STUDY

# Money Laundering

## in Moroccan and French Law

*A comparative study in criminal law, business criminal law and international criminal law*

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**ABSTRACT**

*Moroccan and French law both criminalise money laundering under the influence of the same international instruments, but by opposite techniques. The French Criminal Code reaches the proceeds of* any *felony or misdemeanour and, since 2013, has relieved the prosecution of identifying the predicate offence where the arrangement has no justification other than concealment; the Moroccan Criminal Code confines the offence to the proceeds of a closed list of twenty-seven categories of offences, from which tax fraud, exchange-control offences and misuse of corporate assets are absent, while adopting a broader definition of the conduct, which extends to acquisition, possession and use. This asymmetry produces situations of concurrent or exclusive jurisdiction, which the study tests through concrete scenarios: the Franco-Moroccan dual national prosecuted in Morocco who cannot effectively be prosecuted in France; the Moroccan national exposed, in France and in the European Union, to a characterisation unknown to his own national law.*

**KEYWORDS**

Money laundering – Predicate offence – Closed list – Presumption of illicit origin – Self-laundering – Territorial and personal jurisdiction – Dual nationality – Extradition – *Ne bis in idem* – Moroccan Criminal Code, arts 574-1 ff. – French Criminal Code, arts 324-1 ff. – Directive (EU) 2018/1673.

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# Introduction

**1 A consequential offence that has become a front-rank offence –** Money laundering is, by nature, a secondary offence: it presupposes that an earlier offence has already generated wealth which is to be reintroduced into the lawful economy with its provenance erased. Long regarded as a mere extension of handling stolen goods (*recel*), it has in thirty years become the instrument of choice for asset-based enforcement, the means by which the profit is reached when the originating act can no longer, or cannot yet, be reached[1]. The French offence of laundering, created by Law No. 96-392 of 13 May 1996, is now thirty years old; its wording has changed little, but the litigation it generates has never ceased to expand[2].

**2 A common international matrix –** The two bodies of legislation compared here derive from the same sources: the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 20 December 1988), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8 November 1990), the United Nations Convention against Transnational Organized Crime (Palermo, 15 November 2000), the United Nations Convention against Corruption (Mérida, 31 October 2003) and the Recommendations of the Financial Action Task Force (FATF), the third of which calls on States to apply the laundering offence to the widest range of predicate offences. It is precisely on the manner of meeting that last requirement that the two systems part company: France chose generality, Morocco enumeration.

**3 French law –** The core provisions are Articles 324-1 to 324-9 of the Criminal Code, supplemented by special offences: laundering of the proceeds of drug trafficking (Criminal Code, art. 222-38) and customs laundering (Customs Code, art. 415). Law No. 2013-1117 of 6 December 2013 inserted the presumption of Article 324-1-1; Law No. 2025-532 of 13 June 2025 on freeing France from the trap of drug trafficking most recently deemed the offence a concealed one and extended that presumption to certain crypto-asset transactions[3].

**4 Moroccan law –** The Kingdom established its enforcement framework by Law No. 43-05 on combating money laundering, promulgated by Dahir No. 1-07-79 of 28 Rabii I 1428 (17 April 2007), which inserted into the Criminal Code a Section VI *bis* composed of Articles 574-1 to 574-7. That text has been reworked three times under the pressure of international evaluations: by Law No. 13-10 (Dahir No. 1-11-02 of 20 January 2011), by Law No. 145-12 (Dahir No. 1-13-54 of 2 May 2013) and lastly by Law No. 12-18 (Dahir No. 1-21-56 of 27 Chaoual 1442, 8 June 2021)[4]. This last reform, which widened the list of predicate offences, raised the fines, redrafted the definition of the conduct and replaced the former Financial Intelligence Processing Unit with the National Financial Intelligence Authority, contributed to Morocco's removal, in February 2023, from the FATF list of jurisdictions under increased monitoring. Judicial activity has followed: the Presidency of the Public Prosecution reports 821 proceedings registered in 2023, 801 in 2024 and 839 in 2025[5].

