



Anti-Money Laundering

in 19 jurisdictions worldwide

2013

Contributing editors: James G Tillen and Laura Billings



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Contributing editors

James G Tillen and Laura Billings
Miller & Chevalier Chartered

Business development managers

Alan Lee
George Ingledew
Dan White

Marketing managers

Rachel Nurse
Zosia Demkowicz

Marketing assistants

Megan Friedman
Cady Atkinson
Robin Synnot
Joe Rush

Administrative assistants

Parween Bains
Sophie Hickey

Subscriptions manager

Rachel Nurse
subscriptions@
gettingthedealthrough.com

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Adam Myers

Production coordinator

Lydia Gerges

Senior production editor

Jonathan Cowie

Production editor

Martin Forrest

Chief subeditor

Jonathan Allen

Senior subeditor

Caroline Rawson

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

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87 Lancaster Road
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Fax: +44 20 7229 6910

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Andorra

Marc Maestre

Maestre & Co Advocats

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 money laundering and anti-money laundering (AML) laws in the Principality of Andorra are:

- the Criminal Code of 2005, with amendments included by Laws 17/2007, 29/2007, 15/2008 and 18/2012;
- the Law on International Criminal Cooperation and the Fight against Money Laundering or the Products of International Crime of 2000, amended by Law 28/2008 and 4/2011 (LCPI); and
- the Decree of 13 May 2009, approving the rules of the Law on International Criminal Cooperation and the Fight against Money Laundering or the Products of International Crime and against Terrorist Financing.

Money laundering

2 Criminal enforcement

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

Enforcement of the AML law is done by the Financial Intelligence Unit (FIU), formerly known as the Money Laundering Prevention Unit (modified by Law 28/2008), which reports to the public attorney any suspicious activity they may have access to within their functions.

The police department also investigates money laundering offences and has a special unit for organised crime and money laundering crimes. They often also act as judiciary police when so requested by a criminal investigation judge.

There are no specialised judges or court divisions for such crimes due to the size of the country, and therefore any crime related to money laundering will be investigated and judged by standard criminal jurisdictions.

3 Defendants

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

The Criminal Code only considers criminal responsibility for natural persons and not for legal entities. Even if a company cannot be prosecuted, the court can take several decisions related to the future of the company (deciding, for example, on its dissolution, or a suspension of its activities), and can also fine it in the case of money laundering crimes, among others.

4 The offence of money laundering

What constitutes money laundering?

The content of article 409 of the Criminal Code has been amended twice since 2005 to include recommendations from supranational bodies, following their visits and reports.

The current definition of money laundering is the acquisition or transmission of goods, values or money coming from any major crime, which has a minimum penalty of six months' imprisonment. The offence also includes any act that may, actively or passively, hide their origin or their equivalent.

There is a list of crimes that may constitute a money laundering offence for which there is no minimum sanction threshold, such as, for example, prostitution, corruption or the illegal trafficking of drugs.

The Criminal Code also excludes self-laundering, by excluding from the money laundering crime those that have been convicted as authors or accomplices of the original crime.

Finally, the above-mentioned conduct can also be prosecuted if any of it has been realised by gross negligence.

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 monetary threshold for prosecution, and there is also no limitation on the type of assets or transactions that can be the basis of the money laundering offence.

6 Predicate offences

Generally, what constitute predicate offences?

As the predicated offences are described in relation to the penalty contemplated in the Criminal Code, there is a large range and number of offences that can constitute a predicate offence for money laundering in Andorra.

Some are specifically described (for example, prostitution, drugs, etc); the others arise from a six-month minimum imprisonment penalty threshold.

As regards what concerns offences against property (for example, thefts, robberies, etc), the use of items obtained through such acts should not be considered a predicate offence for money laundering as this conduct has a more specific offence in the Criminal Code. There are, however, no clear court decisions confirming this interpretation.

Concerning tax offences, there is only one contemplated in the Criminal Code, the minimum sanction for which is three months, therefore the minimum penalty threshold is not overcome and so this cannot be a predicate offence.

Article 412 establishes that a money laundering offence is applicable when the predicated offence has been carried out in a foreign country, as long as the predicate offence is a type of crime that also exists in the Andorran Criminal Code.

7 Defences

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

There are no specific defences.

8 Resolutions and sanctions

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

Andorran criminal procedure does not allow for any settlement, plea agreements or other similar transactions, and the only fast procedure is not applicable to this kind of offence, therefore the only outcome will be a judgment.

