

# France

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## Domestic legislation

### 1 Domestic law

**Identify your jurisdiction's money laundering and anti-money laundering (AML) laws and regulations. Describe the main elements of these laws.**

The main French money laundering legislation proceeds from the following:

- the French Monetary and Financial Code;
- the Financial Markets Authority's (FMA) General Regulation; and
- the French Criminal Code (FCC)

The French Monetary and Financial Code sets out, from articles L561-1 to L562-11, various measures and requirements in relation to money laundering mostly to prevent such an offence using both disclosure and vigilance requirements.

The Financial Markets Authority regulates participants and products in French financial markets. It regulates, authorises, monitors, and, when necessary, conducts investigations and issues sanctions. In addition, it ensures that investors receive material information, and provides a mediation service to assist them in disputes. Therefore, the FMA's General Regulation provides among other things, legally binding guidelines for investment service providers in order to prevent money laundering (from article 315-49 to 315-58).

Articles 324-1 to 324-6-1 of the French Code of Criminal Law have to do with the money laundering offence, which is defined as:

*Facilitating by any means the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanour which has brought him a direct or indirect benefit.*

*Money laundering also comprises assistance in investing, concealing or converting the direct or indirect products of a felony or misdemeanour.*

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## Money laundering

### 2 Criminal enforcement

**Which government entities enforce your jurisdiction's money laundering laws?**

Money laundering is investigated by a prosecutor or an investigating judge with the assistance of the police or customs.

Pertaining to some complex cases and some specific offences, the Financial Prosecutor has a national jurisdiction.

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### 3 Defendants

**Can both natural and legal persons be prosecuted for money laundering?**

Both natural and legal persons may be prosecuted for money laundering legislation infringement. However, regarding legal persons' criminal liability, French law requires the offence to be committed on their account and by one of their organs or representatives (article 121-2 of the French Code of Criminal Law).

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### 4 The offence of money laundering

**What constitutes money laundering?**

French law separates two types of money laundering offences:

- facilitating the false justification of the origin of an offender's property or incomes when his or her felony or misdemeanour has brought him or her direct or indirect benefits; and
- assisting in the investment, concealment or conversion of the direct or indirect products of a felony or misdemeanour.

Under article 121-3 of the French Code of Criminal Law the offence of money laundering requires mens rea, the intent to commit the offence.

Attempted money laundering is also criminalised.

Financial institutions cannot be prosecuted for their customers' money laundering per se. However, if such institutions actively and knowledgeably participate in money laundering it would obviously be prosecuted.

As regards negligence, depending on the facts of the case, the prosecution could use it to characterise the intent to commit the offence (eg, repeated negligence or negligence toward an unusual and expensive transaction).

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### 5 Qualifying assets and transactions

**Is there any limitation on the types of assets or transactions that can form the basis of a money laundering offence?**

There is no limit on the types or value of the assets that can form the basis of a money laundering offence.

Regarding the types of transactions, see question 4.

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### 6 Predicate offences

**Generally, what constitute predicate offences?**

Every misdemeanour or crime committed in France or in another jurisdiction can constitute a predicate offence.

It is not required for the predicate offence to be judged or even prosecuted in France or in another jurisdiction.

Under French case law judges can characterise the predicate offence regarding French criminal law.

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### 7 Defences

**Are there any codified or common law defences to charges of money laundering?**

There are no codified defences to charges of money laundering.

However, under article 324-6-1 of the French Code of Criminal Law, every person who attempted to launder money but warned the authorities, preventing the offence, and identified – if any – his or her accomplices or accessories will be exempted from punishment.

Under the same article, every money launderer who warned the authorities in order to stop the offence or to identify – if any – his or her accomplices or accessories will face a lower sentence (ie, divided by two).

## 8 Resolutions and sanctions

### What is the range of outcomes in criminal money laundering cases?

As regards sanctions pertaining to natural persons, money laundering offences carry maximum sentences of five year's imprisonment and a fine of €375,000.

