

# Collection of practical factsheets – Public information databases useful for third-party due diligence

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An anti-corruption program shall include third-party due diligence. The purpose of such assessment is to mitigate the risk of corruption that a business relation may incur. Indeed, if an organization is not sufficiently vigilant about the risk incurred, it may find itself more or less directly involved in the commission of corruption offences.

The AFA's guidelines detail the content of a third-party due diligence. Third-party due diligence involves gathering information about that person. This process aims at collecting and cross-checking various information from different sources to form a cluster of clues.

This procedure being new for many public and private entities, the AFA considered it useful to provide a leaflet identifying various sources of information. This document is therefore not a guide on third-party due diligence.

This leaflet is intended to be practical and lists the databases widely and commonly used. Users of this document may identify other databases. In this regard, their feedback would be valuable and the AFA can be reached via the contact details indicated at the end of this document.

## *The use of public databases*

### *How do information databases relate to third-party due diligence?*

Third-party due diligence shall consist of researching and analyzing information of all kinds to determine the probability of being involved, indirectly, in the commission of corruption offences.

In addition to the direct questioning of the person or the consultation of its website, the search may include information already available in open databases. The AFA has conducted a non-exhaustive inventory of these freely accessible databases. This list is limited to reporting on the existence of such databases and indicating a possible use of them. It does not comment on the credit to be given to these databases.

### *Do all databases have the same value?*

Databases are of different types and quality. It is necessary to consider the sources of information and to question the value attached to each information collected. In this regard, it may be useful to consider the following criteria in order to distinguish between the different sources.

- ***French legal database.*** This is a database for legal information collected under French law: information can be relied on.
- ***Legal database of an equivalent jurisdiction (or country).*** This is legal information filed under a law of an equivalent jurisdiction - which could receive equivalence under French law - and is required under local law. Information can be considered serious.
- ***Legal database of a non-equivalent jurisdiction (or country).*** This is legal information filed under a law of a non-equivalent jurisdiction. It is necessary to question the reliability of

information coming from a jurisdiction which is considered - by hypothesis - not equivalent.

- ***Database belonging to an international organization of which France is a member.*** There are many international or intergovernmental organizations of which France is a member, which may make assessments or hold information concerning individuals or legal entities. These include institutions such as the International Monetary Fund (IMF), the World Bank, various regional investment or development banks, the Organization for Cooperation and Economic Development (OECD), Financial Action Task Force (FATF) etc. Information from these fora can be collected with confidence.
- ***Database belonging to an international organization of which France is not a member.*** It is necessary to question the information on a case-by-case basis.
- ***Databases of a non-governmental organization (NGO).*** These NGOs, some of them internationally recognized, are necessarily activist, which should require to question the objectivity of the information provided and the method by which it is prepared. In many cases, however, the information made available can be collected or processed in a beneficial manner.

## ***Open sources of information***

This expression has no specific legal definition. "Open sources" means all activities and methods of disseminating, collecting and analyzing information obtained from a source made public.

These sources include newspapers, websites, books, scientific magazines, radio broadcasts, television broadcasts, etc. Open sources may contain reliable information but also information to be considered with caution: false information, information no longer valid, or biased. It is up to the person who looks at this database to assess the source. As a rule, it is recommended to establish a grid for the acceptability of information found in open sources.

## ***Search engines***

There are several search engines available for free use, but as a matter of habit or convenience, only one of them is often used. In addition to their own performance, search engines operate with algorithms that may vary and the resulting search may be affected. It may therefore be wise to use several search engines in order to diversify the results obtained. In addition, open source research may be affected by the absence of universal and mandatory standards for classification and formalization of information. It is also often useful to vary the spelling of a proper name or the language in which the search is performed. For example, "enterprise" or "company", "corruption" or "bribery", "free zone" or "tax heaven". In addition, research that is too precise may exclude information; on the other hand, a research that is too broadly stated may lead to too much information.

