

## **Part VI: Obligations relating to the Prevention of Money Laundering**

### **Chapter I: Declaration of certain sums or transactions**

#### **Article L561-1**

*(inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)*

Persons other than those referred to in Article L. 562-1 who, in the normal course of their business, execute, supervise or recommend transactions giving rise to capital movements, are required to declare to the Public Prosecutor any transactions they have knowledge of which involve sums that they know to derive from an offence referred to in Article L. 562-2.

When they have made such a declaration in good faith, those persons benefit from the provisions of Article L. 562-8. They are required to comply with the obligations indicated in Article L. 574-1. The Public Prosecutor informs the department referred to in Article L. 562-4, which provides it with all the relevant information.

### **Chapter II: Declaration of Sums or Transactions Suspected of Having an Illicit Origin**

#### **Article L562-1**

*(Act No. 2001-420 of 15 May 2001 Article 33 I, Official Journal of 16 May 2001)*

*(Act No. 2003-706 of 1 August 2003 Article 43 I, Article 70 2, Official Journal of 2 August 2003)*

*(Act No. 2004-130 of 11 February 2004 Article 70 I, Official Journal of 12 February 2004)*

*(Act No. 2004-204 of 9 March 2004 Article 33 VI, Official Journal of 10 March 2004 effective 1 October 2004)*

The provisions of the present Chapter apply to:

1. Organisations, institutions and departments governed by the provisions of Part I of the present Book;
2. The Bank of France, the Issuing Institution of the Overseas Departments and the Overseas Issuing Institution;
3. The companies and departments referred to in Article L. 310-1 of the Insurance Code, and insurance and reinsurance brokers;
4. Organisations that come within the scope of Article L. 111-1 of the Mutual Insurance Code;
5. Investment firms, members of regulated financial instruments markets and the legal entities referred to in Articles L. 421-8 and L. 442-2, as well as the undertakings for collective investment in transferable securities referred to in I of Article L. 214-1, the management companies of the undertakings for collective investment referred to in II of Article L. 214-1, the

miscellaneous property intermediaries referred to in Part V of the present Book, the persons authorised to canvass referred to in Articles L. 341-3 and L. 341-4, and financial investment advisors.

6. Money-changers;
7. Persons who execute, supervise, or recommend transactions relating to the acquisition, sale, transfer or letting of real property;
8. The legal representatives and managers responsible for casinos, groups, clubs and companies which organise games of chance, lotteries, betting and sporting or racing tips;
9. Persons who regularly engage in trading in, or organising the sale of, gems, precious materials, antiques and works of art.
10. Companies entitled to the exemption provided for in II of Article L. 511-7.
11. Accountants and auditors;
12. Notaries, bailiffs, receivers and court-appointed administrators, as well as advocates of the *Conseil d'Etat* and of the Court of Cassation, and counsel of the Courts of Appeal, as determined in Article L. 562-2-1;
13. Court-appointed auctioneers and valuers and companies effecting voluntary sales of furniture at public auctions.

For the purposes of the present Part, the persons referred to in 1 to 6 are referred to as "financial institutions".

## **Article L562-2**

(Act No. 2001-420 of 15 May 2001 Article 34 I, Official Journal of 16 May 2001)

(Act No. 2004-130 of 11 February 2004 Article 70 III, Official Journal of 12 February 2004)

(Act No. 2004-204 of 9 March 2004 Article 33 VII 1, Official Journal of 10 March 2004 effective 1 October 2004)

The financial institutions and persons referred to in Article L. 562-1 are required, as determined by the present Part, to declare to the department instituted by Article L. 562-4:

1. The sums entered in their books which might derive from drug trafficking, from fraud against the financial interests of the European Communities, from corruption or from organised crime, or which might contribute to the financing of terrorism;

2. The transactions relating to sums which might derive from drug trafficking, from fraud against the financial interests of the European Communities, from corruption or from organised crime, or which might contribute to the financing of terrorism.