A basic money laundering offence can be punished with between one and five years' imprisonment, and a fine of up to three times the value of the money laundered. If the offence is committed through gross negligence, the penalty can be up to one year's imprisonment.

The penalty will be higher if the offence is committed within an organised group, if the subject acts with continuity, or within a banking or financial entity, a real state agency or an insurance company. In this situation, the penalty could be between three and eight years' imprisonment. An additional disqualification for working within a banking, financial, real estate or insurance company can be imposed, lasting for up to 10 years.

9 Forfeiture

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

The judge may adopt, at any time during an internal procedure, resolutions considered appropriate to ensure the restitution of stolen objects and the preservation of evidences, and secure both civil and criminal responsibilities that emanate from the crime. At the request of a foreign country that has initiated criminal proceedings and sent a request of seizure, forfeiture or confiscation, the judge may also order the appropriate precautionary measures, such as blocking or freezing accounts, forbidding an operation, or the alienation of any property that may be subject to further forbidden acts, according to the Andorran or foreign laws.

Moreover, at the request of the country, instruments, objects, documents and values may be seized by the Andorran judicial authorities and transmitted to the country that has requested it, provided they are of obvious interest in the criminal case.

The other objects, documents or valuable products of a criminal offence can be immediately restored by the Andorran judicial authorities to the owners.

In general, however, the judge will have to freeze any asset that may arise from a crime, and therefore from any money laundering offence. Recent changes have clarified that any goods, values or money related to money laundering (even in the case of an attempt to commit crime) must be confiscated.

Any confiscation derived from a crime that is carried out in Andorra will be in favour of the Andorran state, except in cases where there is a specific agreement with another country.

10 Limitation periods

What are the limitation periods governing money laundering prosecutions?

Prescription for this kind of offence occurs 10 years from the moment the last act is carried out.

11 Extraterritorial reach

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

Our laws allow prosecution against any person that commits the offence in the Principality of Andorra for the acts realised within the jurisdiction, but also for connected acts, even if realised outside.

Offenders can be prosecuted when the offence is committed by an Andorran national, even if all the acts are carried out outside Andorra, provided the offence is also established in the laws of the foreign country where it is performed. This cannot happen if the foreign country has already judged this same act.

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?

The LCPI establishes that the FIU is the independent entity responsible for promoting and coordinating measures to prevent money laundering and terrorist financing activities.

Within their mandate, the FIU can issue technical guidance notes to be followed by all covered institutions and persons.

It is also within their capability to carry out inspections on site to control the correct implementation and follow-up of the AML regulations.

13 Covered institutions and persons

Which institutions and persons must carry out AML measures?

The AML measures established in the LCPI apply to all financial institutions, insurance companies authorised to act within life insurance and postal agencies that can send money, as well as to all professionals, be they personal or corporate entities, who, in the course of their activity, realise, control or advise in operations that involve money or assets transactions that may be used for money laundering. In particular, this includes:

- external accounting or tax advisers, auditors, economists or managers;
- notaries, lawyers and other independent legal professions when they act on behalf of their clients in the following activities:
 - purchasing or selling real estate or business companies;
 - manipulating cash, titles or other values of a client;
 - opening and managing bank accounts;
 - organising the necessary contributions to incorporate or manage companies; or
 - incorporating or managing companies, trusts or any other similar structures, or acting on behalf of their clients in any financial and real state institution;
- sellers of high-value articles, such as precious stones and metals, when payments are done in cash, and for amounts higher than €15,000 or the equivalent in other currencies;
- other service providers to companies and trusts not previously mentioned;
- gambling entities; and
- real estate agents acting in sales and purchasing activities.

For legal, accounting, tax, auditors and similar professionals, measures do not apply in cases where information is received from clients while determining the legal situation of the client or when performing a defence or representation in court procedures, or when establishing a strategy to avoid such procedures.

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?

Aside from the obligation to denounce any suspicious operation to the FIU, all covered institutions and persons must adopt client due diligence procedures to identify all persons involved in the activities, and their background, together with the operation's background and origin of funds.

Covered institutions and persons must also designate an internal body with the responsibility of organising and supervising the implementation of the AML law, and with the duty of reporting any suspicious transactions. This internal body needs to be communicated to the FIU.

Specifically for covered financial institutions, there is an extra obligation to contract an external audit annually to certify the compliance with AML rules established by LCPI law, and this report will need to be submitted to the FIU.

The FIU is capable of designing a professional association to be the first step in the reporting activity. This faculty has not been used yet.