### ***Asset freeze orders and restriction lists***

There are several categories of databases or lists that use proper names or company names. The French list of asset freezes imposes a strong restriction on relations with the listed persons. Persons subject to an asset freeze cannot be contacted without prior authorization. In France, the « Registre National des Gels » is mandatory (it includes the European list of asset freezes). Asset Freeze lists from other countries should be considered with caution. These lists are not applicable in France but call for more vigilance. When dealing with entities sanctioned by extraterritorial jurisdictions, it is wise to consider whether the relationship should continue.

### ***Lists of non-cooperative countries or non-equivalent jurisdictions.***

They are lists, implemented by States or intergovernmental organizations, which aim at identifying countries that do not comply with the common rules on transparency and traceability, taxation or economic and financial standards. These lists call for increased vigilance, considering that the countries concerned do not offer a safe business environment.

### ***Lists of sanctioned persons, entities or countries***

These lists identify financial or trade measures against natural or legal persons or indicate the countries in respect of which there are restrictions in economic and financial relations.

They come up mainly from the United Nations Security Council and the Council of the European Union. In the event of a third party being included on one of these lists, restrictions apply.

## *Other open databases*

There are many other public databases. The present compendium cannot identify all these databases. It is therefore useful to ask about the existence of these databases by browsing the web pages of the organizations publishing these data. For public institutions in France, there are at least three data disclosure requirements. It is mandatory to publish:

- public data of local authorities with more than 3,500 inhabitants when they are of economic, health, social or environmental interest ;
- key public procurement data as well as the key concession contract data (as listed by the Ministry For Finance) must be published ;
- data on grants awarded exceeding EUR 23,000 must also be published in a mandatory format.

These publication requirements make many databases available. It should also be noted that, when they are not obliged to publish, many public entities have decided to do it on a voluntary basis. It is often useful, as a first step, to check out the size and location of the published data on the issuer's website.



### ***What to do with any information?***

A single piece of information has rarely an absolute value but feeds up a cluster of clues that may or may not rise suspicion of corruption. Where information is provided under the French law requirements, there is no need for further verification. For example, a company's registration number is the same in any other database and does not require the information to be cross-checked. On the contrary, some other categories of information need to be cross-checked or challenged. An information that does not meet any legal consideration (it is an opinion, reported facts or statements, a news article, an assessment made by a NGO.....) can be helpful to feed up a cluster of clues, but it is useful to confront it with other sources.

### ***How to proceed? there is too much information...***

It may be useful to:

- establish a list of information requested for a given category of third party;
- identify the databases and sources available (where to find this needed kind of information);
- establish a pattern of verification, confrontation and acceptability of information.

Depending on the information collected, further research or even special due diligence (for instance, by sending a questionnaire) may be undertaken.

For example, information that a company is established in a non-cooperative jurisdiction may lead to an addition request: why is this

entity settled there? Further information should be asked to this company.

### *Is there a typical pattern for searching information required?*

There is no typical pattern. Where the third party is a legal person, the research involves determining the ownership structure (who owns the capital), legal configuration, control and management of the legal person, its activities, background, governance etc.



Where the third party is a natural person, the pattern of searching for information is not fundamentally different, but the sequencing is: the primary search is about the natural person itself, and then it can be determined that the natural person is a manager, a beneficiary of a legal person, a member of an association...

### ***Granularity of information search, how far to go?***

In a risk-based approach, the high risk third parties (the risk mapping allows to break them down into homogeneous groups) are persons that require the most comprehensive assessment possible. The resources allocated to the search for information are thus adapted to the challenge. Third parties belonging to a group of persons who are a priori less risky are subject to a less thorough assessment. The classification made by the mapping in either category is not definitive: in light of new information, a reclassification may take place.