The financial institutions are also required to declare the following to that department:

1. Any transaction in which the identity of the principal or the beneficiary remains dubious despite the checks carried out pursuant to Article L. 563-1;

2. Transactions executed by financial institutions for their own account or on behalf of third parties with natural persons or legal entities, including their subsidiaries or establishments, acting as, or on behalf of, fiduciary funds or some other asset management instrument, when the identity of the grantors or the beneficiaries is not known.

A decree may extend the obligation to declare stipulated in the first paragraph to own-account transactions or transactions on behalf of third parties executed by financial institutions with natural persons or legal entities, including their subsidiaries or establishments, domiciled, registered or established in any of the States or territories whose legislation is recognised as inadequate or whose practises are considered to obstruct the fight against money laundering by the international authority for consultation and coordination in regard to the fight against money

laundering. The said decree shall determine the minimum amount of the transactions subject to declaration.

### **Article L562-2-1**

(inserted by Order No. 2004-130 of 11 February 2004 Article 70 II, Official Journal of 12 February 2004)

The persons referred to in 12 of Article L. 562-1 are required to make the declaration stipulated in Article L. 562-2 when, in the context of their professional activity, they execute for and on behalf of their customer any financial or real-property transaction or when they participate by assisting their customer with the preparation or execution of transactions relating to:

1 The buying and selling of real property or business concerns;  
2 The management of funds, securities or other assets belonging to the customer;  
3 The opening of current accounts, savings accounts or securities accounts;  
4 Organisation of the contributions required to create companies;  
5 The formation, administration or management of companies;  
6 The formation, administration or management of foreign-law trusts or any similar structure.

The persons referred to in 12 of Article L. 562-1, when they are engaged in activities relating to the transactions referred to above, and accountants when they give legal advice pursuant to the provisions of Article 22 of order No. 45-2138 of 19 September 1945 which instituted the Order Of Accountants and regulates the title and profession of the accountant, are not required to make the declaration stipulated in Article L. 562-2 when the information was received from one of their clients, or obtained on one of them, within the scope of a legal consultation, unless it took place for money-laundering purposes, or if those persons proceeded therewith knowing that their client wished to obtain legal advice for money-laundering purposes, or when they provide their professional services in the interest of that client in connection with judicial proceedings, whether that information was received or obtained before, during or after those proceedings, including advice given in relation to the means of initiating or avoiding such proceedings.

Notwithstanding Article L. 562-2, advocates of the *Conseil d'Etat* and of the Court of Cassation, and legal counsel of the Courts of Appeal send their declarations, as applicable, to the president of the Order of Advocates of the *Conseil d'Etat* and of the Court of Cassation, to the president of the order which the advocate belongs to or to the president of the professional body which the counsel belongs to. Those authorities send the declarations sent to them by the advocate or the counsel to the department instituted by Article L. 562-4, unless they consider that the suspicion of money laundering is unfounded.

In which case, the president of the Order of Advocates of the *Conseil d'Etat* and of the Court of Cassation, or the president of the order which the advocate belongs to or the president of the professional body which the counsel belongs to informs the advocate or the counsel of the reasons why he believed he should not forward the information that he had sent to him. The president of the order or of the professional body who has received a declaration which he has not forwarded to the department instituted by Article L. 562-4 sends the information contained in that declaration to the president of the National Bar Chamber or to the president of the National Chamber of Legal Counsel. The information thus forwarded does not contain any references to the identity of the persons. Under the same conditions, the president of the Order of Advocates of the *Conseil d'Etat* and of the Court of Cassation, the president of the National Bar Chamber and the president of the National Chamber of Legal Counsel send a report to the Minister of Justice on the situations which did not give rise to communication of the declarations within a time limit set in a *Conseil d'Etat* decree.

The department instituted by Article L. 562-4 receives that information from the Minister of Justice.

The provisions of the present article are applicable in New Caledonia, the Overseas Territories and Mayotte.

