Anti-money Laundering & Fraud in France

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General climate and recent developments

State of legal development

In general terms, how developed are the laws on money laundering, terrorism financing and fraud in your jurisdiction?

In terms of combating money laundering and the financing of terrorism, the French regulatory system was previously less developed than in other jurisdictions. The Financial Action Task Force – as part of the French anti-money laundering (AML) and terrorism financing regime – emphasised that there was a lack of technical and human resources in self-regulated organisations entrusted with the task of ensuring compliance with AML and terrorism financing requirements. The Financial Action Task Force also highlighted a significant lack of regulation and supervision of non-financial institutions and professionals. However, in 2016 France significantly enhanced its internal AML and terrorism financing legal and regulatory framework by transposing the Fourth EU Anti-money Laundering Directive (2015/849/EU).

In terms of enforcement, France now has a strict regime with extensive reporting and due diligence requirements, especially in regulated sectors, which includes:

- banks and credit institutions;
- insurance companies;
- investment enterprises; and
- real estate agents.

Recent developments

Have there been any notable recent developments in relation to anti-money laundering, terrorism financing or fraud law and enforcement, including any regulatory changes, case law and convictions?

The following are some of the recent developments in relation to the regulation of AML and terrorism financing in France:

- On 9 July 2018 the Fifth EU Anti-money Laundering Directive (2018/843/EU) came into force. This directive extends AML requirements to additional services, including cryptocurrency trading platforms,

electronic wallet providers, tax-related services and art traders. The directive requires that EU governments create a list of national public offices and functions that identify politically exposed persons (PEPs). It also:
    - provides for greater access to beneficial owner registers when performing AML due diligence;
    - ends the anonymity of bank and savings accounts and safety deposit boxes; and
    - boosts cooperation between EU financial entities.
- Once the new French bill concerning a plan of action for business growth and transformation is adopted, it will allow the French government to transpose into domestic law the Fifth EU Anti-money Laundering Directive and improve national asset-freezing mechanisms.
- On 23 October 2018 the Anti-Fraud Act was adopted to enhance the detection of fraud and strengthen the measures used to tackle taxpayer failure to comply with duties. There is no equivalent of mail fraud or wire fraud – under French law these only exist as tax fraud – which may also be connected to money laundering (eg, tax evasion schemes aimed at concealing money laundering). In this respect, a new financial police force attached to the Ministry for the Economy and Finance is entrusted with the task of carrying out tax fraud investigations. The act also increases penalties for tax evaders and other offenders and imposes new reporting obligations on digital platforms in order to allow the tax administration to track revenue which has not been duly declared. Lastly, the act establishes a naming and shaming procedure through the quasi-systematic publication of all criminal sentences for fraud.

The following are some recent highlights in case law concerning AML and terrorism financing in France:

- In 2017 the first deferred prosecution agreement was signed between the National Financial Prosecutor and HSBC Private Bank, which agreed to pay a fine of €300 million as a result of money laundering connected to tax evasion.
- On 10 January 2019 the Prudential Supervision and Resolution Authority (ACPR) imposed a €1 million fine on Western Union for AML violations, which included:
    - shortcomings in the bank's procedure for identifying PEPs;
    - non-compliance with enhanced due diligence obligations for high-risk transactions; and
    - failure to report suspicious transactions to the Financial Investigation Unit of the Ministry for the Economy and Finance (Tracfin).
- On 21 December 2018 the ACPR imposed a €50 million fine on La Banque Postale for failing to detect and prevent transfers to and from individuals who had their assets frozen. An appeal was lodged with the French Supreme Administrative Court.
- In 2017 and 2018 the ACPR fined two entities of the Crédit Mutuel group €2.5 million, one bank of the Crédit Agricole group €2 million, Societe Generale €5 million and BNP Paribas €10 million for numerous AML violations (in particular, for failing to detect suspicious transactions and report them to Tracfin).

Legal and enforcement framework

Domestic legislation

What primary and secondary legislation applies to money laundering, terrorism financing and fraud in your jurisdiction?

The following legislation applies to anti-money laundering and terrorism financing:

- the Criminal Code (Articles 222-38, 324-1 and *seq*, 421-1 and 421-2-2);
- the Monetary and Financial Code (Book V, Title VI);
- the Customs Code (Article 415);
- the Insurance Code (Article L 310-1 and *seq*); and
- the General Tax Code (Article 1741).

