

ARTICLE

Navigating Legal Compliance: A Comprehensive Due Diligence Framework in Tunisia

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Due Diligence

Due Diligence:
An investigation, audit, or review performed to confirm facts or details of a matter under consideration

Navigating Legal Compliance: A Comprehensive Due Diligence Framework in Tunisia

Introduction:

A due diligence framework in accordance with Tunisian legislation and laws would involve a comprehensive review and analysis of various aspects of a business or transaction to ensure compliance with local regulations and to assess associated risks. Due diligence in Tunisia typically covers legal, financial, operational, and regulatory aspects.

Tunisia introduced the Organic Law No. 2019-9 of January 23, 2019, amending and supplementing the Organic Law No. 2015-26 of August 7, 2015, relating to the fight against terrorism and the repression of money laundering.¹ This Law regulates the rights and obligations of legal persons and natural persons in preventing and detecting money laundering and terrorist financing.

¹ <https://legislation-securite.tn/fr/law/104480>

This law also contains provisions regarding customer screening, identification and verification of customers, and the reporting of unusual transactions.

Legal due diligence refers to the measures taken to mitigate risk before entering into an agreement or carrying out a financial transaction with another party. It also refers to the identification of the main legal risks, the identification of the reorganizations that need to occur before or after the transaction, and assistance in drafting the acquisition contract and the warranty of assets and liabilities, as well as in negotiations.

Due Diligence Requirements

1. Due Diligence for Individuals (Natural Person)

Identity Verification Requirements

As per the requirements of the Tunisian regulations, these are the following ID attributes required for the purpose of identifying a natural person (Individual) from official documents.

- Full Name;
- Address.

Compliant CDD Methods

One shall perform verification of the End-user's identity on the basis of independent sourced documents. These documents provide reasonable reliability to the confirmation of the identity in Tunisia, to ensure that documents being utilized are photo-based biometric identification documents that suffice requirements for Identity Verification.

For the purpose of verifying the End-user's identity, we shall also verify the documents that are submitted. We utilize our specialized Document Verification service to perform checks on the authenticity of the document.

Documents Required for Verification

The following documents are considered in Tunisia as Proof of Identity:

- Identity Verification
- Identity Card;
- Driving Licence;
- Passport.

Address Verification

The following documents are considered in Tunisia as proof of address:

- A current utility bill (such as gas, electricity, telephone or mobile phone bill);
- Bank statement (issued no more than three months ago that shows the End-user's address and name);
- A document issued by a government department that shows the End-user's address and name.

Timing of Verification

Identity Verification is not limited to a one-time, one instance process. In fact, it is required in multiple instances as per regulations.

You are to pursue Identity Verification when you onboard a new Customer. If you are dealing with transaction data, you should apply Identity Verification as per the monetary thresholds defined in Tunisia's regulations. In other instances, Identity Verification becomes more important to employ if you face higher risks from your Customers. A high risk situation would be any instance where an Individual might represent above normal exposure of money laundering related threats to you.

Politically Exposed Persons and EDD ²

Measures As per the Enhanced Due Diligence requirements under Tunisia's regulations, you are required to determine if your Customer is a Politically Exposed Person, holds a public office, or exhibits a higher risk profile. In order to fulfill your obligations, We provides you it's AML³ Screening service. The service screens an individual's selected ID attributes of Name and DOB⁴ against watchlists of global regulatory authorities, foreign and domestic databases, compromised PEPs⁵ and sanctioned individuals.

The service highlights the category of the PEP based on the degree of risks they pose and also any immediate family member, or a close associate of the PEP.

You may utilize such services as per your requirements. This includes before or after establishing a relationship with your Customer.

Reliance on External Services

In the absence of explicit regulations, clients on their discretion, may seek the services of a third party for fulfilling AML/KYC⁶ obligations. Regardless of reliance on a third party, client will remain liable for maintaining regulatory compliance as well as fulfilling AML and KYC obligations.

Record Retention

As per Tunisia's Act, you are required to retain data for not less than ten (10) years. These are a part of your AML and KYC obligations for due diligence. In the case where this information is processed, collected and managed by a relevant third-party. You are liable to collect all such necessary information (Due Diligence Data) from the third party without undue delay.

² Enhanced Due Diligence

³ Anti-Money Laundering

⁴ Date of Birth

⁵ Public Exposed Persons

⁶ Anti-Money Laundering/ Know Your Customer

2. Corporate Due Diligence (Legal Person)

A. Legal Due Diligence

Corporate Structure and Governance:

- Review the company's organizational documents (articles of incorporation, bylaws)
- Verify the registration and legal existence of the company.
- Assess the composition of the board of directors and executive management.

Contracts and Agreements:

- Review existing contracts, including supplier agreements, customer contracts, and partnership agreements.
- Identify any contractual obligations and liabilities.

Compliance with Local Laws:

- Ensure the company complies with Tunisian corporate, labor, and tax laws.
- Review any ongoing legal disputes or litigation.

B. Financial Due Diligence:

Financial Statements:

- Review audited financial statements and tax records.
- Analyze revenue, expenses, and profit margins.

Tax Compliance:

- Ensure compliance with Tunisian tax laws, including VAT and income tax.
- Assess any outstanding tax liabilities.

Asset and Liability Review:

- Identify and value company assets and liabilities.
- Evaluate the condition and ownership of physical assets.

C. Operational Due Diligence:

Business Operations:

- Assess the company's operations, including production, supply chain, and sales.
- Identify any operational challenges or bottlenecks.

Technology and Intellectual Property:

- Review intellectual property rights, patents, and trademarks.
- Evaluate the condition and security of IT systems.

D. Regulatory Due Diligence:

Compliance with Industry Regulations:

- Ensure the company complies with sector-specific regulations, if applicable (e.g., healthcare, financial services).

Environmental Compliance:

- Evaluate environmental regulations and compliance, if relevant to the business.

E. Human Resources and Labor Compliance:

Employment Contracts:

- Review employment contracts, terms, and conditions.
- Verify compliance with labor laws, including minimum wage and working hours.

Employee Benefits:

- Assess employee benefit programs and retirement plans.
- Verify compliance with social security contributions.

F. Market and Competitive Analysis:

Market Position:

- Analyze the company's market share, competitors, and growth potential.

Customer and Supplier Relationships:

- Evaluate key customer and supplier relationships and their stability.

G. Risk Assessment:

Identify Risks:

- Summarize all identified legal, financial, operational, and regulatory risks.

Mitigation Strategies:

- Develop strategies to mitigate or manage identified risks.

P.S. It's important to note that due diligence requirements can vary depending on the specific industry, the size and nature of the transaction, and the legal and regulatory changes in Tunisia. Engaging legal and financial experts with expertise in Tunisian law is crucial to ensure thorough and compliant due diligence.