15 Breach of AML requirements

What constitutes breach of AML duties imposed by the law?

Breaches of the AML law are classified as light, serious and very serious.

Very serious breaches include lack of reporting duties, breach of the prohibition to inform the client of any suspicious activity, or not facilitating information that the FIU may require according to LCPI.

Serious breaches include not ensuring the identity of the clients, insufficient checks of the beneficial owner, no conservation of the relevant documents, or the lack of internal procedures to avoid money laundering (including the lack of audit for those who require it).

Finally, a light breach includes not reporting to the FIU the people responsible for money laundering or any other infringement of the LCPI.

16 Customer and business partner due diligence

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

The covered institutions and persons must ascertain the identity of their customers and of their beneficial ownership by requesting they present an official document when establishing any business relationship. If the customer is an individual, the party under obligation must verify the customer's identity, address and professional activity. To this end, the customer must be asked to show an official identity document with a photograph, a copy of which must be kept. If the customer is a legal person, the party under obligation must require an authentic document accrediting its name, legal form, registered office and corporate purpose, and justification of the identity of the individual who, according to the documentation presented, has powers to represent the entity, and of the powers granted.

Covered institutions must obtain information on the purpose of the business relationship with the customer. The data collected must be updated so that the customers can be correctly identified when establishing the business relationship or carrying out a transaction susceptible to involving money laundering or terrorism financing.

To perform the previous obligations, the parties under obligation must diligently verify the identity of the customer and, if necessary, the beneficial owners, before establishing any business relationship carrying out a transaction. Notwithstanding this, the identity of the customer and the beneficial owner may be verified after the first business relationship if this is necessary to avoid obstacles to the carrying out of the transaction, provided that the risk of money laundering

or terrorism financing is slight. The identification process must be conducted as soon as possible thereafter.

Within the scope of life insurance, the verification of identity can be done after the policy is contracted, provided that it is done before paying out or at the time the beneficiary intends to exercise rights vested under the policy.

Bank accounts may be opened prior to the identification of the customer provided that there are safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until the identification duties have been fully complied with.

Cross-border transfers for amounts of more than €1,000 made by the financial parties under obligation must include full details of the ordering party. These must include:

- the ordering party name;
- the number of the account from which the transfer is made. In the absence of the account number, the financial party under obligation must accompany the transfer with a transaction number that allows it to be traced back to the ordering party; and
- the ordering party's address. The address can be replaced by the ordering party's place and date of birth, customer number or national ID number.

In national transfers, regardless of the amount, the details to be provided can be limited to the number of the account from which the transfer is made or a transaction identification number, provided that the financial party obliged to execute the transfer can provide full details of the ordering party to the entity receiving the transfer or to the FIU within three working days.

The financial parties under obligation must duly inform the parties ordering the transfers about the data transfer rules before implementing the transfer orders.

The financial parties under obligation must adopt enhanced due diligence measures on the basis of a risk analysis when they are the recipients of transfers that do not include the information on the ordering party required by this article.

In the event that the customer cannot be identified in accordance with what is mentioned above, the financial parties under obligation may not establish a business relationship or carry out transactions for the customer.

In the case of relationships that have already started, the business relationship must be ended and consideration given to sending a communication to the FIU.

The financial parties under obligation must also follow the due diligence procedures with respect to existing customers, at the appropriate moment in terms of their risk analysis.

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?

There are enhanced due diligence measures to be adopted for certain types of clients that are mainly represented by those clients that have not been identified physically by a personal meeting, or politically exposed persons.

Also, when Andorran banks have to establish a professional relationship with a foreign bank entity to act as correspondent banks or financial institutions, additional due diligence measures have to be adopted, while working with shell banks is prohibited.

Finally, those operations with products that may favour anonymity have to be carefully controlled to avoid those being used for money laundering or terrorist financing purposes.

18 Record keeping and reporting requirements

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

Any activity, operation or project of operation related to money or assets on which there is a suspicion of money laundering needs to be reported to the FIU. The report must contain all related documentation.

After a report of suspicion, any new element that comes to knowledge related to the operation must also be reported.

The report must be submitted regardless of the country in which the money laundering offence has been or may be committed, or regardless of where the funds come from or go to.

This report must be done prior to realising the transaction, and the FIU has the capacity, if enough evidence exists, to provisionally block the transaction for a maximum of five days, during which the transaction must be finally authorised or sent to the public attorney.

