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Client Alert

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AUGUST 1, 2024

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Banks May Be Convicted of Aggravated Money Laundering Under French Anti-Money Laundering Legislation

On June 19, 2024, the Criminal Chamber of the Court of Cassation handed down a significant ruling in the ongoing efforts to combat money laundering and the financing of terrorism. The ruling resulted in a bank convicted of aggravated money laundering.

By acknowledging the bank's liability in conjunction with its customers, the Cour de cassation brings French and American systems closer in terms of corporate liability.

THE CASE

The individuals occupying the positions of director within a group of companies were referred to the Paris Criminal Court for the commission of offences that included fraud, misuse of company assets, breach of trust, illegal financial investment advisor activity and money laundering. These acts were alleged to have been committed between 2012 and 2014.

The bank the company held its account with was also criminally referred for aggravated money laundering. The referral occurred due to the fact the bank had permitted the company's directors to transfer significant sums to foreign bank accounts. The court stated in its ruling, "*whereas the bank, because of its professional status and the controls it had to carry out, could not have been unaware of the criminal origin of the sums in this account that it managed, having regard in particular to the way in which it operates and its obligations of vigilance and enhanced surveillance in the case of Indonesia under Articles L. 561-2 et seq. of the Monetary and Financial Code.*"

In the initial proceedings, the judges found the directors guilty but exonerated the bank.

But, the Paris Court of Appeal diverged from this decision and convicted the bank of aggravated money laundering.

The Criminal Chamber of the Court of Cassation upheld the decision of the Court of Appeal, reasoning that:

although the bank's failure to comply with its due diligence obligations alone does not constitute assistance in laundering the proceeds of offences committed by its client, "*the provision of a bank account in one of its establishments and the execution of orders to transfer the sums held in the account to foreign accounts* (...) *are likely to constitute participation by the bank in money laundering operations;*"

the intent required to establish the offence of money laundering can be inferred from the information available to the bank in the operation of the account, which meant that it could not have been unaware of the fraudulent origin of the funds appearing on the company's accounts (the account was on orange alert, the funds came from a country on the grey list of suspect countries (for money laundering), the funds were increasing, etc.);

despite such knowledge of the fraudulent origin, the bank failed to make the required suspicious transaction reports in a timely manner.

TOWARDS AN EXPANSION OF ANTI-MONEY LAUNDERING OBLIGATIONS AND SANCTIONS FOR NON-COMPLIANCE IN FRANCE THAT BRING FRENCH LEGAL SYSTEM CLOSER TO THE AMERICAN ONE

The rules applicable to the fight against money laundering have considerably expanded since the culpable activity that took place in 2012-2014 that is referred to in the judgment. Specifically, the publication of the 5th European Directive, transposed in France by a ruling in February 2020, (i) extends the number of entities covered by the anti-money laundering obligations and (ii) strengthens the various obligations.

On June 19, 2024, the European Union went even further by publishing a new set of rules on the fight against money laundering and terrorist financing which, in particular, provide for:

- enhanced measures for high-risk third countries;
- imposing due diligence obligations on clubs, players, football agents or crypto providers;
- the introduction of a cash payment limit of €10,000;
- the introduction of an obligation to verify the identity of occasional customers for cash transactions over €3,000.

To illustrate the expansion of the legal arsenal in France, the Commercial Chamber of the Court of Cassation recently held that **failure to comply with anti-money laundering standards could constitute an act of unfair competition giving rise to a right to damages for competitors.**

In any event, the Criminal Chamber of the Court of Cassation clarified the contours of criminal liability for money laundering in its decision of June 19, 2024. It thus emphasizes the importance of making all "subject actors" aware of the various obligations provided for by the Monetary and Financial Code and the European directives in order to avoid exposing themselves to the risk of conviction and possible damage to their image and reputation.

This decision also recalls that the lack of vigilance of banks or other obliged entities is not only likely to lead to civil penalties but can be interpreted as a material act necessary for the characterization of the offence of money laundering.

By this decision, the Cour de cassation brings French and American systems closer in terms of corporate liability. Indeed, since the amendments to the Bank Secrecy Act in the 1980s and 1990s, US law easily recognizes the liability of

companies for the breach of anti-money laundering rules. The 19 June's ruling recalls that French judges can also include banks as potential targets of the AML law.

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