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[1] See generally M.-L. Rassat, *Droit pénal spécial. Infractions du Code pénal*, Dalloz, coll. Précis, 8th ed., 2018; M. Véron, *Droit pénal spécial*, Sirey, 17th ed., 2019; Ph. Conte, *Droit pénal spécial*, LexisNexis, 6th ed., 2019; V. Malabat, *Droit pénal spécial*, Dalloz, coll. HyperCours, 10th ed., 2022; E. Dreyer, *Droit pénal spécial*, LGDJ, coll. Manuel, 3rd ed., 2025; Ph. Bonfils and L. Grégoire, *Droit pénal spécial*, LGDJ, 2022; R. Salomon, A. Lepage and C. Ribeyre, *Droit pénal des affaires*, LexisNexis, coll. Manuel, 2024.

[2] J. Lasserre Capdeville, « Retour sur l'élément matériel du délit de blanchiment de capitaux », *Banque et Droit* No. 229, Sept.-Oct. 2026.

[3] L. No. 2025-532, 13 June 2025, *JO* 14 June 2025; Cons. const., 12 June 2025, No. 2025-885 DC. See E. Dreyer, « Contre la corruption et le blanchiment, tout est permis ? », *Gaz. Pal.* 2025, No. 27.

[4] *Bulletin officiel* No. 7018 of 24 Moharrem 1443 (2 Sept. 2021), official translation edition, p. 1626; Arabic text in *BO* No. 6995 of 14 June 2021.

[5] Figures released by the King's Prosecutor General at the Court of Cassation, President of the Public Prosecution, November 2026.

**5 Purpose and method –** The comparison will first address the offence itself (I), then its punishment (II), before testing the two systems at the point where they meet: in space, when funds, acts or persons fall simultaneously under both sovereignties (III). For that last part, constructed scenarios will be used, because it is in the practical case that the true reach of a difference in legislative technique is revealed.

# I. – The offence: two legislative techniques

## A. – The precondition: the predicate offence

**6 France: generality –** Article 324-1 of the Criminal Code refers to the direct or indirect proceeds "of a felony or misdemeanour" (*d'un crime ou d'un délit*), without further specification. Any offence of that rank which has generated a profit may therefore support a laundering charge: tax fraud, misuse of corporate assets, undeclared work, customs or securities offences, on the same footing as drug trafficking or corruption. Only petty offences (*contraventions*) are excluded. This generality, intended in 1996 to break with the narrow model of laundering drug money alone, is the distinctive feature of French law[6].

**7 France: autonomy –** The Criminal Division of the Cour de cassation has drawn from that generality a remarkable autonomy. Since 2008 it has described Article 324-1 as a "general, distinct and autonomous offence"[7]. Three consequences follow. First, the perpetrator of the predicate offence may himself be prosecuted for laundering his own proceeds: self-laundering, accepted as early as 2004, has not been called into question since[8], and the Court of Justice of the European Union has confirmed its compatibility with Union law[9]. Secondly, prosecution for laundering is conditional neither on conviction nor even on prosecution of the predicate offence: it is enough that its elements be established by the court trying the laundering charge; thus laundering of the proceeds of tax fraud escapes the admissibility conditions specific to prosecution of tax fraud itself[10]. The third concerns international criminal law and will be taken up below: it is immaterial that the predicate offence was committed abroad.

**8 France: the presumption of Article 324-1-1 –** The 2013 legislature went further by reversing, in certain circumstances, the burden of proving origin. Under Article 324-1-1, property or income "is presumed to be the direct or indirect proceeds of a felony or misdemeanour where the material, legal or financial conditions of the placement, concealment or conversion operation can have no justification other than to conceal the origin or the beneficial owner of that property or income". The prosecution then no longer has to identify the predicate offence; it need only establish the abnormality of the circuit. The Cour de cassation declined to refer the question of the provision's constitutionality, the presumption not being irrebuttable[11]; it nonetheless reviews the conditions for its application, requiring trial courts to verify them[12], and, once those conditions are met, places on the defendant the burden of proving lawful origin[13]. Since the Law of 13 June

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[6] B. Bouloc, « De quelques aspects du délit de blanchiment », *RD bancaire et fin.* 2002, p. 151; C. de Jacobet de Nombel, « Blanchiment. Élément matériel du blanchiment », *J.-Cl. Pénal des affaires*, fasc. 10, 2022.

