COUNTRY UPDATE-Colombia: AML

Published 04-Dec-2023 by
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Member of the Financial Action Task Force? No, however, Colombia is a member of GAFILAT, a South American organization that is an associated member of FATF since 2006.

On FATF blacklist? No.

Member of Egmont? Yes.

Background

Colombia, a country that was once considered as a veritable incubator for money laundering activity, has become a regional leader in the fight against money laundering. Colombia made a considerable effort to change, if not eliminate, this negative image. Critically, Colombia has closed the significant gaps that once challenged its legal and, more particularly, anti-money laundering compliance framework. As a result, Colombia's regulators and law enforcement officials have improved the free flow of information that is crucial for the early detection, prevention, and prosecution of these kind of felonies.

Under Colombian law, one person, working individually, can be prosecuted for money laundering. Specifically, article 323 of the Criminal Code provides the following:

"Any person who acquires, safeguards, invests, transports, transforms, guards, or manages assets that are directly or indirectly sourced from extortion, migrant smuggling, human trafficking, extortion, illicit enrichment, extortive kidnapping, rebellion, weapon traffic, trafficking of minors, financing of terrorism and administration of resources related to terrorist activities, smuggling, smuggling of hydrocarbons or their derivatives, custom fraud or favouring and facilitating smuggling, favouring the smuggling of hydrocarbons or their derivatives, criminal offenses against the financial system or the public administration, or anyone who is in any way related with the product of a criminal offense or a criminal conspiracy related with the traffic of toxic drugs, narcotics, psychotropic drugs, or anyone who conceals to such assets which are sourced from any of the aforementioned criminal offenses with an appearance of legality, therefore concealing their true nature, origin, location, destination, movement or rights upon said assets shall be sanctioned, for this sole conduct, with imprisonment for 10 to 30 years and receive a pecuniary fine of 1,000 to 50,000 minimum monthly legal wages. (...) "

Legislative framework

Colombian law considers money laundering as an independent offense, which can be prosecuted without reference to other criminal offenses such as narcotics trafficking. Thus, to prosecute, law enforcement officials must show that the money launderer knew that the funds at issue were the product of an illegal act. Colombian law also punishes money laundering domestically even when the criminal activities have been committed, either wholly or partly, abroad. To prove the intent and knowledge required to demonstrate the crime, the Supreme Court case law has established that it is possible to prove the cognitive and wilful element of intent based on the objective circumstances, including circumstantial evidence.

Money laundering is sanctioned with a prison sentence of 10 to 30 years and a fine of 1,000 to 50,000 Legal Minimum Monthly Wages (LMMW) in Colombian pesos. The LMMW for 2022 is COP$1,160,000 (approximately $239). This penalty can be aggravated by several circumstances. For instance, article 324 of the Criminal Code provides that the penalty of imprisonment will increase when criminal conduct is performed by individuals who are members of an organization dedicated to money laundering and when the illegal conduct is developed by the leaders, managers, or guardians of such corporations. These aggravating factors will result in a significant penalty of up to 45 and 52 years, which make the penalties for money laundering some of the highest penalties in our legal system.

Article 326 of the Criminal Code also forbids straw men. As per article 326, a straw man is a person who offers his/her name to purchase goods with money from drug trafficking or related crimes. The maximum punishment for being a straw man is 270 months in prison and a maximum fine of 50,000 LMMW. Article 237 of the the Criminal Code, also provides penalties for those who, directly or through third parties, obtain assets for their own benefit or for the benefit of another, that may result in any kind of criminal activity. For such behavior, the penalty is up to 180 months in prison and a fine equal to twice the value achieved, while not exceeding the equivalent of 50,000 LMMW.

The Colombian legal system does not include the criminal liability of organizations that are considered accessory to a main criminal sanction imposed upon an individual. Indeed, legally incorporated entities or organizations can be subjected to administrative sanctions if there is a conviction to an individual in a case involving such entity or organization. Recently, Act 1778 of 2016 included the possibility of sanctioning organizations for acts of transnational bribery but not for money laundering offenses.

"Non-Compliance with Control Mechanisms" is another offense defined under the Criminal Code. Pursuant to Article 325, amended by Act 1357 of 2009, Article 3, this offense occurs when any employee or director of a financial institution or cooperative, with the intent of concealing or disguising the illicit origin of the money, fails to comply with any or all control mechanisms established by the Colombian regulations for cash transactions. The maximum penalty for this offense is up to 128 months in prison.

Article 325A, amended by Article 4 of Act 1357, also states that failure to comply with the reports established by Colombian law regarding transactions in cash, by the individuals or entities under control of the Information and Financial Analysis Unit - UIAF - will be directly liable for the crime of Failure to Report a Cash Transaction. The minimum penalty is 38 months in prison and a fine of up to 15,000 LMMW.

The Colombian legislation provides two mechanisms that enable the seizure of assets: (i) criminal confiscation, as per article 82 of the Criminal Procedure Code CPC; and (ii) asset forfeiture, as per article 34 of the Political Constitution and Act 1708 of 2014. Criminal Confiscation must be performed following a conviction and shall consider both, proceeds and instrumentalities used or intended for use, either directly or indirectly, in an offense, which includes money laundering offenses. Given its accessory nature in relation to the conviction, criminal confiscation is not applicable if the statute of limitations has passed. Asset forfeiture is constitutionally based and is regulated in detail in Act 1708 of 2014. It is defined as a patrimonial consequence arising from illegal activities, consisting in the declaration of ownership of such property in favor of the State and it is autonomous and independent from criminal proceedings and it is not subject to the statute of limitations.