### **Article L562-3**

(*Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000*)

(*Act No. 2001-420 of 15 May 2001 Article 33 II, Official Journal of 16 May 2001*)

Any information likely to alter the assessment made by the financial institution or person referred to in Article L. 562-1 concerning the declaration referred to in Article L. 562-2 must be immediately brought to the attention of the department instituted by Article L. 562-4.

### **Article L562-4**

(*Act No. 2001-420 of 15 May 2001 Article 40 I and II, Official Journal of 16 May 2001*)

(*Act No. 2004-204 of 9 March 2004 Article 33 VII 2, VIII, Official Journal of 10 March 2004 effective 1 October 2004*)

A department, placed under the authority of the Minister for the Economy, receives the declaration referred to in Article L. 562-2. That department is composed of public agents of the State who are specially empowered by the Minister, as determined in a Conseil d'Etat decree. The said department collects and assembles all the information needed to establish the origin of the sums or nature of the transactions which have been the subject of a declaration referred to in Article L. 562-2, the special inspection provided for in Article L. 563-3 or an investigation referred to in Article L. 563-5. As soon as the information collected reveals facts likely to relate to drug trafficking or organised crime or the financing of terrorism, it refers the matter to the Public Prosecutor, informing him, if applicable, that it has also been submitted to the customs administration with a view to it carrying out investigations to seek and establish the offence referred to in Article 415 of the Customs Code.

The Public Prosecutor sends all the final decisions handed down in the cases which have been the subject of a declaration of suspicion pursuant to the present Part to the department referred to above.

### **Article L562-5**

(*Act No. 2001-420 of 15 May 2001 Article 33 II, Article 34 II, Official Journal of 16 May 2001*)

(*Act No. 2004-204 of 9 March 2004 Article 33 VII 2, Official Journal of 10 March 2004 effective 1 October 2004*)

Without prejudice to the provisions of Article L. 562-6, the department instituted by Article L. 562-4 acknowledges receipt of the declaration within the time limit applicable to the

transaction. It may oppose execution of the transaction. In which case it is deferred for a maximum period of twelve hours.

If the acknowledgement of receipt is not accompanied by a stop notice, or if, upon expiry of the period stipulated in the stop notice, no decision of the presiding judge of the *tribunal de grande instance* of Paris or, if applicable, of the investigating judge, has reached the financial institution or person referred to in Article L. 562-1 who made the declaration, the transaction may be executed.

When it has been impossible to stay their execution, the declaration relates to transactions that have already been executed. The same applies when it has emerged subsequent to execution of the transaction that the sums could be derived from drug trafficking, or organised crime or the financing of terrorism. The department instituted by Article L. 562-4 acknowledges receipt of those declarations.

The presiding judge of the *tribunal de grande instance* of Paris may, at the request of the department instituted by Article L. 562-4, and after consulting the Public Prosecutor of the *tribunal de grande instance* of Paris, extend the period indicated in the first paragraph of the present article or order the provisional sequestration of the funds, accounts or securities covered by the declaration. The Public Prosecutor of the *tribunal de grande instance* of Paris may submit a request having the same object. The order which grants the request is enforceable at once before any notice is served on the person concerned by the declaration.

## **Article L562-6**

(Act No. 2001-420 of 15 May 2001 Article 33 II, Article 41, Official Journal of 16 May 2001)

(Act No. 2004-204 of 9 March 2004 Article 33 IX, Official Journal of 10 March 2004 effective 1 October 2004)

The declaration may be verbal or written. The financial institution or person referred to in Article L. 562-1 may ask the department instituted by Article L. 562-4 not to acknowledge receipt of the declaration. In the event of that department referring the case to the Public Prosecutor, the declaration, which the latter is informed of, does not appear in the case file.