[7] Cass. crim., 20 Feb. 2008, No. 07-82.977; formula repeated in Cass. crim., 24 Feb. 2010, No. 09-82.857, *Bull. crim.* No. 37.

[8] Cass. crim., 14 Jan. 2004, No. 03-81.165, *Bull. crim.* No. 12; *D.* 2004. 1377, note C. Cutajar; *JCP G* 2004. II. 10081, note H. Matsopoulou; *RSC* 2004. 350, obs. R. Ottenhof. See also J. Lasserre Capdeville, « Brèves remarques sur l'auto-blanchiment vingt ans après », in *Mélanges en l'honneur du professeur Philippe Conte*, LexisNexis, 2023, p. 499.

[9] CJEU, 2 Sept. 2021, Case C-790/19, *LG and MH (Self-laundering)*, ECLI:EU:C:2021:661.

[10] Cass. crim., 20 Feb. 2008, cited above.

[11] Cass. crim., 9 Dec. 2015, No. 15-90.019 (QPC, no referral); to the same effect, Cass. crim., 4 Dec. 2024, No. 24-83.013.

[12] Cass. crim., 15 Sept. 2021, No. 21-81.308; Cass. crim., 2 Apr. 2025, No. 24-81.185 (presumption set aside for want of sufficient evidence).

[13] Cass. crim., 6 Mar. 2019, No. 18-81.059; Cass. crim., 18 Dec. 2019, No. 19-82.496; Cass. crim., 12 Feb. 2025, No. 24-84.828.

2025, the same presumption attaches to transactions carried out by means of a crypto-asset with a built-in anonymisation function, or of any account or technique allowing transactions to be anonymised or rendered opaque.

**9 Morocco: enumeration –** Article 574-1 of the Moroccan Criminal Code treats as laundering only acts relating to property derived "from one of the offences provided for in Article 574-2". The latter sets out a list which Moroccan scholarship regards as exhaustive. Confined to seven categories in 2007 and raised to twenty-four in 2011, it has numbered twenty-seven since Law No. 12-18: illicit trafficking in narcotic drugs and psychotropic substances; trafficking in human beings; smuggling of migrants; illicit trafficking in arms and ammunition; bribery, extortion by public officials, trading in influence and misappropriation of public and private property; terrorism offences; counterfeiting or falsification of currency, public debt instruments and other means of payment; membership of an organised group formed to commit acts of terrorism; sexual exploitation; handling of things derived from a felony or misdemeanour; breach of trust; fraud (*escroquerie*); infringements of industrial property; infringements of copyright and related rights; environmental offences; intentional homicide, violence and assault; abduction, false imprisonment and hostage-taking; theft and extortion; smuggling of goods; fraud relating to goods and foodstuffs; forgery, counterfeiting and usurpation of office, titles or names; hijacking of or damage to aircraft, ships or other means of transport and interference with means of communication; insider dealing; attacks on automated data-processing systems; and, since 2021, dissemination of false or misleading information on financial instruments, price manipulation and pyramid selling or supply of services[14].

**10 Morocco: the significant absences –** What the list omits matters as much as what it contains. It includes neither tax fraud, nor offences against exchange-control regulations, nor misuse of corporate assets, nor fraudulent bankruptcy, nor, more generally, those business offences that cannot be reduced to fraud, breach of trust or forgery. Smuggling is listed, but not customs offences as a whole. It follows that, in Moroccan law, placing the proceeds of tax fraud or of an irregular export of capital is not, as such, laundering; it becomes so only if the prosecution manages to connect the funds to one of the listed characterisations, the presence in the list of handling, breach of trust and forgery offering, in that regard, bridges which practice does not fail to use.

