

QUICK CHANGE
Procedure no. 2015-07

Reprimand and fine
of EUR 40,000

Hearing of 20 June 2016
Decision handed down on 4 July 2016

**AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉOLUTION
SANCTIONS COMMITTEE**

Having regard to the letter dated 16 September 2015 in which the Chairman of the Autorité de contrôle prudentiel et de résolution (hereinafter, the ACPR) informed the Committee that the Supervisory College of the ACPR (hereinafter, the College), ruling through the Sub-College with responsibility for the banking sector, decided at its meeting of 7 September 2015 to open a disciplinary procedure under number 2015-07 against Quick Change, having its registered office at 9, rue Félix-Éboué, Marigot – 97150 Saint-Martin;

Having regard to the statement of objections dated 16 September 2015;

Having regard to the statements of defence dated 29 January, 19 April and 15 June 2016, along with the accompanying documentation, in which Quick Change (i) acknowledged the alleged facts, (ii) described the action it had taken to comply with its obligations regarding anti-money laundering and counter terrorist financing (hereinafter, AML-CTF), (iii) requested that the hearing is not public, and (iv) requested leniency from the Committee;

Having regard to the statements of reply dated 14 March 2016, in which Emmanuel Constans, representing the College, (i) noted that Quick Change did not dispute the alleged facts, (ii) pointed out that the action taken to remedy the shortcomings observed in the inspection report was overdue and left considerable room for improvement, and (iii) considered that heavy sanctions should be imposed on the company;

Having regard to the report of 4 May 2016 by Rapporteur Yves Breillat, in which he found that all the objections notified to Quick Change were substantiated;

Having regard to the letters dated 6 May 2016 summoning the parties to the hearing, informing them of the composition of the Committee and indicating that the hearing would not be public, in accordance with the company's request;

Having regard to the other case documents, including in particular the inspection report signed on 13 May 2015 following the inspected company's remarks concerning the draft report sent on 10 April;

Having regard to the Monetary and Financial Code, notably Articles L. 612-41 and R. 612-35 to R. 612-51, as well as Articles L. 561-5, L. 561-6, L. 561-10-2, L. 561-33, L. 562-3, L. 612-21, R. 561-10 and R. 561-38;

Having regard to Article L.O. 6313-1 of the General Code of Territorial Collectivities;

Having regard to the *Arrêté* (ministerial order) of 10 September 2009 on money changers (hereinafter, the *Arrêté* of 10 September 2009), notably its Articles 4 and 5;

Having regard to the Sanctions Committee's Rules of Procedure;

The ACPR Sanctions Committee, comprising Rémi Bouchez in the chair, Jean-Pierre Jouguelet, Christian Lajoie, Christine Meyer-Meuret and Elisabeth Pauly;

Having heard, at the session held in camera on 20 June 2016:

- Yves Breillat, Rapporteur, aided by his deputy, Raphaël Thébault;
- Rodolphe Lelté, representing the Director General of the Treasury, who said that he had no observations to make;
- Emmanuel Constans, representing the ACPR College, aided by the Director of the Legal Affairs Directorate, the Head of the Institutional Affairs and Public Law Division and two members of the Legal Affairs Directorate; Emmanuel Constans proposed issuing a reprimand along with a fine of at least EUR 40,000, to be published in a non-anonymous decision;
- The manager of Quick Change, who had the last word;

Having deliberated in the sole presence of Mr Bouchez, Mr Jouguelet, Mr Lajoie, Mrs Meyer-Meuret and Mrs Pauly, and also Jean-Manuel Clemmer, Chief Officer of the Sanctions Committee, who acted as meeting secretary;