To whom does the legislation apply? May both individuals and organisations be held liable under the legislation? Does the legislation have extraterritorial effect?

Both natural and legal persons can be held liable under French law.

Legal persons can be held liable only for "offenses committed on their behalf by their bodies and representatives" (Article 121-2 of the Criminal Code). A 'body' is defined as being responsible for the managing and directing of a corporation. 'Representatives' include persons to whom certain responsibilities have been delegated. To engage the liability of a legal entity, the body or the representative must have acted with wilful misconduct.

The French legislation has extra-territorial reach if:

- one of the activities leading to the offence took place on French soil;
- the perpetrator is a French national and the conduct took place abroad, provided that either the law of the foreign jurisdiction qualifies the offence as a crime or the offence constitutes a felony under French law; or
- the victim is a French national.

In a recent decision, the French Supreme Court held that there could also be extra-territorial jurisdiction over money laundering perpetrated abroad when money laundering is not separable from its predicate offence which is committed in France (Cass Crim, 11 November 2017, No 17-81546). This decision contradicts the case law which has found that money laundering is distinct from its predicate offence. In this respect, the French courts have held that they have jurisdiction over money laundering offences perpetrated in France, irrespective of whether the predicate offence was committed abroad.

International agreements

Is your jurisdiction a party to any international cooperation agreements to combat money laundering, terrorism financing and fraud?

France is a party to the following international agreements:

- the Financial Action Task Force;
- the International Organisation of Securities Commissions;
- the UN Convention against Corruption;
- the UN Convention against Transnational Organised Crime;
- the Council of Europe Conventions on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;
- the Camden Assets Recovery Interagency Network (via the Financial Investigation Unit of the Ministry for the Economy and Finance (Tracfin)); and

- the Egmont Group (via Tracfin).

Enforcement authorities

Which government authorities enforce the law on anti-money laundering, terrorism financing and fraud, and what is the extent of their powers?

EnforcementCriminal offences may be investigated by the police, usually by the division specialising in serious financial crimes and by a public prosecutor. In complex cases, the investigation is led by an investigating magistrate together with the public prosecutor.

In 2013 the French National Financial Prosecutor (PNF) was established at a national level. The PNF prosecutes crimes in its fields of competence, which include:

- breach of probity (ie, corruption, influence peddling and cronyism);
- damage to public finances (ie, tax fraud and money laundering); and
- market abuse (ie, price manipulation and the dissemination of false information).

Tracfin analyses suspicious transactions relating to money laundering and terrorism financing. It receives reports from the institutions and persons listed in the Monetary and Financial Code (Article L 561-2, including banks and credit institutions, insurers, investment enterprises and real estate agents). If Tracfin discovers activities that may involve a criminal offence, which is punishable with more than one year of imprisonment, it can refer the matter to a public prosecutor.

Monitoring complianceThe following authorities are entrusted with the task of ensuring the compliance of covered institutions and persons with anti-money laundering and terrorism financing obligations:

- The Prudential Supervision and Resolution Authority (ACPR), which oversees the compliance of the French state-owned investment authority charged with investing public funds, banks and credit establishments, insurance and mutual insurance companies and insurance intermediaries. Its supervisory board reviews responses to anti-money laundering questionnaires and carries out on-site controls. The ACPR Sanction Committee can adopt administrative measures (eg, warnings, reprimands, prohibiting institutions from carrying out certain transactions, temporary suspension of directors (for a maximum period of 10 years) and withdrawal of a licence) and impose fines. Recently, the Sanction Committee imposed a €1 million fine on Western Union for anti-money laundering violations.
- The Financial Markets Authority (AMF), which monitors compliance of portfolio management companies, crowdfunding companies and other investment firms. Similarly to the ACPR, the AMF can conduct on-site controls, adopt administrative measures and impose fines.
- The National Sanctions Commission (an independent body created at the Ministry for the Economy and Finance), which oversees the imposition of penalties on certain professionals, including real estate agents and betting operators for failing to comply with anti-money laundering requirements. The commission builds cases following requests from different administrations (eg, the Ministry for the Economy and Finance and the Department of the Home Office) and imposes non-pecuniary penalties (eg, professional disqualification).
- The Anticorruption Agency (AFA), which operates under the authority of the minister of justice and the minister of budget. The AFA has both investigative and supervisory powers, as well as the power to impose administrative penalties as part of compliance programmes. As with the ACPR and the AMF, the AFA makes recommendations which serve as guidelines for determining good practices.