**11 Morocco: autonomy and proof of origin –** Moroccan law also knows a form of autonomy: the opening words of Article 574-2 make the definition applicable to the listed offences "even where they are committed outside Morocco", and no provision makes prosecution for laundering conditional on prior conviction of the perpetrator of the predicate offence. But it knows no presumption comparable to that of Article 324-1-1. The Moroccan Court of Cassation ensures that illicit origin is positively demonstrated: it has held that, where the prosecution fails to establish that the defendants' assets derived from the alleged drug trafficking, and to specify their source and value, the court may not order their confiscation, innocence remaining the principle[15]. Where the French court may infer illegality from opacity, the Moroccan court must find it.

## B. – The physical element

**12 France: two forms of conduct, broadly construed –** Article 324-1 distinguishes laundering by false justification (first paragraph) – "facilitating, by any means, the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanour which has brought him a direct or indirect profit"

[14] Moroccan Criminal Code, art. 574-2, as amended by L. No. 13-10 and L. No. 12-18, art. 1. The list is rendered here from the Arabic version consolidated as at 14 June 2021.

[15] Moroccan Court of Cassation, Criminal Chamber, judgment No. 5331 of 4 June 2014, case No. 6834/2013.

– and laundering by assistance in an operation (second paragraph) – "assisting in an operation of placement, concealment or conversion of the direct or indirect proceeds of a felony or misdemeanour". The second form, by far the more commonly used, has received an expansive interpretation which Professor Lasserre Capdeville has recently synthesised[16]. A mere deposit or transfer of funds to a bank account constitutes *placement*[17], as does the acquisition of movable or immovable property[18] or subscription to a capital increase[19]. *Concealment* covers the opaque transfer of funds abroad[20], the interposition of a company in an acquisition[21] or the use of nominee managers and offshore accounts[22]. Cashing cheques followed by cash withdrawals is a *conversion*[23]. The three characterisations are, moreover, interchangeable[24].

**13 France: the limits –** Two boundaries remain. First, laundering requires a positive act: a bank's mere breach of its due-diligence obligations does not amount to assistance in the operation; acts of participation and knowledge of the fraudulent origin are still required[25]. Secondly, carrying cash without any particular artifice is not, in itself, concealment[26]. Lastly, the predicate offence must precede or be concurrent with the operation[27]. Above all, the French text does not criminalise, as laundering, the mere *possession* or *use* of the proceeds: such conduct falls under handling (Criminal Code, art. 321-1), a characterisation which, by a classic rule, cannot be applied to the perpetrator of the predicate offence himself.

**14 Morocco: an analytical and broader definition –** Article 574-1, as redrafted by Law No. 12-18, proceeds by listing seven forms of conduct, faithfully modelled on the Vienna and Palermo Conventions: the acquisition, possession or use of property or its income; its conversion, transfer or transport for the purpose of concealing or disguising its true nature or illicit origin; the concealment or disguise of the true nature, origin, location, disposition, movement or ownership of property or of rights relating to it; assistance given to any person involved in the predicate offence to evade the legal consequences of his acts; facilitating, by any means, the false justification of the origin of the property or income of the perpetrator of the predicate offence; assistance or advice given to an operation of safekeeping, placement, concealment, conversion, transfer or transport of the proceeds; and lastly the attempt to commit any of those acts. The last two forms reproduce, and enlarge, the French formula; the first four have no equivalent in Article 324-1.