1. Whereas, Quick Change, registered in the Basse-Terre Trade and Companies Register on 1 July 2000, is a money-changing company which operates in Saint Martin in the French Antilles; it has a share capital of EUR 38,000 which is held in equal proportions by the manager and his spouse; in 2013, the company reported a significant reduction in both its turnover (from EUR 459,552 to EUR 339,770) and results (from EUR 39,022 to a loss of EUR 17,723); according to information provided by its manager, the company recorded net income of EUR 19,082 in 2014 and EUR 9,293 in 2015; the exchange of United States dollars (hereinafter, US dollars) for euros represents a major part of its business; in addition to occasional clients, who account for most of its turnover, it also does business with casinos operating in the Dutch part of Saint Martin; on the date of the inspection, it had four employees, working on two sites, namely rue Félix-Éboué and rue de la Mairie;

I. Alleged breaches by Quick Change

1. On the organisation of its anti-money laundering and counter terrorist financing system

Regarding the duty to keep a ledger of transactions and record transactions

2. Whereas, money changers must comply with certain rules on recording transactions; whereas, Article 4 of the *Arrêté* of 10 September 2009 provides that before the end of each day money changers must enter in a ledger certain information stated on the transaction slips, which must be time and date stamped and numbered in chronological order — namely, for each transaction, the type of transaction, the currency or currencies involved, the amounts exchanged and the exchange rates used — and that information relating to one-off transactions in excess of a maximum amount, which was

EUR 8,000 on the date of the inspection, carried out for occasional clients must be immediately recorded in a specific section of the ledger;

3. Whereas, according to **objection 1**, entries of exchange transactions in the two transaction ledgers kept by the money changer are inadequate; whereas, on the main business site, transactions are recorded by hand in old diaries recycled for this purpose; whereas, the figures recorded are unusable; whereas, information required by the regulations is missing, including the type of transaction (buy or sell), the currencies involved, the amounts exchanged and the exchange rates used; whereas, in addition, on Quick Change’s secondary rue de la Mairie site transactions are recorded in an Excel spreadsheet which does not show the type of transaction or the exchange rates used, and only records transactions in euros and US dollars, although the site also offers money-changing services in other currencies; whereas, several money-changing transactions between 8 March 2013 and 21 July 2014 were not recorded in the ledgers, and some of these exceeded EUR 8,000; whereas, moreover, some money-changing transactions were only partially recorded in the Excel spreadsheet; whereas, several of the spreadsheet cells corresponding to amounts recorded or converted were not correctly filled in; whereas, lastly, the transaction slips were not time and date stamped;

Regarding the internal written rules and internal control procedures

4. Whereas, Article R. 561-38-4 of the Monetary and Financial Code requires reporting entities to define “*the procedures to be followed to control risk and implement due diligence measures covering clients, the storage of documents, the detection of unusual or suspicious transactions and compliance with the obligation to report to Tracfin*”; whereas, this obligation is described in Article 5 of the *Arrêté* of 10 September 2009, which provides that these procedures, which are intended to “*ensure compliance with all types of continuous due diligence obligations to counter the risk of being used for money laundering or terrorist financing purposes, describe the tasks to be performed in application of the above-mentioned provisions*”, must, in addition to describing the tasks that will enable money changers to comply with their due diligence and reporting obligations, state the frequency and type of permanent and periodic controls designed to ensure the effective implementation of these procedures;

5. Whereas, according to **objection 2**, the internal procedures manual dated 12 June 2014 is incomplete; whereas, in particular, it does not describe: (i) the criteria used to differentiate occasional clients and regular business relationships; (ii) the procedures for identifying and checking the identity of beneficial owners; in this respect, the money changer’s clients include legal entities (namely companies, including casinos and retail businesses); (iii) the Tracfin reporting obligations, including in particular the obligation set out in Article L. 561-15-III of the Monetary and Financial Code, when enhanced scrutiny has not enabled the money changer to obtain reasonable assurance that the transaction is lawful or to obtain proof of the origin of funds, and the obligation set out in subsection V of the same article to promptly notify Tracfin of any fact that may invalidate, confirm or modify information contained in an initial report; whereas, in addition, there is no effective internal control system to verify compliance with the AML-CTF obligations;

