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Jurisdiction update: Colombia ? AML

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Member of the Financial Action Task Force? **No, however Colombia is a member of GAFISUD a South American organization member of FAFT**

On FATF blacklist? **No**

Member of Egmont? **Yes**



Marta Garcia Colomar

Colombia, once seen as a veritable incubator for money laundering activity, has made great strides in changing, if not purging, this negative image. Critically, Colombia has closed the yawning gaps that once riddled its legal and, more particularly, its AML compliance framework. As a result, Colombia's regulators and law enforcement officials have improved the free flow of information that is crucial to early detection, prevention, and prosecution.

Under Colombian law, one person, working individually, can be prosecuted for money laundering. The law views money laundering as an independent offense which can be prosecuted without reference to other criminal acts such as narcotics trafficking. Thus, to prosecute, law enforcement officials must only show that the money launderer knew that the funds at issue were the product of some illegal act.

Colombia's AML framework consists of several laws. Among the most innovative is Law 190 on Anticorruption. Enacted in 1995, this law defined money laundering to include the receiving, legalizing, and hiding of assets stemming from any illegal activity. Two years later, Law 365 amended Article 247A of the Criminal Code to include this definition of money laundering.

On July 24, 2001, the new Criminal Code entered into effect (enacted by Law 599 of 2000). This new Code modified the money laundering regulations that were put into place by Article 323. In 2002, Article 323 was modified by Article 8 of Law 747 to provide that:

"Anyone who acquires, protects, invests, transports, transforms, guards or handles goods which originate in the near or middle activities of migrant trafficking, human trafficking, extortion, illicit enrichment, kidnapping for extortion, rebellion, arms trafficking, crimes against the financial system, the public administration, or related to the proceeds of crime covered by a conspiracy, trafficking-related toxic drugs, narcotics or psychotropic substances or provide them with appearance of legality or legalizes, conceals or disguises the true nature, source, location, destination, movement or interest in such property or perform any other act to conceal or disguise the illicit origin, shall be liable for that act alone, in prison from six to fifteen years and a fine."

The Criminal Code also includes the crimes of extortion, unjust enrichment, kidnapping for extortion, rebellion, and all crimes related to trafficking with narcotics or psychotropic substances, and weapons. Law 747 of 2002 added smuggling immigrants and human trafficking to the list of crimes against society. Law 1121 of 2006 amended the criminal code to establish terrorist financing as a separate crime from money laundering, and it includes regulations for the prevention, detection, investigation, and sanction of terrorism financing.

Colombian law punishes money laundering domestically even when the criminal activities have been conducted, in whole or in part, abroad. However, the punishment or penalty is doubled when the illegal transaction has domestic ramifications, i.e. if the laundered proceeds are smuggled into the country.

The penalties for money laundering may also be increased if certain aggravators are present. Article 324 of the Criminal Code,

for example, provides that aggravation occurs when the criminal conduct is performed by individuals affiliated with an organization devoted to money laundering; in that case the penalty of imprisonment increases. Another aggravating circumstance occurs when the illegal conduct is developed by the leaders, managers, or guardians of those corporations.

Article 326 of the Criminal Code also makes it a crime to be a "straw man." As defined by Article 326, a straw man is a person who gives his/her name to purchase goods with money from drug trafficking or related crimes. The maximum punishment for being a straw man is 15 years in prison and a fine of at least fifty thousand Colombian pesos, and the seizure of the illegal funds. The Criminal Code also punishes those who, directly or through intermediaries, obtain assets for their own or for another, that result in some form of criminal activity. For such behavior, the penalty is up to ten years in prison and a fine equal to twice the value achieved, while not exceeding the equivalent of \$50,000.00 statutory minimum wage.

"Omission of Control" is another offense defined under Law 399 of 2000. Pursuant to Article 325, an employee or director of a financial institution or cooperative may not provide credit to institutions to conceal or disguise the origin of the money. The law also states that failure to comply with any or all mechanisms of control established by Colombian law for transactions in cash will render an individual directly liable for Omission of Control (Article 102 and subsequent of Decree 663 of 1993). The minimum penalty is six years in prison and a fine of up to ten thousand Colombian pesos. Law 1357 of 2009 modifies Article 136 of the Criminal Code in the same way.

Law 600 of 2000 provides that the legal status of companies and organizations involved in criminal activities can be annulled. This will result in the closure of the company and its physical premises. Once it is established that the company or organization is guilty of criminal activity, a designated judicial officer will direct the closure of the company's premises and strip it of its legal status and ability to do business in Colombia.

Law 1108 of 2006 approved the Anti-American Convention Against Terrorism. The law relates to the measures to prevent, fight, and eradicate the financing of terrorism in the Americas.

Regarding forfeiture, Law 793 of 2002 streamlined seizure proceedings and imposed a regulatory structure on them. As a consequence of this change, the government improved its capacity to deal with financial and money laundering. Colombian law provides one of the most comprehensive forfeiture frameworks in Latin America.

Within the Colombian legal and regulatory system there are several other laws and decrees that regulate anti-money laundering activities. These are some of the most relevant ones:

- Law 1288 of 2009 of Intelligence regulates the organizations that conduct intelligence activities to reach their constitutional goal.
- Law 964 of 2005 regulates the Securities Exchange Market.
- Law 795 of 2003 modifies some regulations from the organizational scheme of the financial system.
- Law 747 of 2002, which modifies the Criminal Code reforms and additions to the Criminal Code establishing and developing the offense of trafficking with persons
- Law 643 of 2001 which establishes the regulations on parimutuel.
- Law 599 de 2000 enacts the Criminal Code.
- Law 526 of 1999 modifies by Law1121 of 2006, which creates the Unit of Information and Financial Analysis.
- Law 270 of 1996, Statutory Law of the Justice Department
- Law 190 of 1995, to fix corruption in the Public Administration.

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