**15 Morocco: possession and self-laundering –** Two features deserve emphasis. The first is the criminalisation of possession and use: in Moroccan law, a person who merely keeps or uses property which

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16 J. Lasserre Capdeville, « Retour sur l'élément matériel du délit de blanchiment de capitaux », cited above; by the same author, « Précisions sur le délit de blanchiment commis par concours à une opération de placement », *Banque et Droit* No. 227, 2026; « Blanchiment par dépôt de fonds sur un compte », *Banque et Droit* No. 228, 2026; « Le banquier et le risque de condamnation pénale pour blanchiment en droit français », *RD bancaire et fin.* July-Aug. 2021, dossier 17.

17 Cass. crim., 18 Mar. 2020, No. 18-85.542, *Banque et Droit* No. 191, May-June 2020, p. 82, obs. J. Lasserre Capdeville; Cass. crim., 13 Sept. 2023, No. 21-87.015.

18 Cass. crim., 17 Dec. 2014, No. 13-87.968; Cass. crim., 26 Oct. 2016, No. 15-84.552.

19 Cass. crim., 2 June 2010, No. 09-82.013.

20 Cass. crim., 14 Jan. 2009, No. 08-82.095.

21 Cass. crim., 5 Dec. 2012, No. 11-82.918.

22 Cass. crim., 9 Dec. 2015, No. 15-83.204.

23 Cass. crim., 17 June 2015, No. 14-80.977.

24 Cass. crim., 25 Mar. 2026, No. 23-84.721.

25 Cass. crim., 19 June 2024, No. 22-81.808; J. Lasserre Capdeville, « Caractérisation du délit de blanchiment d'argent à l'encontre d'un établissement de crédit », *D.* 2024. 1759. See already D. Rebut, « Manquement du banquier à ses obligations professionnelles et commission du délit de blanchiment », *Banque et Droit* No. 88, 2003, p. 11; Th. Bonneau, « La responsabilité du banquier encourue pour non-respect de la législation relative au blanchiment de capitaux », *RD bancaire et fin.* 2005, étude 2.

26 Cass. crim., 19 June 2024, No. 23-81.904; Cass. crim., 25 June 2025, No. 24-85.882.

27 Cass. crim., 26 Jan. 2022, No. 20-86.858.

he knows to derive from one of the listed offences is a launderer. The second lies in the phrase, introduced in 2021 into the first three indents, according to which the act may be performed "in the interest of the perpetrator or of another": the Moroccan legislature thus appears to have intended to reach laundering by the very perpetrator of the predicate offence, in line with the FATF Recommendations. The exact scope of that phrase has not yet, to our knowledge, been settled by the Court of Cassation; it at least offers the prosecution a textual basis which French law, entirely judge-made on this point, lacks.

### C. – The mental element

**16 France –** Laundering is an intentional offence (Criminal Code, art. 121-3). The defendant must have known that the funds derived from a felony or misdemeanour; he need not have known its exact nature, its circumstances or its perpetrator[28]. That knowledge is inferred from the circumstances, and notably from the defendant's status as a professional[29]; it may not, however, rest on hypothetical reasoning[30]. Directive (EU) 2018/1673 allowed Member States to criminalise negligent laundering, where the offender "ought to have known"; France has not availed itself of that option[31].

**17 Morocco –** Article 574-1 requires the acts to be committed "intentionally and knowingly", the defendant "knowing" that the property is the proceeds of one of the offences in Article 574-2. The Moroccan Court of Cassation infers that a prosecution for participation in laundering fails where the element of knowledge is not established[32]. Two differences from French law emerge. On the one hand, the knowledge required is more specific: on the wording of the text, it relates to derivation from an offence *on the list*, and not from any felony or misdemeanour, which increases the evidential burden. On the other, the second indent – conversion, transfer, transport – carries a specific intent, the purpose of concealing or disguising the origin, which the second paragraph of Article 324-1 does not require.