If the money laundering is committed habitually, by using means provided by the offender's profession or with the aggravating circumstance of an organised crime the maximum sentences are raised to 10 years' imprisonment and a fine of €750,000.

However, under article 324-3 of the French Code of Criminal Law, the amount of the fine may be raised to half of the value of the assets that were subject to money laundering.

Moreover, if the maximum imprisonment of the predicate offence exceeds the above-mentioned, this maximum applies to the money laundering offence provided that the launderer had knowledge of the predicate offence.

Pertaining to legal persons, under article 131-38 of the French Code of Criminal Law the maximum amount of the fine is multiplied by five (ie, €1,875,000 and €3,750,000).

In any case, under article 324-7 of the French Code of Criminal Law, money laundering also carries a sentence of confiscation of the offender's assets whether or not they have connections with the offence.

When the money laundering carries a maximum sentence of five years' imprisonment, articles 41-1 to 41-2 of the French Criminal Procedure Code provide for alternative measures that the prosecutor may use to settle a case without trial provided that the offender acknowledges guilt.

Articles 180-1 and 495-7 of the French Criminal Procedure Code provide for plea agreements for all misdemeanours (except some expressly listed). This procedure requires the offender to plead guilty and a judge to confirm the plea agreement.

## 9 Forfeiture

### Describe any related asset freezing, forfeiture, disgorgement and victim compensation laws.

As regards the assets subject to money laundering, they can be seized and confiscated or granted to the victim as damages.

Pertaining to money laundering the French courts are also entitled to confiscate some or all the assets belonging to the offender, whether or not they have connections to the predicate offence or the money laundering.

## 10 Limitation periods

### What are the limitation periods governing money laundering prosecutions?

Under French law (ie, article 8 of the French Criminal Procedure), the limitation period for misdemeanours is three years; and for a felony, 10 years. The time period begins to run from the moment the offence is committed.

## 11 Extraterritorial reach

### Do your jurisdiction's money laundering laws have extraterritorial reach?

Under articles 113-1 et seq of the FCC, French law is applicable to:

- every offence committed in France, even partially; the nationality of the offender has no consequence;
- every felony committed outside France by a French citizen or to misdemeanours provided that they are also criminalised in the country where they have been committed; and
- every felony or misdemeanour sanctioned by imprisonment, when the victim is a French citizen.

## AML requirements for covered institutions and individuals

### 12 Enforcement and regulation

#### Which government entities enforce your jurisdiction's AML regime and regulate covered institutions and persons? Do the AML rules provide for ongoing and periodic assessments of covered institutions and persons?

Covered institutions and persons must comply with various requirements and assessments from:

- the Financial Markets Authority;
- Tracfin; and
- the 'Autorité de contrôle prudentiel et de resolution', the French Prudential Supervisory Authority of the Banque de France.

The AML rules provide for assessments of covered institutions and persons (article L561-36 of the French Monetary and Financial Code).

### 13 Covered institutions and persons

#### Which institutions and persons must carry out AML measures?

Under article L561-2 of the French Monetary and Financial Code – among others – the following persons must carry out AML measures:

- banking service providers;
- payment institutions;
- electronic currency institutions;
- insurance companies listed by article L310-1 of the Insurances Code and some insurance intermediaries;
- institutions or unions listed in the Chapter III of Book IX of the Social Security Code or article L727-2 of the French Rural Code;
- mutual societies and unions that carry transactions referred to in paragraph I, 1 of article L111-1 of the Mutuality Code and the mutual societies and unions that manage settlements and contracts for said mutual societies and unions;
- Banque de France, issuing institution of the overseas departments referred to in article L711-2 of this code and the overseas issuing institution referred to in article L712-4, hereof;
- investment firms other than portfolio management companies;
- money changers;
- crowdfunding intermediaries;
- entities engaged in the activities referred to in sub-paragraphs 1, 2, 4, 5, 8 and 9 of article 1 of Act No. 70-9 of 2 January 1970 regulating the conditions of practice of the activities pertaining to certain transactions in real estate and goodwill, excluding exchanges, letting or subletting, seasonal or otherwise, whether unfurnished or furnished;
- legal representatives and managers responsible for the gaming and betting operators;
- entities regularly engaging in trading in gems, precious materials, antiques and works of art;
- certified public accountants;
- attorneys of the Conseil d'Etat and of the Cour de cassation;
- firms carrying out voluntary sales of furniture at public auctions;
- entities engaged in the domiciliation activity referred to in articles L123-11-2 et seq of the Commercial Code;
- sports agents; and
- authorised persons under article L621-18-5 of the French Monetary and Financial Code.