19 Privacy laws

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

The person or entity that reports an operation must not inform the affected client of such report, nor give him or her any details on its situation, unless there is written authorisation from the FIU and no responsibility falls on the entity that has reported the activity. Apart from the reporting duty to the FIU, all other confidentiality laws and rules apply.

Therefore, a breach of privacy legislation can be done only by reporting the information the FIU, to which no secrecy rule can be argued.

Apart from general legal requirements in terms of information and document keeping, the LCPI establishes a duty to all covered institutions and persons to keep all the documentation for a period of five years from the operation (for occasional clients), from the end of the professional relation or from the report of a suspicious operation to the FIU.

Among the documents, the covered entity should include information about the client's identity, the nature and date of the transaction, the currency and the amount of the transaction, and the purpose and intention of the commercial relationship with the client.

20 Resolutions and sanctions

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

The breach of AML measures can constitute a slight, serious and very serious fault. Sanctions for slight faults are imposed by the FIU, and can be a warning or a fine from €600 to €6,000.

For serious and very serious faults, sanctions are imposed by the government, and they can range from suspension for six months (serious) to three years (very serious), or fines between €6,001 and €60,000 (serious), or between €60,001 and €600,000 (very serious).

21 Limitation periods

What are the limitation periods governing AML matters?

Limitation periods for AML matters are established within three years, counted from the moment of the breach. If the breach is recurrent then it is counted from the last one.

However, if there have been acts with the aim of disguising the breach, the limitation period will increase by up to 10 years.

22 Extraterritoriality

Do your jurisdiction's AML laws have extraterritorial reach?

Andorran regulations in AML law will apply to any person or company conducting business in Andorra, regardless of whether it is a subsidiary or any other kind of situation that relates it to a foreign entity.

Any covered institution must ensure that any controlled subsidiary, or permanent establishment of delegations located outside Andorra, applies similar measures to those established in LCPI.

If there is any difference between the legislation of the country of the foreign entity and the one from the Principality of Andorra, then foreign entities should apply the one that is more strict. If for any reason this is not possible due to foreign law, then the Andorran FIU should be informed.

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.

See www.gettingthedealthrough.com.

24 Supranational

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

Andorra is party to the FATF-GAFI and the European Council. As with many other European countries, the MONEYVAL (the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) is in charge of the follow-up of the country.

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.

The last published mutual assessment is dated March 2012, and is available on MONEYVAL's website. Great improvements have been noted from the previous report dated 2008. Recently, Andorra has again amended the Criminal Code to accommodate the Council of Europe's Group of States against Corruption's recommendations included in the evaluation report resulting from the joint first and second evaluation rounds. Some of these amendments have an effect on some predicated offences of AML.

26 FIUs

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

Unitat D'intel·ligència Financera (the FIU)

c/o Dr Vilanova No. 17

4th floor, Seu Consell General

AD500 Andorra la Vella

Andorra

Tel: +376 806 730

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?

Full collaboration in criminal affairs is provided as long they comply with LCPI requirements, which, apart from the formal ones, are mainly that:

Update and trends

The Andorran FIU has been reinforced both in their staff and training, and following this the team is now more complete. Different professional skills have been incorporated, and their capacity to achieve their mandatory objectives has increased.

A big effort is being carried out to inform non-financial professionals, as their capacity and resources are lower. They were included later in the list of AML-covered persons and institutions, and still need some assistance. The Andorran Bar of lawyers is also assisting in these efforts, through internal diffusion and communication, and also by specific seminars and conferences for the different type of professionals covered.

- procedures in foreign countries respect fundamental rights guaranteed in our constitution;
- the request may not be contrary to fundamental principles of the Andorran judicial system;

- there are no elements to consider that the procedure has been initiated because of political opinions, race, religion, nationality, or through being part of a specific social group;
- all crimes on which the request of collaboration is based are considered a crime in Andorra;
- the same facts have not been judged in Andorra;
- the facts detailed in the cooperation request are serious enough to justify Andorran collaboration; and
- the communication of the information request does not affect sovereignty, security, public order or other essential interests of Andorra.

The judge may require that the other state certify that the information requested will only be used for the purposes stated in the collaboration request.

The last MONEYVAL report mentions the efficiency of the international assistance in money laundering cases.



Marc Maestre

legal@mcadvocats.ad

Baixada del Moli 15, Ed. Moli II, 1er
AD500 Andorra la Vella
Andorra

Tel: +376 809 650
Fax: +376 809 651
www.mcadvocats.ad

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