## II. – Punishment: convergences and divergences

### A. – Penalties

**18 France –** Simple laundering is punishable by five years' imprisonment and a fine of EUR 375,000 (Criminal Code, art. 324-1). The penalties rise to ten years and EUR 750,000 where the offence is committed habitually, by using the facilities afforded by the exercise of a professional activity, or by an organised gang (art. 324-2); habitual commission is established by the plurality of operations, even where the funds derive from a single offence. The fine may be raised to half the value of the property or funds to which the operations related (art. 324-3). Where the predicate offence carries a longer custodial sentence, laundering borrows the penalties of that offence, provided its perpetrator was aware of it (art. 324-4). Attempt is punishable (art. 324-6); active repentance gives rise to exemption from or reduction of the penalty (art. 324-6-1). Legal persons incur a fivefold fine and the penalties of Article 131-39 (art. 324-9). Above all, laundering

[28] Cass. crim., 3 Dec. 2003, No. 02-84.646; Cass. crim., 20 May 2015, No. 14-81.964. See C. de Jacobet de Nombel, « Blanchiment. Élément moral du blanchiment », *J.-Cl. Pénal des affaires*, fasc. 20, 2023.

[29] Cass. crim., 25 Oct. 2017, No. 16-80.238.

[30] Cass. crim., 16 Oct. 2024, No. 23-82.720.

[31] Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 Oct. 2018 on combating money laundering by criminal law, art. 3(2).

[32] Moroccan Court of Cassation, Criminal Chamber, judgment No. 801 of 6 Feb. 2013, case No. 16701/2012.

is one of the few misdemeanours for which confiscation of all or part of the convicted person's estate, whatever its origin, may be ordered (art. 324-7, 12°).

**19 Morocco –** Article 574-3 punishes laundering, without prejudice to more severe characterisations, by two to five years' imprisonment and a fine of MAD 50,000 to 500,000 for natural persons – the ceiling was MAD 100,000 before 2021 – and by a fine of MAD 500,000 to 3,000,000 for legal persons, without prejudice to the penalties incurred by their managers and employees (art. 574-6). Those penalties are doubled where the offence is committed by using the facilities afforded by the exercise of a professional activity, habitually, by an organised gang or by a repeat offender, recidivism being assessed over the five years following a final conviction (art. 574-4). Total confiscation of the property used or intended to be used to commit the offence and of its proceeds, or of their equivalent value, is mandatory, subject to the rights of third parties in good faith; dissolution of the legal person, publication of the decision and a professional ban may be added (art. 574-5). A perpetrator, co-perpetrator or accomplice who reveals the facts to the authorities before they have knowledge of them benefits from an absolving excuse; the penalty is halved where the disclosure is made after the offence (art. 574-7).

**20 Assessment –** The scale is comparable as regards custodial sentences – five years on both sides, ten in the aggravated forms – Moroccan law being distinguished by a two-year minimum. The gap widens on the financial side: where the Moroccan court has a capped fine and a confiscation limited to the instrumentality and the proceeds, the French court may impose a fine proportionate to half the sums laundered and a general confiscation. For the wealthy defendant, the French risk is of a different order of magnitude.

## B. – Courts and limitation

**21 Morocco: specialised jurisdiction –** Article 38 of Law No. 43-05, as worded in 2021, assigns the prosecution, investigation and trial of laundering offences to the courts of Rabat, Casablanca, Fès and Marrakech, whose districts are fixed by regulation, by way of derogation from the ordinary rules of jurisdiction; the courts of Rabat, originally the only competent courts, remained so on a transitional basis until the implementing text was adopted. Financial intelligence is the responsibility of the National Financial Intelligence Authority, attached to the Head of Government.

**22 France: specialisation and limitation –** In France, laundering of complex economic and financial offences falls, concurrently with the ordinary courts and the specialised interregional courts, within the remit of the National Financial Prosecutor (Code of Criminal Procedure, art. 705) and, for organised crime, of the national prosecution office established by the Law of 13 June 2025. That Law also settled a long-standing controversy by providing that laundering, "whatever the material facts that characterise it", is deemed a concealed offence within the meaning of Article 9-1 of the Code of Criminal Procedure: the six-year limitation period therefore now runs only from the day on which the offence came to light and could be established in conditions allowing prosecution, subject to the twelve-year long-stop. Moroccan law has no equivalent rule: laundering there is governed by the ordinary limitation period for misdemeanours.