Investigatory powersIn criminal investigations, the PNF, the public prosecutor and, if applicable, the investigating magistrate have broad powers, which vary depending on the type of investigation being carried out. Investigations are categorised as:

- *In flagrante delicto* investigations, which are used:
    - when a crime punishable by imprisonment is in the process of being committed or has just been committed; or
    - if the suspect is found in possession of something which would implicate them in the offence.

In this situation, the police enjoys broad powers, including temporary detention, interrogation, search and seizure.

- Preliminary investigations, which are used in any other situation. No coercive measures are generally allowed. Subjects under investigation must give their consent to searches and seizures.
- Judicial investigations, which are led by an investigating magistrate and used in complex cases. The investigating magistrate enjoys broad investigative powers of arrest, interrogation of witnesses and suspects, search and seizure.
- Deferred prosecution agreements, which are investigations conducted by the PNF, which has extensive powers and may enter into settlements with companies for corruption, influence peddling or laundering of tax fraud offences.

In the context of administrative investigations conducted by the ACPR and the AMF, these authorities can, without prior judicial authorisation:

- request the delivery of any documents on a voluntary basis;
- access business premises to obtain documents and correspondence;
- make copies of the materials obtained; and
- summon individuals to attend interviews.

Statute of limitations

What is the limitation period for bringing actions in relation to money laundering, terrorism financing and fraud offences?

The statute of limitations for prosecuting money laundering and terrorism financing offences is six years starting from the date on which the offence was committed (Article 8 of the Code of Criminal Procedure). If the offence was hidden or concealed, the statute of limitations starts running from the date on which the offence was discovered, but the offence cannot be prosecuted if 12 years have passed since it was committed (Article 9-1 of the Code of Criminal Procedure).

As money laundering is distinct from its predicate offence, prosecution for money laundering remains possible even if prosecution for the predicate offence is statute-barred (Cass Crim, 31 May 2012, No 12-80.715).

The statute of limitations for the prosecution of money laundering offences starts on the day of the last act of investment or concealment of criminal proceeds (CA Montpellier, 18 March 2014, No 13-00480). As these acts are likely to be recurring, the statute of limitation starts running anew every time a new investment or concealment of the criminal proceeds occurs.

Offences

Legal definition

How are 'money laundering', 'terrorism financing' and 'fraud' legally defined in your jurisdiction?

Article 324-1 of the Criminal Code defines 'money laundering' as:

- facilitating by any means the false justification of the origin of property or income of the perpetrator of a felony or a misdemeanour that has brought that person a direct or indirect benefit; or
- assisting by investing, concealing or converting the direct or indirect property obtained through felony or misdemeanour.

Article 421-2-2 of the Criminal Code defines 'terrorism financing' as the supplying, pooling or directing of funds, value or goods, or providing advice to that end, with the intention or understanding that they will be used (in full or in part) to commit one or more acts of terrorism.

Fraud does not constitute a separately defined offence under French criminal law. Rather, 'fraudulent conduct' is a material element of several criminal provisions under the Criminal Code (eg, swindling, breach of trust, extortion and falsification).

Nevertheless, Article 1741 of the General Tax Code defines 'tax fraud' as the fraudulent evasion or attempt to evade the levying or payment, in whole or in part, of taxes, either by wilfully failing to file a tax return within the prescribed timeframe, or by wilfully concealing part of the imposable sums, or by arranging for insolvency or hindering the collection of taxes by acting in any other fraudulent manner.

Principal and secondary offences

What are the principal and secondary offences in relation to money laundering, terrorism financing and fraud?

The principal money laundering offences are set out in Article 324-1 of the Criminal Code, which states that 'money laundering' consists of:

- facilitating by any means the false justification of the origin of property or income of the perpetrator of a felony or a misdemeanour that has directly or indirectly benefited that person; or
- assisting in investing, concealing or converting the direct or indirect property obtained through a felony or misdemeanour.