### 14 Compliance

#### Do the AML laws in your jurisdiction require covered institutions and persons to implement AML compliance programmes? What are the required elements of such programmes?

Some of the aforementioned persons (see question 13) must – among others – implement the following steps in their compliance programmes:

- customer due diligence, provided by articles L561-5 to L561-14-2 of the French Monetary and Financial Code, which mostly consists of:
  - identifying the customer and verifying his or her identity on the basis of official documents, prior to the business relationship;
  - assessing the risk of money laundering;

- maintaining this information up to date throughout the business relationship;
- keeping records, for at least five years, of all this information; and
- reporting any suspicious activities from a customer or future customer to Tracfin (FIU);
- creation of an internal system to assess and manage money laundering risks; and
- organisation of in-house training concerning money laundering.

In addition, under the FMA's General Regulation, investment service providers and portfolio management companies must create a compliance officer position and provide for sufficient means to accomplish its missions with independence.

## 15 Breach of AML requirements

### What constitutes breach of AML duties imposed by the law?

Any failure to comply with the aforementioned obligations constitutes a breach of AML duties.

French law (ie, articles L561-15 to L561-22 of the French Monetary and Financial Code) particularly addresses reporting every suspicious transaction. It is to be noted that article L561-22 provides for a protection against civil and criminal lawsuits for the person who reports a transaction that he or she thought to be suspect.

## 16 Customer and business partner due diligence

### Describe due diligence requirements in your jurisdiction's AML regime.

As set out above (see question 14) customer due diligence is stated by articles L561-5 to L561-14-2 of the French Monetary and Financial Code. It mostly consists of the following steps, prior to engaging in a business relationship:

- identifying the customer by using every reliable written document (ie, official documents described in article R561-5 of the French Monetary and Financial Code);
- if need be, identifying the beneficial owner and verifying identity;
- assessing the risk of money laundering;
- gathering all relevant information as to the object and nature of the business relationship and to the customer. Keeping such information up to date throughout the relationship is also required; and
- keeping records of the information gathered for five years from, for instance, the end of the business relationship.

Depending on the assessed risk of money laundering, customer due diligence requirements can be raised or lowered.

The verification procedure requires verifying the customer's identity based on a valid, official document. If the customer is a natural person the document should contain his or her photograph. Concerning legal persons, it must be a three-month-old or less document containing, among others, the identity of its partners and representatives.

The verification procedure should be conducted in the customer's, or its representative's, physical presence. Should that not be the case, complementary measures, stated by article R561-20 of the French Monetary and Financial Code, would be required.

Moreover, every time that the covered persons have reason to suspect that their customer's identity may have changed they must undertake a new identification.

If identifying the customer or obtaining information on the object and nature of the business relationship is impossible, the covered persons are forbidden to conduct any transaction.

The definition of the effective beneficiary is stated at article L561-2-2 as the natural person who controls, directly or indirectly, the customer or as the person for whom a transaction or an activity is executed.

## 17 High-risk categories of customers, business partners and transactions

### Do your jurisdiction's AML rules require that covered institutions and persons conduct risk-based analyses? Which high-risk categories are specified?

As set out above (see question 16), the French AML rules provide for a requirement for covered persons to assess the risk of money laundering. Depending on the result of this assessment the AML requirements will be raised or lowered.