Regarding staff training

6. Whereas, Article L. 561-33 of the Monetary and Financial Code requires reporting entities to organise regular staff training on AML-CTF obligations and the freezing of assets;

7. Whereas, according to **objection 3**, Quick Change employees, including the manager who is the Tracfin reporter and correspondent and also the person responsible for implementation of the AML-CTF system, had not received training on AML-CTF and the freezing of assets at the time of the inspection;

2. On implementation of the due diligence obligations

Regarding compliance with the obligation to identify occasional clients

8. Whereas, Article R. 561-10-II-2 of the Monetary and Financial Code, as worded at the time of the events, requires money changers to identify occasional clients and, if applicable, effective beneficiaries of transactions, and to check proof of identity when the transaction or associated transactions is/are in excess of EUR 8,000 before executing the transaction or assisting in its preparation or execution, even when they do not suspect that the transaction might contribute to the laundering of money or the financing of terrorism;

9. Whereas, according to **objection 4**, the inspection identified two money-changing transactions in excess of EUR 8,000 carried out on 3 April 2013 and 21 July 2014 respectively, for which the clients were not identified;

Regarding the failure to carry out KYC checks on clients wrongly considered as occasional

10. Whereas, Article L. 561-2-1 of the Monetary and Financial Code provides that a business relationship is created when a reporting entity “*enters into a professional or commercial relationship which is intended, at the time contact is established, to exist for a certain period of time (...)*” ; Whereas, Article L. 561-6 of the Code provides that reporting entities must exercise continuous due diligence with regard to the business relationship and closely scrutinise transactions carried out, to ensure that they are consistent with their up-to-date knowledge of the client; whereas, Article R. 561-12 of the Code describes how this obligation should be implemented, and provides that reporting entities must “*1° prior to entering into a business relationship, obtain and examine information and documents, including those listed in a decree issued by the Minister of the Economy, that are necessary to gain knowledge of the client and of the purpose and nature of the business relationship, in order to assess the risk of money laundering and terrorist financing; / 2° During the business relationship, obtain, update and examine information and documents, including those listed in a decree issued by the Minister of the Economy, that enable it to maintain an appropriate level of knowledge of their client. Information should be collected and stored in a manner that is consistent with the objectives of assessing the risk of money laundering and terrorist financing and adequately monitoring such risk; / 3° At all times, be able to provide the supervisory authorities with proof of the due diligence measures they have implemented regarding money laundering and terrorist financing risks presented by the business relationship*”;

11. Whereas, in accordance with **objection 5**, the inspection identified seven clients who should have been classified as business relationships; whereas, Quick Change failed to obtain the information required pursuant to its know-your-client obligations;

Regarding compliance with the identification and due diligence obligations with regard to clients identified as business relationships

12. Whereas, Article L. 561-5 of the Monetary and Financial Code provides that prior to entering into a business relationship with a client, reporting entities must identify the client and, if applicable, the beneficial owner, using appropriate methods, and must verify their identity by obtaining documentary evidence; whereas, Article L. 561-6 of the Monetary and Financial Code requires reporting entities, prior to entering into a business relationship with a client, to obtain information on the purpose and nature of the business relationship and any other relevant information concerning the client; whereas, Article R.561-5 of the Monetary and Financial Code provides that the identity and powers of any individuals acting on behalf of clients must also be checked;

13. Whereas, according to **objection 6**, of the three business relationships identified by the money changer, i.e., casinos A, B and C, the identities noted on the money changing transaction slips filled out by the first two do not correspond to the company names appearing on excerpts from the official register contained in the client files; whereas, moreover, no information establishes any direct links between these casinos and the companies registered under the company names D and E; whereas, in addition, only a copy of the driving licence of an individual who is allegedly responsible for representing these three casinos has been included in the file, and the powers of that individual within the three companies have not been verified; whereas, in addition, no information on the identity of the client's beneficial owners, the financial situation of the three companies and the origin of the funds has been included in the client files; whereas, Quick Change has failed to comply with its identification and know-your-client obligations;