Article 421-2-2 of the Criminal Code defines 'terrorism financing' as the supplying, pooling or directing of funds, value or goods, or providing advice to that end, with the intention or understanding that they will be used (in full or in part) to commit one or more acts of terrorism.

Article 222-38 of the Criminal Code prohibits the laundering of the proceeds derived from drug trafficking, while Article 415 of the Customs Code prohibits the laundering of the proceeds derived from customs offences (eg, smuggling, importing or exporting without the proper customs declaration).

Article 1741 of the General Tax Code prohibits fraudulent evasion or attempts to evade the levying or payment, in whole or in part, of taxes, either by wilfully failing to file a tax return within the prescribed timeframe, or by wilfully concealing part of the sums subject to tax, or by arranging for insolvency or hindering the collection of taxes by acting in any other fraudulent manner.

In certain circumstances, the violation of anti-money laundering due diligence obligations set forth in the Monetary and Financial Code can also constitute a criminal offence. For example, disclosure to third parties of the existence and content of the report on suspicious activities sent to the Financial Investigation Unit of the Ministry for the Economy and Finance (Tracfin) is punishable with a fine of up to €22,500 (Article L 561-18 and L 574-1 of the Monetary and Financial Code).

The failure to comply with reporting obligations on suspicious activities to Tracfin does not constitute a separately defined offence under French criminal law. However, this conduct can fall within Article 434-1 of the Criminal Code, which punishes the failure to notify administrative or judicial authorities when a crime is committed, provided that it is still possible to prevent or limit its consequences. To engage the liability of institutions and persons subject to these reporting obligations, the authorities must give evidence that institutions and persons subject to these reporting obligations had actual knowledge that a crime (including money laundering) was being perpetrated.

Predicate offences

How are predicate offences defined?

The French government has adopted an all-crime approach to predicate offences in respect of anti-money laundering and terrorism financing legislation. Therefore, any misdemeanour or felony can constitute a predicate offence if the perpetrator of the predicate offence obtains a profit or receives an asset as a consequence of that offence (which is then used in money laundering).

To establish that money laundering has taken place, the authorities must identify and provide evidence of the predicate offence. In practice, this is often difficult, despite recent case law indicating a trend towards greater flexibility. In 2013 a presumption was introduced in the Criminal Code according to which goods and funds are presumed to be the direct or indirect product of a felony or misdemeanour when the material, judicial or financial conditions of the operation of placement, dissimulation or conversion could have no other justification than to conceal the origin or the effective beneficiary of the goods and revenues (Article 324-1-1-1 of the Criminal Code). Therefore, the burden of proof is reversed and the perpetrator must prove the legality of the funds or goods in question.

De minimis rules

What de minimis rules apply to money laundering, terrorism financing and fraud offences?

There is no *de minimis* rule which applies to money laundering and terrorism financing offences.

Penalties and plea agreements

Penalties

What penalties may be issued for money laundering, terrorism financing and fraud offences?

Criminal penaltiesThe following penalties for money laundering apply to natural persons:

- A maximum penalty of five years' imprisonment and a fine of €375,000 apply (Article 324-1 of the Criminal Code). The fine may be increased to half the value of the assets laundered (Article 324-3 of the Criminal Code).
- For aggravated money laundering a maximum penalty of 10 years' imprisonment and a fine of €750,000 apply (Article 324-2 of the Criminal Code).
- If the predicate offence is punished with a longer imprisonment compared to that of money laundering, the applicable penalty for these charges would be that of the predicate offence, provided that the defendant had knowledge of the predicate offence (Article 324-4 of the Criminal Code).

The following penalties apply to legal entities:

- The maximum penalty is five times the maximum fine for natural persons (€1.875 million) (Article 324-9 of the Criminal Code). For aggravated money laundering, the maximum penalty is a €3.75 million fine.

- Additional penalties can be imposed (eg, the dissolution or prohibition to exercise a professional activity for a maximum of five years).
- Legal entities convicted of money laundering are automatically excluded from the register which lists companies that can entertain contractual relationships with the public administration (Article 45 of Ordinance No 2015-899, 25 July 2015).