When, based on a declaration made pursuant to Articles L. 562-2, L. 563-1, L. 563-1-1 and L. 563-3 to L. 563-5, the department instituted by Article L. 562-4 has referred the matter to the Public Prosecutor, it informs the financial institution or the person who has made the declaration thereof, as determined in a *Conseil d'Etat* decree.

## **Article L562-7**

(Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

(Act No. 2001-420 of 15 May 2001 Article 33 II, Article 43, Official Journal of 16 May 2001)

When, as a result of either a serious lack of diligence or a failure in the organisation of its internal verification procedures, a financial institution or person referred to in Article L. 562-1 fails to comply with the obligations deriving from the present Part, the authority having disciplinary powers institutes proceedings on the grounds of the professional or administrative rules and informs the Public Prosecutor thereof.

## **Article L562-8**

*(Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)*

*(Act No. 2001-420 of 15 May 2001 Article 33 II, Official Journal of 16 May 2001)*

For sums or transactions which have been the subject of the declaration referred to in Article L. 562-2, no action founded on Articles 226-13 and 226-14 of the Penal Code may be brought against executives or employees of the financial institution or against the other persons referred to in Article L. 562-1 who made that declaration in good faith.

No action for civil damages or professional sanction may be brought against a financial institution, its executives or its employees, or against another person referred to in Article L. 562-1 who have made the declaration referred to in Article L. 562-2 in good faith. In the event of damage resulting directly from such a declaration, the State assumes liability therefor.

The provisions of the present article apply even if proof of the criminal nature of the facts giving rise to the declaration is not produced or if those facts have resulted in a decision to nonsuit, acquit and discharge.

When the transaction has been executed as provided for in Article L. 562-5, and barring any fraudulent collusion with the owner of the sums or the initiator of the transaction, the financial institution is exempted from any liability, and no criminal proceedings may therefore be brought against its executives or employees pursuant to articles 222-34 to 222-41, 321-1, 321-2, 321-3 and 324-1 of the Penal Code or Article 415 of the Customs Code. The other persons referred to in Article L. 562-1 are also exempted from any liability.

## **Article L562-10**

*(inserted by Order No. 2001-420 of 15 May 2001 Article 35, Official Journal of 16 May 2001)*

The department instituted by Article L. 562-4 heads up a liaison committee in the fight against money laundering of the proceeds of crime and other offences which, as determined by decree, is composed of the professions referred to in Article L. 562-1, the supervisory authorities and the relevant Government departments.

## **Chapter III: Other Vigilance Obligations of Financial Institutions**

### **Article L563-1**

*(Act No. 2004-130 of 11 February 2004 Article 70 IV, X, Official Journal of 12 February 2004)*

The financial institutions or the persons referred to in Article L. 562-1 must, before entering into a contractual relationship or assisting a client with the preparation or execution of a transaction, confirm the identity of the co-contracting party through production of any probative

document. They likewise confirm the identity of any occasional client who asks them to carry out transactions of the types, and in the amounts, determined in a *Conseil d'Etat* decree. The persons referred to in 8 of Article L. 562-1 meet that obligation by applying the measures stipulated in Article L. 564-1.

They determine the true identity of the persons with whom they enter into a contractual relationship or who request their assistance with the preparation or execution of a transaction when it appears to them that those persons might not be acting on their own behalf.

The financial institutions and the persons referred to in Article L. 562-1 take specific and appropriate measures, as determined by decree, to deal with the increased risk of money laundering which exists when they enter into a contractual relationship with a client who is not physically present for identification purposes or when they assist him with the preparation or execution of a transaction.

### **Article L563-1-1**

(Act No. 2001-420 of 15 May 2001 Article 36, Official Journal of 16 May 2001)

(Act No. 2004-130 of 11 February 2004 Article 70 X, Official Journal of 12 February 2004)

To ensure application of the recommendations made by the international authority for consultation and coordination in regard to the fight against money laundering, the Government may, for public order reasons and as determined in a *Conseil d'Etat* decree, make some or all of the transactions executed for their own account or on behalf of third parties by financial institutions established in France or with natural persons or legal entities referred to in the sixth paragraph of Article L. 562-2, or domiciled, registered or holding an account with an institution located in a State or territory referred to in the seventh paragraph of that same article, subject to specific conditions, or restrict or prohibit them.