3. On the implementation of reporting and enhanced scrutiny obligations

Regarding failures to report suspicious transactions

14. Whereas, Article L. 561-15-I of the Monetary and Financial Code provides that the entities referred to in Article L. 561-2 of the same Code have a duty to report to Tracfin “*amounts recorded on their books or transactions relating to amounts that they know, suspect or have good reason to suspect result from an offence punishable by a custodial sentence of more than one year or that contribute to the financing of terrorism*”; whereas, Article L. 561-8 of the same Code provides that if they are unable to identify the client or to obtain information on the purpose or nature of the business relationship, they must not execute any transactions on any terms whatsoever, and must not enter into or pursue a business relationship with the client;

15. Whereas, according to **objection 7**, Quick Change has failed to comply with its reporting obligations with regard to a number of individual cases;

16. Whereas, according to **objection 7-1**, three citizens of Haiti, Mrs F, Mrs G and Mr H, entered the premises on 18 October 2013 in order to exchange EUR 43,900 for US dollars, namely, EUR 11,000 by Mrs F, EUR 18,000 by Mrs G and EUR 14,900 by Mr H; whereas, according to the information obtained by the money changer, the origin of the funds was a withdrawal from a credit institution in Guadeloupe; whereas, the purpose of the transaction was allegedly to buy goods in the Dutch part of Saint Martin; whereas, the file contains no documentary proof of the origin of funds or their intended purpose, nor does it contain any information concerning the occupation of the clients; whereas, in view of the lack of sufficient information, supported by documentary proof, about the origin of funds and the purpose of these transactions, involving material amounts, Quick Change should have reported them as suspicious transactions;

17. Whereas, according to **objection 7-2**, on 10 March 2014, Mr I, who declared he operated a garden centre, exchanged EUR 20,000 for US dollars; whereas, according to the information obtained by the money changer, the origin of the funds was a withdrawal from a local credit institution and the purpose of the transaction was to buy goods in the Dutch part of Saint Martin; whereas, the file contains no documentary proof of the origin of funds or their intended purpose; whereas, in view of the lack of sufficient information, supported by documentary proof, about the origin of the funds and the purpose of the transaction, involving a material amount, Quick Change should have reported it as a suspicious transaction;

18. Whereas, according to **objection 7-3**, on 3 April 2013 Quick Change exchanged EUR 30,000 for US dollars on behalf of the real property company J; whereas, this transaction was paid for by a cheque issued by property company R; whereas, the money changer noted that the transaction was executed in the absence of company R's representative by one of the casinos with which it has a business relationship, and which was allegedly acting on behalf of the real property company; whereas, the file contains no documents identifying the company, the absence of the representative at the time of the transaction is not explained, and no other information about the client has been recorded; whereas, Quick Change also failed to obtain information concerning the origin and purpose of the funds;

Regarding non-compliance with the enhanced scrutiny obligation

19. Whereas, according to Article L. 561-10-2-II, reporting entities “*must implement enhanced scrutiny measures with regard to any transaction that is particularly complex or involves an unusually high amount or does not seem to have any economic justification or lawful purpose. In such cases, they must obtain information from the client concerning the origin of the funds, the intended recipient, the purpose of the transaction and the identity of the beneficiary*”;

20. Whereas, according to **objection 8**, on 31 December 2012 Quick Change remitted two cheques of EUR 4,000 each issued by Mr K, corresponding to the payment for two exchange transactions executed on the same day; whereas, the file does not contain any information on the client’s identity; whereas, the money changer has failed to obtain information on the origin of the funds, the intended recipient and the purpose of the transactions;

4. On the system for freezing assets

21. Whereas, Article L. 562-3 of the Monetary and Financial Code provides that the entities referred to in Article L. 561-2 “*who hold or receive funds, financial instruments or economic resources are required to apply the freezing or restrictive measures imposed pursuant to this chapter*”;

22. Whereas, according to **objection 9**, Quick Change did not put in place a system to identify individuals or entities that are the subject of restrictive measures or whose assets have been frozen;