## C. – Synoptic table

The table below brings together the main points of comparison identified so far.

| Criterion | French law | Moroccan law |
|---|---|---|
| **Source** | Criminal Code, arts 324-1 to 324-9; art. 222-38; Customs Code, art. 415 | Criminal Code, arts 574-1 to 574-7 (L. No. 43-05, as amended by L. Nos 13-10, 145-12 and 12-18) |

| Criterion | French law | Moroccan law |
|---|---|---|
| **Predicate offence** | Any felony or misdemeanour | Closed list of twenty-seven categories (art. 574-2) |
| **Tax fraud, exchange control, misuse of corporate assets** | Included (any misdemeanour) | Not listed |
| **Proof of origin** | Rebuttable presumption of illicit origin (art. 324-1-1) | No presumption; positive proof of origin required |
| **Physical element** | False justification; assistance in an operation of placement, concealment or conversion | Seven forms of conduct, including acquisition, possession and use |
| **Self-laundering** | Accepted by case law since 2004 | Textual basis since 2021 ("in the interest of the perpetrator or of another") |
| **Mental element** | Knowledge of criminal origin, without specification of the offence | Knowledge of derivation from a listed offence; specific intent for conversion |
| **Basic penalty** | 5 years; EUR 375,000; fine up to half the sums laundered | 2 to 5 years; MAD 50,000 to 500,000 |
| **Aggravated form** | 10 years; EUR 750,000 | Penalties doubled (art. 574-4) |
| **Confiscation** | General confiscation of the estate (art. 324-7, 12°) | Instrumentality and proceeds, or equivalent value (art. 574-5) |
| **Limitation** | Offence deemed concealed (Law of 13 June 2025) | Ordinary rules for misdemeanours |
| **Courts** | Ordinary courts, JIRS, national prosecution offices | Rabat, Casablanca, Fès, Marrakech (L. No. 43-05, art. 38) |

# III. – Application in space: laundering between two sovereignties

## A. – Heads of jurisdiction

**23 France: extended territoriality –** French criminal law applies to offences committed on the territory of the Republic, an offence being deemed so committed "where one of its constituent facts took place on that territory" (Criminal Code, art. 113-2). Applied to laundering, the rule has acquired considerable reach. Seised of the case of a foreign minister who had deposited in French banks commissions received in his own country in return for the grant of oil concessions, the Criminal Division held that the provisions defining the offence require neither that the offence which produced the laundered sums took place on national territory, nor that the French courts have jurisdiction to prosecute it; it was enough that the underlying facts were punishable in France, in that instance as bribery[33]. The same logic led to the final conviction, for laundering in France the proceeds of misappropriations committed in his own country, of the vice-president of a Central African State[34]. The predicate offence is therefore characterised under French law, and a single act of placement, concealment or conversion performed in France suffices to found jurisdiction[35].

[33] Cass. crim., 24 Feb. 2010, No. 09-82.857, *Bull. crim.* No. 37; *Rapport annuel de la Cour de cassation 2010*, Part 4.

[34] Cass. crim., 28 July 2021, No. 20-81.553.

[35] See D. Rebut, *Droit pénal international*, Dalloz, coll. Précis, 3rd ed., 2019; A. Huet and R. Koering-Joulin, *Droit pénal international*, PUF, coll. Thémis, 3rd ed., 2005.

**24 France: personal jurisdiction –** Outside the territory, French law applies to misdemeanours committed by French nationals "if the facts are punishable under the legislation of the country in which they were committed" (Criminal Code, art. 113-6, second paragraph). This active personality jurisdiction is doubly restricted: prosecution may be brought only at the instance of the public prosecutor, preceded by a complaint from the victim or an official denunciation by the authority of the country where the act was committed (art. 113-8); and it is excluded where the person shows that he has been finally tried abroad for the same facts and, in the event of conviction, that the sentence has been served or is time-barred (art. 113-9). That last rule, however, operates only for extraterritorial heads of jurisdiction: a foreign judgment is no bar to prosecution, in France, of acts committed in France.

