



SEACEN/World Bank Regional
Advanced Workshop for Banking
Supervisors on AML/CFT

Legal and Regulatory Issues for AML/CFT
in the Supervisory Regime

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Legal and Regulatory Issues for AML/CFT in the Supervisory regime

- 1 • Effective supervision of AML frameworks requires a robust law enforcement environment.
- 2 • Laws and regulations must be reconciled to meet AML objectives.
- 3 • AML/CFT regulation should be supplemented by adequate guidance.
- 4 • Supervisors should have access to accurate information through off-site and on-site supervision.
- 5 • Supervisory powers should be exercised effectively.

1 • Effective supervision of AML frameworks requires a robust law enforcement environment.

1.1. Impact of law enforcement on AML Supervision

- Preventive measures are only effective in a robust law enforcement environment :
 - Integrity of data is key for identifying customers
 - Adequate treatment of information commands compliance with reporting obligations
- Sanctions are no longer dissuasive in a weak law enforcement environment :
 - Corruption or lack of supervision make sanctions uncertain
 - Disproportionate sanctions are not credible
 - Sanctions must be effectively enforced

1 • Effective supervision of AML frameworks requires a robust law enforcement environment

1.2. How can a poor law enforcement environment be mitigated ?

- Priorities must be assessed
 - Resources should be dedicated to essential law enforcement functions
 - Regulatory and supervisory regimes should be developed progressively
- International standards may be adapted to local environment
 - Impediments need to be mitigated
 - More effective authorities should play a leading role

2 • Laws and regulations must be reconciled to meet AML objectives

2.1. Impact of other professional obligations on AML organizations

- The obligation of non interference in one's customer's business should not prevent a banker from exercising his obligations of vigilance.
- Banking secrecy should allow transfer of nominative to competent authorities and other entities of a group for AML purposes.
- The right for a banker to close a misused account should be reconciled with the obligation of non disclosure of STRs and the right for any person to open an account.

2 • Laws and regulations must be reconciled to meet AML objectives

2.2. Impact of territorial application of law on AML organizations and national legislations

- The right for every jurisdiction to apply its national AML legislation within its borders should go along with the respect of international standards
- Supervisors should implement international cooperation.
- Foreign entities of a group should participate in consolidated AML risk management on a worldwide basis.

3 • AML/CFT regulation should be supplemented by adequate guidance

3.1. In a rule-based system, laws and regulations tend to be high level :

- Administrative authorities cannot add regulatory obligations through guidance.
- Interpretation of legal provisions are not binding for the Commission bancaire acting as a jurisdiction.
- AML obligations may be revealed by a decision of the Commission bancaire.

3 • AML/CFT regulation should be supplemented by adequate guidance

3.2. Adequate guidance is provided through several channels:

- Regularly updated, the AML questionnaire is a comprehensive source of information on AML/CFT
- The decisions of the Commission bancaire on AML/CFT are public and published in an annex to the annual report.
- Sensitive cases are submitted to the Commission bancaire.
- When necessary, additional regulations are adopted

4 • Supervisors should have access to accurate information through off-site and on-site supervision

4.1. Supervisory regimes should preserve the integrity of the accounting of financial institutions

- To protect the integrity of the accounting, supervisors should verify that financial institutions :
 - Maintain reliable accounting systems that allow traceability of transactions.
 - Specific provisions were introduced for Bureaux de change : they must set up organization and accounting procedures that makes it possible to ensure compliance with AML provisions.
- To verify the integrity of the accounting, supervisors should be able to :
 - Rely on verifications carried out by external auditors
 - Order on-site verifications conducted by their own inspection, external auditors or other competent authorities (Customs for bureaux de change)
- To restore the integrity of accounting, supervisors should have the capacity to request publication of rectified statements

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4 • Supervisors should have access to accurate information through off-site and on-site supervision

4.2. Legal and regulatory issues with regard to off-site supervision

- Supervisory regimes should request qualitative information on AML organization, in the same way it requests quantitative information through prudential statements (AML annual questionnaire, Internal control and compliance periodic reports, Audit reports)
- Supervisors should access nominative information for AML purposes without restrictions (Customers files and accounts, Reports on compliance incidents, STRs). Banking secrecy should not be opposed to supervisors, otherwise, compliance with AML obligations should be supervised by another authority, such as the FIU in Lebanon.
- Information should be readily available, which raises the question of the location of the file and the form in which it should be kept (electronic or paper file).
- Issues on domestic or international co-operation will be discussed in a separate presentation)

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4 • Supervisors should have access to accurate information through off-site and on-site supervision

4.3. Legal issues with regard to on-site examinations

- Specificity of AML examinations with regard to access to other entities of the group or related companies :
 - Foreign branches or subsidiaries
 - Outsourcing providers and eligible introducers
- Inspectors should not interfere in judicial investigations
- Banque de France inspectors do not have investigative powers
 - They cannot force access or take documents without authorization
 - They can only acknowledge their incapacity to conduct the examination

(On-site and off-site techniques will be discussed in a separate presentation)

5 • Supervisory powers should be exercised effectively.

5.1. Supervisory powers should be the same measures that apply for prudential purposes :

- According to FATF Recommendation 23, “for financial institutions subject to the core principles, the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for money laundering.”
- The Commission Bancaire can implement administrative measures : (decision to conduct an inspection, to request a document, an information or a statement that is not required by an existing regulation, order, appointment of a an external auditor, a provisional administrator, a liquidator)
- When the Commission bancaire imposes a sanction, it uses its jurisdictional powers : (warning, blame, revocation of a general manager, limitation of activity, revocation of licence)

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5 • Supervisory powers should be exercised effectively.

5.2. Legal and regulatory issues with regard to the implementation of supervisory measures :

- When the Commission Bancaire intends to impose an administrative measure, it needs to inform the financial institution of its intention and request observations before the measure can be formally adopted. This contradictory procedure implies to present the case twice before the Commission Bancaire as well as to respect procedural delays subject to the type of measure to be adopted.
- When the Commission Bancaire intends to impose a sanction, it initiates the disciplinary procedure by issuing a letter indicating the facts and qualifications that could be decided upon (using the conditional tense). Observations are requested and an audience is held with the representative of the bank and their counsels. The decision is made by the board out of the presence of the general secretariat. The Commission Bancaire decides whether the decision should be made public, which is generally the case when the facts are related to money laundering.
- Although procedural issues are often raised by defendants, most decisions were confirmed by court, especially when facts are related to money laundering. When a decision is cancelled, the judge generally indicates the procedure that should have been followed. As a result, fewer recourses are engaged against disciplinary sanctions.

5 • Supervisory powers should be exercised effectively.

5.2. The Commission Bancaire's preventive action is a mass action that cannot be evaluated in terms of the number of disciplinary proceedings being instigated :

- About 1100 credit institutions and 150 investment firms are subject to off-site monitoring.
- More than half receives a letter asking for explanations or improvements on the basis of their answers to the questionnaire.
- Most of the 150 to 200 annual on-site inspections are partially or completely related to money laundering (general or AML inspections).
- Over 90% of examination reports are followed by action letters to credit institutions, investments firms or bureaux de change.
- For the remaining 10%, a disciplinary procedure is engaged
- About half of the sanctions are mainly related to money-laundering
- Fines of up to 1million €were imposed for facts related to money laundering.
- 95% of sanctions related to money laundering are made public.

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Secrétariat général de la Commission bancaire