Regulators/monitoring authorities

Among others, the anti-money laundering regulating entities established by the law and which relevant for the matter at hand are the following:

- ***Ministry of Justice*** — The Ministry of Justice has been entrusted, among other things, with the following tasks with regard to AML: (i) coordination, support and promotion of the effective state policy regarding justice, law and other aspects; (ii) participation in the creation and definition of the principles governing criminal and penal policy, crime prevention, actions against organized crime, and promotion of the modern infrastructure of detention facilities; (iii) promoting and enforcing, within its jurisdiction, the rules and the policies on the forfeiture, control and allocation of assets seized and forfeited in accordance with the AML law; (iv) coordination of legal response to AML offences, propose policy reforms and advise the state and its agencies with regard to the formulation of new policy initiatives; (v) development, through the Directorate of Legal System, of policies aimed at the harmonization between the local law and the international law.
- **Ministry of Foreign Affairs** — with regard to AML its functions are the following: (i) to coordinate the position of Colombia in international forums and bilateral meetings on the matter, following the instructions imparted by the government and any other guidelines established by the relevant national authorities; (ii) to communicate information regarding Colombia's achievements and legislative progress in the AML field at international level; and (iii) to coordinate with the appropriate entities, the proceedings to be undertaken by the National Congress in order to implement the international instruments concerning AML/CTF that have been ratified by Colombia.
- **The Financial Intelligence Unit of Colombia —** which is called "Unidad de Información y Análisis Financiero (Financial Analysis and Information Unit, UIAF, after its wording in Spanish)". The UIAF is a special administrative unit that operates in the Ministry of Treasury and Public Credit created by Act 526 of 1999. Its main functions are the following: (i) to detect and prevent possible operations of asset laundering and terrorist financing in all economic activities; (ii) to collect, centralize and analyse all the relevant information received from financial institutions, other companies and individuals; (iii) to report specific cases to the Superintendence of Finance, the Tax Administration and the Prosecutor’s Office; (iv) to carry out specific studies regarding AML and to provide best practice guidelines for sectors and economic operations which are usually known for having a high risk of money laundering; (v) to propose new AML control mechanisms and amend already existing control mechanisms.
- **Companies Superintendence** — that supervises the compliance of specific obligations that Colombian companies have to prevent money laundering.

Colombian regulations pertaining to money laundering apply to the following sectors: financial institutions; securities issuers; customs brokers and other companies that are engaged in foreign trade; companies or individuals professionally engaged in sale/purchase of new and used vehicles; currency exchange houses or brokers; money transportation companies; gaming and betting industry and Colombian companies with incomes exceeding 160,000 LMMW.

Financial institutions have to comply with the SARLAFT, which is an in-house money laundering and terrorist financing risk management system with a risk-based approach. The main features of the SARLAFT regulation include implementing adequate know-your-customer (KYC) procedures, monitoring transactions, investigating unusual transactions and reporting any suspicious transactions to the relevant authorities. Banks should comply with the minimum requirements of the regulations, which include special additional tasks for politically exposed persons. Reduced requirements apply to persons or companies that operate with significant cash amounts because of their business.

Due diligence

Banks should perform detailed due diligence so future controls can be omitted. Enhanced due diligence is required for politically exposed persons. In Colombia, this includes not only politically-related people but also public figures. This also includes due diligence of deposit accounts which will be used by political parties and during political campaigns. For correspondent banking relationships, every international transaction should be reported to the authorities. Each report requires information on the origin of the money i.e., client, address, telephone number, activity and reason for sending the wire and beneficiary.

Entities must define special procedures in order to perform KYC for non face-to-face interviews. They must also implement follow-up procedures for clients' transactions. Special requirements and an investigation from the regulator shall be performed whenever an institution fails to report the required periodical AML information. Each entity shall define if a suspicious transaction shall be performed or not, although this has to be reported to the UIAF. Financial institutions should report individual cash transactions exceeding COP $10,000,000 (approximately $2,528) and total monthly cash transactions exceeding COP$50,000,000 (approximately $12,642).

Ultimate Beneficial Owners Registry

Over the years, the investigation of money laundering instances has been equipped with increasingly sophisticated tools to trace the flow of money. One notable example of the measures Colombia has taken to conduct more effective investigations is Act 2155 of 2021, which modified Article 631-6 of the Tax Statute to establish the Ultimate Beneficial Owners Registry ("RUB" in Spanish). The RUB is a registry that companies must submit before the tax authority, detailing the natural persons who are beneficiaries of the entities.

To comply with this requirement, companies must report the personal data of anyone holding 5% or more ownership in a corporation. In the case of companies with legal entity partners, the obligation is to report those individuals behind the entire corporate structure. Tools like these have enabled the Colombian authorities to exercise greater control over corporations and individuals. Control and detailed information reporting are key trends in Colombian legislation concerning money laundering.

This country profile is kindly provided by Diaz Reus

Complaints Procedure