The following penalties apply for terrorism financing:

- Natural persons face a maximum penalty of 10 years' imprisonment and a fine of €225,000 (Article 421-5 of the Criminal Code).
- Legal entities face a maximum penalty of five times the fine provided for natural persons (€1.125 million) (Article 422-5 of the Criminal Code). They can also be subject to additional penalties, such as those described above.

The following penalties apply for tax fraud:

- Besides applicable tax penalties, natural persons face up to five years' imprisonment and a fine of €500,000 (Article 1741 of the General Tax Code).
- For aggravated tax fraud, the maximum penalty is seven years' imprisonment and a fine of €3 million. The amount of the fine may be increased to half the value of criminal proceeds.
- Legal entities face a maximum penalty of five times the fine provided for natural persons (€2.5 million).

Administrative penaltiesNon-compliance with anti-money laundering and terrorism financing obligations can also lead to administrative fines.

The Prudential Supervision and Resolution Authority issues fines of:

- up to €5 million for natural persons; and
- up to €100 million or 10% of the net annual turnover, whichever is the highest, for legal entities (Article L 561-36-1 of the Monetary and Financial Code).

The Financial Markets Authority issues the following fines:

- up to €15 million or five times the amount of profits made for natural persons; and
- up to €100 million or ten times the amount of profits made for legal entities (Article L 621-15 of the Monetary and Financial Code).

The National Sanctions Commission issues fines of up to €5 million (Article 561-40 of the Monetary and Financial Code).

These administrative bodies can also adopt administrative measures (eg, warnings, reprimands, banning institutions from carrying out certain transactions, the temporary suspension of directors (for a maximum period of 10 years) and the withdrawal of licences).

The criminal and administrative penalties can be applied together. The French Constitutional Court held that the imposition of an administrative and criminal penalty for failure to file a tax return is not contrary to the *ne bis in idem* principle (Constitutional Court, 23 November 2018, No 2018-745). In the 2016 case *A and B v Norway*, the Grand Chamber of the European Court of Human Rights also considered that there was no double jeopardy in breach of Article 4 of Protocol No 7 where administrative and criminal proceedings relating to the same conduct (tax wrongdoing) provided that these proceedings were complementary and did not lead to a disproportionate

result. Finally, on March 20 2018 the European Court of Justice also considered that national legislation may provide for an imposition of administrative and criminal penalties for the same conduct, provided that these penalties have complementary objectives and are aimed at serving a general interest (ECJ, 20 March 2018, C-537/16).

Plea agreements

Are plea agreements available? If so, how often are they used and what rules, standards and procedures apply?

There are different plea bargaining regimes available in France.

First, the Code of Criminal Procedure contains a provision on guilty pleas, the so-called '*Comparutions sur Reconnaissance Préalable de Culpabilité'* (CRPC) (Article 495-7). According to this procedure, the defendant agrees to plead guilty to a specific charge in exchange for a more lenient sentence. The CRPC is a two-stage procedure which consists of:

- a meeting with the public prosecutor during which negotiations between counsel and the prosecutor occur; a proposal for an imprisonment sentence cannot exceed one year, nor can the amount of the fine exceed the maximum amount of the proceeds of the crime; and
- if the defendant accepts the proposed sentence, the judge then decides whether to approve it.

When it was adopted in 2004, the CRPC did not originally apply to corporations. However, in 2016 this procedure was used for the first time in a case involving Swiss bank Reyl, which pleaded guilty for laundering tax fraud proceeds and agreed to pay a fine of €2.8 million. The agreement was subsequently approved by the Paris Criminal Court on 5 January 2016.

Second, if the defendant pleads guilty, the public prosecutor can also propose a settlement, which is available only in cases in which charges are brought for misdemeanours which carry a sentence of up to five years' imprisonment (Articles 41-2 and 41-3 of the Code of Criminal Procedure). The sentences available to the prosecution do not include imprisonment. If the defendant accepts the proposed sentence, the judge must then approve it. In theory, charges of money laundering carrying five years' imprisonment may be settled through this procedure. However, this is unlikely considering how serious these charges often are.

Third, another plea agreement available for legal entities charged with corruption, influence peddling, money laundering and other specific offences is the deferred prosecution agreement (CJIP). This procedure is available only to corporations with a minimum of 500 employees and an annual turnover of at least €1 million. It allows the public prosecutor to drop the charges if the company agrees to undertake one or more of the following obligations:

- the payment of a fine to the Treasury not exceeding 30% of the company's annual turnover in the last three financial years;
- the implementation of compliance measures; or
- the payment of compensation to the identified victims (Article 41-1-2 of the Code of Criminal Procedure).