II. Quick Change’s statements of defence

23. Whereas, Quick Change does not dispute the alleged facts and states that it is aware of the serious nature of the breaches identified; whereas, in order to rectify the situation it has appointed an external service provider who is now responsible for controls and regulatory monitoring; whereas, in January 2016 it drew up a manual of internal procedures and has stated that procedures to ensure the traceability of transactions, differentiate between occasional clients and business relationships, and know its clients are operational; whereas, it has purchased specialised software for that purpose; whereas, in addition, it has carried out a risk classification and put in place an internal control procedure; whereas, moreover, to further improve application of its procedures, it has decided to close its secondary money changing office and operate solely from its main office, and no longer works with the casinos with which it previously had business relationships, which changes have resulted in a reduction in business; whereas, in view of the corrective action taken, Quick Change hopes that no sanctions will be imposed; whereas, in addition, the manager, who also states that on 10 September 2015 he was the victim of a robbery in his home after a series of hold-ups, has requested leniency;

*
* *

24. Whereas, in view of the foregoing it is established that all the objections of which Quick Change was notified have been substantiated; whereas, as at the date of the on-site inspection the money changer did not comply with a number of essential obligations that apply to money changers; whereas, moreover, in view of the very nature of their business, money changers are particularly exposed to the risk of involvement in money laundering and terrorist financing transactions and must therefore be particularly vigilant;

25. Whereas, serious shortcomings existed in the procedures for recording transactions, both as regards the use of transaction slips, which were not time or date stamped, and the keeping of ledgers (objection 1); whereas, the internal procedures manual in use at the time of the inspection was not compliant on a number of counts relating to essential aspects of AML-CTF (objection 2), on which neither the manager nor the

employees had received any training (objection 3); whereas, the consequence of these organisational shortcomings was the non-compliance of individual files as regards identification (objection 4) and knowledge of clients, some of whom were wrongfully classified as occasional; whereas, when considering these breaches the Committee has to take into consideration the large amounts exchanged by certain clients, in particular by the three casinos with which, at the time of the inspection, Quick Change had business relationships (objections 5 and 6); whereas, several failures to report suspicious transactions involving relatively large amounts and to conduct enhanced scrutiny were also observed (objections 7 and 8); whereas, lastly, at the time of the inspection no measures had been put in place to ensure Quick Change complied with its obligations regarding the freezing of assets (objection 9);

26. Whereas, without the corrective action taken by Quick Change’s management, such breaches would be sufficiently serious to justify the removal of the company from the list referred to in Article L. 612-21 of the Monetary and Financial Code, as the College representative pointed out at the hearing, particularly as in 2002 Quick Change had also been the subject of an on-site inspection during which serious shortcomings in its AML-CTF system had been identified; whereas, the inspection findings that resulted in the opening of this procedure reflect long-standing shortcomings in the company’s actions in this area;

27. Whereas, however, the investigation established that Quick Change’s managers, who stated at the hearing that they are now aware of their AML-CTF obligations, have put in place corrective measures and refocused the business activity; whereas, although the relevance and effectiveness of these recent changes will need to be verified, the Committee is of the opinion that it can take them into consideration; whereas, the Committee also observes that Quick Change’s managers have not disputed the alleged breaches and made the effort to travel from Saint Martin to attend the hearing;

28. Whereas, in view of all the foregoing and in compliance with the proportionality rule, Quick Change should be issued with a reprimand and a fine of EUR 40,000, in a non-anonymous decision;

FOR THE FOREGOING REASONS

[THE ACPR] DECIDES:

ARTICLE 1 – A reprimand and a fine of EUR 40,000 shall be imposed on SARL Quick Change.

ARTICLE 2 – This decision will be published in the register of the ACPR and may be consulted at the Committee Secretariat.

Chairman of the
Sanctions Committee

[Rémi Bouchez]

This decision may be appealed within a period of two months from its notification, in accordance with Article L. 612-16-III of the Monetary and Financial Code.