### ***Why look at the international legal environment?***

The legal and business environment is not neutral. Some jurisdictions adopt the highest standards of integrity and do not tolerate criminal behaviors. By contrast, some other countries enable inappropriate behavior and local anti-competitive practices which may lead to corruption. In some countries, the private affairs of the ruling class and public affairs are mixed, fostering a climate of corruption and nepotism. Finally, some jurisdictions trade on their lack of transparency, or even legal permissiveness, to attract capital and investments, of « questionable » origins.

## ***Definitions of useful concepts***

### ***Beneficial owner and ultimate beneficiary.***

The third party is not limited to the "apparent" person. The French Monetary Code refers to the "beneficial owner" as persons possessing at least 25 % of a legal person. This definition is also useful even for persons that do not have to abide by this code. But not being a "beneficial owner" (over 25%) does not exclude that person from being an "ultimate beneficiary" (under 25%), which should also be looked at. The "ultimate beneficiary" (such as the notion of "end customer") is not legally defined but is understood as any person who ultimately owns all or part of the legal person.

### ***Politically Exposed Persons***

A "Politically Exposed Person" (PEP) is a person subject to increased financial scrutiny, not because of the criminal nature of their activity but because of their high risk exposure. This does not imply then the existence of an offense. The Financial Action Task Force (FATF) states that *"due to the risks associated with PEP, the FATF recommendations require enhanced due diligence measures. These requirements are of a preventive (not criminal) nature and should not be interpreted as meaning that all PEPs are involved in criminal activities."*

Therefore, the concept of PEP is relevant to prevention and protection. Within the meaning of the EU Anti-Money Laundering Directives, the following shall be considered as PEPs :

- Heads of State, Heads of Government, members of a national government or of the European Commission, members of a national parliamentary assembly (National Assembly as well as the Senate) or of the European Parliament, the leaders of a political party; magistrates of the Court of Cassation, state councilors and members of the Constitutional Council, or their equivalents abroad; judges of the Court of Auditors or their equivalent abroad; directors or members of the management body of a central bank, ambassadors or head of missions; general officers or senior officers in command of an army; members of an administrative, management or supervisory body of a state-owned enterprise conducting business at the national level; directors, deputy directors, members of the board of an international organization;
- their relatives: the spouse (regardless of the nature of the covenant), the children and their spouse, the parents.

### ***Lobbyists***

The term "interest representative " (lobbyist) refers to civil society actors (companies, firms, trade unions, associations or NGOs) that combine three characteristics (within the meaning of Decree No. 2017-867 of 9 May 2017):

- a legal person or a natural person engaged in...
- lobbying activities by taking the initiative of contacting a public official in order to influence a public decision; and
- carrying out such activity on a principal or regular basis.

Interest representation (lobbying) is not illegal. However, as this activity aims to promote private interest to public decision-makers, it can lead to inappropriate situations.

For this reason, the legislator sought to make this activity transparent through the implementation of registers.

## *An offshore area*

Offshore areas are trade zones where the local national law does not apply or applies in a very derogatory manner (for instance, in some countries, the full possession of land or of legal persons by foreigners, or the exercise of a certain trade, is not permitted under the national law, as a consequence, so-called "offshore" zones are created to implement a "more international" law).

While not necessarily illegal or illegitimate, the World Customs Organization (WCO) warns that these "economic and financial facilitation" zones are usually associated with areas of lawlessness, non-control and non-transparency, which generate high risks of financial crime: the "shadow activities". The WCO also points out that a "free zone" presents a risk that should be identified but is not necessarily associated with crime. Whatever the name chosen (Free Zones, Special Customs Zones, Free Trade Zones, Special Economic Zones, Export Processing Zones, Free Ports, Revised Kyoto Convention, Customs procedure and Customs control...), what matters is the effective legal environment that prevails. If a relationship is established within a free zone, it is useful to ask the third party concerned about the nature of the relationship and the reasons for its presence in the zone. Attention is drawn to the fact that there may be countries which are favorably evaluated but that host offshore areas.

To consult the practical factsheets of the compendium, please read the French version from page 14 [here](#).