### **Article L563-2**

(Act No. 2004-130 of 11 February 2004 Article 70 X, Official Journal of 12 February 2004)

The provisions of Article L. 563-1 apply to bonds and other securities covered by Article 990 A of the General Tax Code.

The tax scheme of those bonds and other securities is maintained.

The provisions of the second paragraph of Article 537 of the General Tax Code shall not impede the application of Article L. 563-1. However, the information referred to in that article is recorded in a register separate from that instituted by Article 537 of the General Tax Code. Since the client has not authorised the financial institution to communicate his identity and tax domicile to the tax authorities, the right to communication provided for in Articles L. 83, L. 85, L. 87 and L. 89 of the Book of Fiscal Procedures does not apply to either the register instituted by the present article or the supporting documents referred to in the first paragraph of Article L. 563-1, prepared in connection with transactions involving bonds and other securities referred to in Article 990 A, and in the second paragraph of Article 537 of the General Tax Code.

### **Article L563-3**

(Act No. 2004-130 of 11 February 2004 Article 70 V, X, Official Journal of 12 February 2004)

Any major transaction involving sums of a unitary or total amount greater than a sum determined in a *Conseil d'Etat* decree and which, without coming within the scope of Article L. 562-2, is subject to unusually complex conditions and does not appear to have any economic justification or lawful purpose, must undergo special scrutiny by the financial institution or person referred to in Article L. 562-1. In such cases, the financial institution or person referred to in Article L. 562-1 makes inquiries of the client as to the origin and destination of those sums, the purpose of the transaction and the identity of the beneficiary.

The details of the transaction are consigned in writing and kept by the financial institution or person referred to in Article L. 562-1, as determined in Article L. 563-4. Only the department instituted by Article L. 562-4 and the supervisory authority may obtain communication of that document and its appendices.

The financial institution or person referred to in Article L. 562-1 must ensure that the obligations laid down in the previous paragraph are complied with by its branches or subsidiary companies having their registered office abroad, unless the local legislation impedes this, in which case, they inform the department instituted by Article L. 562-4 thereof.

### **Article L563-4**

(Act No. 2001-420 of 15 May 2001 Article 38, Official Journal of 16 May 2001)

(Act No. 2004-130 of 11 February 2004 Article 70 VI, X, Official Journal of 12 February 2004)

Without prejudice to provisions which impose more restrictive obligations, the financial institutions and persons referred to in Article L. 562-1 shall hold the documents relating to the identity of their regular or occasional clients for five years with effect from closure of their accounts or cessation of their relations with them. They shall also hold the documents relating to the transactions carried out by them for five years with effect from their execution.

For application of the present Part, the department instituted by Article L. 562-4 and the supervisory authority may request that those documents be communicated to them to enable them to reconstitute all the transactions carried out by a natural person or legal entity in connection with a transaction which was the subject of a declaration referred to in Article L. 562-2, the special scrutiny referred to in Article L. 563-3 or an investigation referred to in Article L. 563-5, and to enable them to inform the corresponding departments of other States, as determined in Article L. 564-2.

### **Article L563-5**

(Act No. 2001-420 of 15 May 2001 Article 39, Official Journal of 16 May 2001)

(Act No. 2004-130 of 11 February 2004 Article 70 X, Official Journal of 12 February 2004)

(Act No. 2004-204 of 9 March 2004 Article 33 X, Official Journal of 10 March 2004 effective 1 October 2004)

Without prejudice to application of Article 40 of the Code of Criminal Proceedings, the information collected by the department instituted by Article L. 562-4 and the supervisory authorities pursuant to Articles L. 562-2 and L. 563-2 to L. 563-4 cannot be used for purposes other than those envisaged by the present Part.