Moreover, complementary measures are required in certain situations. Those situations, among others, are the following:

- when the customer or its representative is absent during his identification;
- when the customer does not live in France and is politically exposed because of his or her current or former functions or because a direct member of his or her family is politically exposed. Politically exposed persons are listed at article R561-18 of the French Monetary and Financial Code (eg, heads of state, members of a parliamentary assembly, ambassadors, etc);
- when the product or the transaction facilitates anonymity;
- when the transaction is to be enforced with a person linked with a country identified by the Financial Action Task Force and some other countries (article L561-10 et seq of the French Monetary and Financial Code); and
- when the intended transaction is particularly complex, expensive or does not appear to be economically justified or licit.

## 18 Record keeping and reporting requirements

### Describe the record keeping and reporting requirements for covered institutions and persons.

As regards record keeping, article L561-12 of the French Monetary and Financial Code requires that covered persons keep for five years from the end of the business relationship the documents:

- used to verify the customer's identity during the due diligence process; and
- pertaining to the transactions they realised on their client's behalf.

Articles L561-15 to L561-22 of the French Monetary and Financial Code provide for reporting requirements.

Article L561-15 requires from the covered persons that they report any account or transactions that they know, suspect or have good reason to suspect originate from an offence sanctioned by more than one year's imprisonment.

In the case of tax fraud there are also reporting requirements provided that at least one criterion listed at article D561-32-1 is met (eg, using shell companies, incoherent transactions, invoice anomalies, frequent cash withdrawals, etc).

Every piece of information that could confirm, modify or invalidate a previous report must be immediately reported to Tracfin (FIU).

Pertaining to transactions using cash deposits or electronic payments, reporting is required for each transaction exceeding €1000 or if the total amount of the monthly transactions exceeds €2000.

Article L561-15-1 II of the French Monetary and Financial Code states that covered persons must report every transaction presenting a high risk of money laundering as regards the country from or to which the funds will be sent, the transaction type or the legal entities involved. However, the decree that is necessary to enforce those requirements is still to be passed.

Concerning lawyers, article L561-17 of the French Monetary and Financial Code provides a special procedure according to which they must report to the Chairman of the Bar who will review the report before transmitting it to the FIU (unless the lawyer acts as trustee in the transaction).

## 19 Privacy laws

### Describe any privacy laws that affect recordkeeping requirements, due diligence efforts and information sharing.

Under article L561-19 of the French Monetary and Financial Code, both the existence and the content of the reports to the FIU are confidential.

There are some exceptions to this confidentiality among which:

- control authorities have access to those reports in order to perform their mission;
- during their investigations, judicial authorities are entitled to request information from the FIU provided that it is necessary to establish liability and that the suspected offence already is money laundering; and
- under very strict conditions provided by articles L561-20 and L561-21 of the French Monetary and Financial Code, covered persons may share information about a mutual customer

## 20 Resolutions and sanctions

**What is the range of outcomes in AML controversies? What are the possible sanctions for breach of AML laws?**

The outcomes will depend on the covered person or persons involved in the AML controversies.

Indeed, breaches of AML requirements are disciplinary matters, which will be settled accordingly (eg, by the Bar Council for lawyers, by the Financial Markets Authority's enforcement committee regarding Investment Services Providers, etc).

Concerning criminal liability, see question 8. As regards civil liability, see question 23.

## 21 Limitation periods

**What are the limitation periods governing AML matters?**

Limitation periods depend on the nature of the offence and can be of one or three years. They usually run from the moment the offence is committed.

As regards civil claims, the limitation period is five years from the date when the contract was signed or the fault committed.

## 22 Extraterritoriality

**Do your jurisdiction's AML laws have extraterritorial reach?**

Article L561-2 of the French Monetary and Financial Code does not require that the covered persons be French but they must carry out activities in France.

## Civil claims

### 23 Civil claims and private enforcement

**Enumerate and describe the required elements of a civil claim or private right of action against money launderers and covered institutions and persons in breach of AML laws.**

Every person claiming to be the victim of someone else's behaviour may claim damages in civil, commercial or criminal courts (not in front of the FMA) provided that he or she can prove the following elements:

- fault;
- prejudice; and
- causality

There is no presumed liability (except some rare exceptions), hence the burden of proof relies on the claimant.