Once the CJIP is accepted by the company, it must be approved by the judge. If the corporation does not satisfy the conditions set forth in the CJIP, the prosecution can resume.

On 14 November 2017 the French national financial prosecutor announced the president of the Paris Court's approval, of the first CJIP, whereby HSBC Private Bank agreed to pay a fine of €300 million to settle criminal charges of money laundering of tax evasion proceeds, without admission of guilt.

Defences

Available defences

What defences are available in your jurisdiction to parties accused of money laundering, terrorism financing or fraud?

Article L 561-22, I of the Monetary and Financial Code provides that the institutions and persons listed in Article L 561-2 (covered institutions and persons) that have fulfilled their obligations to report suspicious activities to the Financial Investigation Unit of the Ministry for the Economy and Finance (Tracfin) cannot be prosecuted for the violation of professional privilege and confidentially rules.

Moreover, covered institutions and persons can be exempted from criminal liability if they have fulfilled their reporting obligations to Tracfin (Article 561-22, IV of the Monetary and Financial Code). This exemption is also available if they have either abstained from performing the transaction or received authorisation by Tracfin to proceed. This defence does not apply in cases of fraudulent cooperation between the covered institution and person and the perpetrator of the predicate offence or the owner of the funds.

Finally, covered institutions can also benefit from exemption from prosecution for money laundering by their client, provided that it was the Bank of France that compelled them to open a payment account for that client. To benefit from this exemption, covered institutions should implement a reinforced anti-money laundering procedure and fulfil their reporting obligations to Tracfin. However, this defence does not apply when the covered institution has cooperated with the perpetrator of the predicate offence or the owner of the funds (Article 561-22, V of the Monetary and Financial Code).

Record keeping, disclosure and compliance

Record-keeping and disclosure requirements

What record-keeping and disclosure requirements apply to companies and relevant individuals under the anti-money laundering, terrorism financing and fraud legislation?

Record-keeping requirementsThe institutions and persons listed in Article L 561-2 of the Monetary and Financial Code (covered institutions and persons) have an obligation to maintain all documents and information about their customers for five years from the closure of the account or the termination of their business relationship (Article L 561-12 of the Monetary and Financial Code). They must also maintain all documents and information about transactions carried out by their customers for five years from their execution.

Disclosure requirementsCovered institutions and persons must report without delay the funds recorded on their books or transactions that they know, suspect or have good reason to suspect to be the result of an offence that carries an imprisonment sentence of more than one year or that relate to terrorism or tax evasion to the Financial Investigation Unit of the Ministry for the Economy and Finance (Tracfin) (Article L 561-15 of the Monetary and Financial Code). They must also report any information that could invalidate or modify the initially reported information.

There is also an obligation to systematically report covered institutions and persons regarding large cash or electronic currency transfer transactions (amounts exceeding €1,000 or €2,000 per customer over one calendar month) to Tracfin (Article D 561-31-1 of the Monetary and Financial Code). A similar obligation is applicable to cash payments or withdrawals to or from a deposit or payment account exceeding €10,000 over one calendar month.

Financial institutions are also required to automatically report on transactions presenting a high risk of money laundering or terrorism financing due to the country to or from which the funds are transferred, the nature of the transaction or scheme surrounding it (Article L 561-15-1 of the Monetary and Financial Code).

For tax fraud, platforms must provide:

- honest, clear and transparent information on the tax and social obligations of the users carrying out transactions; and
- an electronic link to the tax administrations' website to enable customers to comply with these obligations (Article 242-2 bis of the General Tax Code).

Every year such platforms must send:

- a statement of the operations carried out by the users of the platform; and
- a document summarising all the information of all users to the tax authorities (Article 242-2 *bis* of the General Tax Code).

Compliance

What internal compliance measures are required and/or advised for companies in relation to the anti-money laundering, terrorism financing and fraud legislation?

The institutions and persons listed in Article L 561-2 of the Monetary and Financial Code must set up internal risk assessment and management programmes (Article L 561-32 of the Monetary and Financial Code).