Disclosure thereof is prohibited. Provided that that information relates to the facts referred to in Article L. 562-2, the department instituted by Article L. 562-4 is nevertheless authorised to communicate the information collected by law enforcement officers designated by the Minister of the Interior as determined in a Conseil d'Etat decree, and by the supervisory authorities. It may also communicate that information to the customs authorities. It may receive from law enforcement officers and the supervisory authorities, and from Government departments, the territorial authorities, the public institutions and the organisations referred to in Article L. 134-1 of the Financial Jurisdictions Code, all the information it requires to accomplish its mission.

#### **Article L563-6**

*(Act No. 2004-130 of 11 February 2004 Article 70 VII, X, Official Journal of 12 February 2004)*

When, as a result of either a serious lack of diligence or a failure in the organisation of its internal verification procedures, a financial institution or person referred to in Article L. 562-1 has failed to respect the obligations imposed on them by the present Chapter, the authority having disciplinary powers may automatically act as stipulated in the professional or administrative rules.

### **Chapter IV: Miscellaneous Provisions**

#### **Article L564-1**

*(Act No. 2004-204 of 9 March 2004 Article 33 VI 2, Official Journal of 10 March 2004 effective 1 October 2004)*

Casinos which exchange means of payment, tokens or chips, or which accept the tokens or chips of other casinos are required to register the names and addresses of the gamblers who exchange or bring with them tokens and chips having a value above an amount determined by decree.

Groups, clubs and companies which organise games of chance, lotteries, betting and sporting or racing tips are required to determine, through production of any probative document, the identity of gamblers winning sums above an amount determined by decree and to record those gamblers' names and addresses, and the amount of the sums they have won. This information must be held for five years.

#### **Article L564-2**

*(inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)*

Consistent with the legislative provisions and international agreements applicable to the protection of privacy and the communication of personalised information, the department instituted by Article L. 562-4 may communicate to the corresponding authorities of other States the information it holds concerning transactions which appear to have as their purpose the investment, concealment, conversion or transfer of sums deriving from an offence referred to in Articles 222-34 to 222-39 and 324-1 of the Penal Code or in Article 415 of the Customs Code, subject to reciprocity and provided that the relevant foreign authorities are subject to the same professional-secrecy obligations as the aforementioned department.

Such communication cannot be permitted if criminal proceedings have already been instituted in France on the basis of the same facts or if it would jeopardize French sovereignty, security or essential interests, or affect public order.

### **Article L564-3**

(Act No. 2003-706 of 1 August 2003 Article 43 II, III, IV, Official Journal of 2 August 2003)

(Act No. 2004-130 of 11 February 2004 Article 70 VIII, Official Journal of 12 February 2004)

A *Conseil d'Etat* decree determines the present Part's implementing legislation, without prejudice to the professional or administrative rules stipulated in the legislation applicable to the financial institutions and persons referred to in Article L. 562-1.

For application of the present Part:

1 The Banking Commission exercises supervisory and disciplinary powers over the companies referred to in 5 of Article L. 562-1. It may impose the penalties provided for in Article L. 613-21.

2 The Finance Inspectorate exercises supervision over the *Caisse des dépôts et consignations* and the Post Office's financial services departments. The results of the investigations of the Finance Inspectorate are made known, as applicable, to the supervisory committee of the *Caisse des dépôts et consignations* or the High Commission referred to in Article 35 of Act No. 90-568 of 2 July 1990 relating to the organisation of the public Post Office and telecommunications services.

3 The Financial Markets Authority exercises supervision over, and the power to impose penalties on, the undertakings for collective investment in transferable securities referred to in I of Article L. 214-1, the management companies of undertakings for collective investment referred to in II of Article L. 214-1, the miscellaneous property intermediaries referred to in Part V of the present Book, the persons authorised to canvass referred to in Articles L. 341-3 and L. 341-4 and financial investment advisors.