As regards money launderers, money laundering is an offence and therefore a fault. As long as that fault causes a prejudice to someone, he or she is entitled to sue the money launderers to be granted damages.

As far as covered institutions and persons in breach of AML requirements are concerned, they have various obligations to fulfil; if they fail to complete those they commit a fault and therefore may be sued for damages by possible victims.

However, article L561-22 of the French Monetary and Financial Code provides for full civil immunity to – among others – covered institutions and persons who reported information in good faith. Should this report prejudice someone, the State would grant him or her damages accordingly.

Finally, the limitation period is five years from the date when the fault was committed.

## Update and trends

In France, money laundering is one of the most prosecuted offences, particularly when the predicate offence is tax fraud.

Nowadays, predicate offences are often left unprosecuted and prosecutors prefer to charge offenders with money laundering. This trend is mostly explained by recent laws which created the possibility, in money laundering cases, of seizing and confiscating some or all of the offender's assets whether or not they have connections with the money laundering.

Hence, the best compliance policy for companies and institutions is to be particularly careful regarding tax issues.

## International anti-money laundering efforts

### 24 Supranational

**List your jurisdiction's memberships of supranational organisations that address money laundering.**

France is a member of various supranational organisations that address money laundering:

- the Financial Action Task Force;
- the Egmont Group;
- the European Union; and
- the United Nations.

### 25 Anti-money laundering assessments

**Give details of any assessments of your jurisdiction's money laundering regime conducted by virtue of your membership of supranational organisations.**

France was assessed for the third time by the FATF on 25 February 2011. The French money laundering legislation is considered to be compliant with the FATF's standards.

### 26 FIUs

**Give details of your jurisdiction's Financial Intelligence Unit (FIU).**

The French FIU is named Tracfin, which stands for 'Traitement du renseignement et action contre les circuits financiers clandestins'. Its details are as follows :

#### Tracfin

10, rue Auguste Blanqui  
93186 Montreuil-sous-bois cedex  
Tel: +33 1 57 53 27 00  
Fax: +33 1 57 53 27 27  
crf.france@finances.gouv.fr  
www.economie.gouv.fr/tracfin/accueil-tracfin

Tracfin is a member of the Egmont Group.

### 27 Mutual legal assistance

**In which circumstances will your jurisdiction provide mutual legal assistance with respect to money laundering investigations? What are your jurisdiction's policies and procedures with respect to requests from foreign countries for identifying, freezing and seizing assets?**

Mutual legal assistance with foreign jurisdictions is provided by the international treaties signed by France (eg, European Convention on Laundering, Search, Seizure and Confiscation of The Proceeds of Crimes of 1990, Regulation of the European Parliament and the Council of 13 November 2007, United Nations Convention against Corruption of 31 October 2003, etc).

In the absence of an international treaty, mutual legal assistance is provided by articles 694 to 696-47 of the French Code of Criminal Procedure.

The legal assistance requests from foreign jurisdictions are sent to the French judicial authorities using diplomatic channels. The replies to those requests follow the same course.

The assistance requests are executed by the prosecutor or the investigating judge depending on the requests (article 694-2 of the French Code of Criminal Procedure).

If need be, the Minister of Justice may be informed that the request endangers public order and the latter will then inform the foreign authorities that their request will not be executed.

Articles 694-5 to 694-9 of the French Code of Criminal Procedure state special provisions concerning hearings, surveillance and infiltration. The same goes for the seizure of the proceeds of an offence (article 694-10 to 694-13 of the French Code of Criminal Procedure)

Pertaining to legal assistance requests from members of the European Union under articles 695 to 695-9-53, the procedure is mostly simplified (eg, under Article 695-1 of the French Code of Criminal Procedure the requests and replies are exchanged directly between judicial authorities, etc).

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