These compliance programmes should include:

- the designation of a person responsible for implementing the anti-money laundering and terrorism financing system;
- an assessment of money laundering and terrorism financing risks;
- the development and implementation of anti-money laundering and terrorism financing procedures (eg, risk management, customer due diligence, detection of suspicious transactions and reporting obligations);
- the implementation of internal controls; and
- the organisation of relevant employee training.

What customer and business partner due diligence is required and/or advised for companies in relation to the anti-money laundering, terrorism financing and fraud legislation?

The institutions and persons listed in Article L 561-2 of the Monetary and Financial Code (covered institutions and persons) must carry out thorough due diligence depending on the risks associated with their business.

Before entering into a business relationship with a customer, businesses must gather the following information as part of the know-your-customer obligations:

- verify the identity of the customer based on any reliable written document (for a natural person, any official document with a photograph of the individual and, for a legal person, an extract from the official register less than three months old);
- where applicable, identify the beneficial owner and verify their identity; a beneficial owner is the individual who either controls, directly or indirectly, the client or on behalf of whom a transaction is carried out; and
- collect information about the purpose and nature of the business relationship, and any other relevant information (Articles L 561-5, L 561-5-1 and R 561-1 of the Monetary and Financial Code).

In addition, covered institutions and persons must also verify the identity of their occasional customers and, where appropriate, of their beneficial owners if they suspect that a transaction presents a risk of being linked to money laundering or terrorism financing, or:

- when the amount is over €15,000 for any person other than money changers and legal representatives of casinos and other related institutions;
- when the amount is over €8,000 for exchange offices; or
- in case of money transfer or money changing transactions, if the client or its legal representative are not physically present (Articles L 561-5 and R 561-10 of the Monetary and Financial Code).

In a business relationship, covered institutions and persons must:

- collect all of the relevant information and keep all documents and risk profiles;
- keep records of all documents and information for five years from the account closure or the termination of the business relationship; and
- monitor transactions undertaken to ensure their consistency with their knowledge of the customer (Article L 561-12 of the Monetary and Financial Code).

There is also a simplified duty of due diligence when the risks of money laundering or terrorism financing are deemed to be low. These cases are listed in Articles R 561-15 and R 561-16 of the Monetary and Financial Code (eg, the clients are banks and credit institutions established in the European Union or in third countries which impose equivalent anti-money laundering and terrorism financing requirements).

Conversely, there is an enhanced duty of due diligence when risks are particularly high (eg, the risky nature of the transaction, the customer is not physically present during the identification process or the customer is a politically exposed person) (Article L 561-5 of the Monetary and Financial Code).

Moreover, according to Article L 561-46 of the Monetary and Financial Code, certain legal entities must also:

- obtain and hold accurate information about their beneficial owners; and
- file documents providing information on the identity and domicile of their beneficial owner with the commercial court registry.

Private enforcement

Private actions

Can private actions be brought in your jurisdiction for damages arising from money laundering, terrorism financing or fraud? If so, who may file such actions and what filing procedures apply?

According to Article 4 of the Code of Criminal Procedure, a civil action can be brought independently of a criminal action before the civil court. A civil action can also be brought in conjunction with a criminal action and in this case the former becomes accessory to the latter (Article 3 of the Code of Criminal Procedure).

This action can be brought under Article 1240 of the Civil Code. The plaintiff must prove:

- the illegal conduct of the perpetrator (who needs to have acted at least out of negligence);
- that it has suffered certain, direct and personal damages; and
- that a causal link exists between the illegal conduct and the damage.

In any event, the statute of limitation of five years applies from the date on which the conduct was or could have been detected.

French courts have held that victims of money laundering cannot bring actions against the institutions and persons listed in Article L 561-2 of the Monetary and Financial Code for damages arising out of their failure to implement anti-money laundering due diligence requirements (Cass, 28 April 2004, No 02-15.054). These institutions can incur only administrative penalties, as the purpose of anti-money laundering obligations is to protect the public interest.

How are damages calculated?

Damages in anti-money laundering cases are calculated according to ordinary civil principles and must be determined by taking into account all the elements known at the date of the judgment.

What other remedies may be awarded to successful claimants?

No other remedies are available to successful claimants.

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