**25 Morocco: territoriality and personality –** Moroccan criminal law applies to all persons on the territory of the Kingdom, whether nationals, foreigners or stateless (Criminal Code, art. 10), and to offences committed outside the Kingdom where they fall within the jurisdiction of the Moroccan courts under the Code of Criminal Procedure (art. 12). The latter deems committed in Morocco any offence one of whose constituent elements was performed there (Code of Criminal Procedure, art. 704). It further allows prosecution and trial in Morocco of any act characterised as a felony (art. 707) or misdemeanour (art. 708) by Moroccan law and committed abroad by a Moroccan, provided that the person has returned to Morocco and does not show an irrevocable foreign decision followed, in the event of conviction, by service, limitation or pardon of the sentence; in the case of a misdemeanour committed against an individual, prosecution requires an application by the public prosecutor seised of a complaint from the injured party or of a denunciation by the authorities of the country of commission. Prosecution remains possible where the accused acquired Moroccan nationality only after the facts (art. 709)[36]. To this is added the rule specific to laundering: the predicate offence may have been committed abroad (Criminal Code, art. 574-2).

**26 Franco-Moroccan cooperation –** The two States are bound by a convention on mutual legal assistance in criminal matters and an extradition convention signed in Rabat on 18 April 2008, which entered into force in 2011[37], the former having been supplemented by an additional protocol signed on 6 February 2015, which organises reciprocal information of the authorities on proceedings likely to concern the other party. Two substantive rules govern the position of the dual national. Neither State extradites its nationals: France refuses the extradition of a person who had French nationality at the time of the facts (Code of Criminal Procedure, art. 696-4, 1°); Morocco surrenders only persons who do not have Moroccan nationality (Code of Criminal Procedure, arts 718 ff.). Yet each of the two States regards the dual national as its national alone. The Franco-Moroccan is therefore extraditable neither from France to Morocco nor from Morocco to France; he can be tried, in his presence, only where he is.

## B. – The Franco-Moroccan prosecuted in Morocco and not in France

**27 First scenario: the proceeds of an offence committed in France, invested in Morocco –** Take a Franco-Moroccan executive who, having misappropriated in Paris funds entrusted to him by investors, reinvests the proceeds in the purchase of a riad in Marrakech through a Moroccan real-estate company. The predicate offence – breach of trust – is on the list in Article 574-2, and the fact that it was committed in France is immaterial. The acts of conversion and concealment were performed in Morocco: Moroccan jurisdiction is territorial (Code of Criminal Procedure, art. 704) and the specialised courts of Marrakech or

[36] Law No. 22-01 on criminal procedure, Book VII, last amended by L. No. 03-23, Dahir No. 1-25-55 of 13 Aug. 2025, *BO* No. 7437 of 8 Sept. 2025.

[37] Convention on mutual legal assistance in criminal matters, Rabat, 18 Apr. 2008, published by Decree No. 2011-960 of 16 Aug. 2011; Extradition Convention, same date, published by Decree No. 2011-961 of 16 Aug. 2011.

Rabat may try the laundering without awaiting the outcome of any French proceedings. In France, the breach of trust of course remains punishable; but the laundering itself was materially carried out in Morocco. French law could reach it only on the basis of active personality, subject to the twofold condition of Article 113-8 – an application by the prosecutor preceded by a complaint or an official Moroccan denunciation – and to the reservation of Article 113-9: once the person has been finally tried in Morocco, and his sentence served or time-barred, French prosecution for the laundering is closed. Prosecuted for laundering in Morocco, he will not be prosecuted on that count in France.

**28 Second scenario: mere possession –** Now take the Franco-Moroccan wife of a public official convicted of bribery, who occupies in Casablanca the apartment bought with the illicit funds and collects its rents, without having taken part either in the offence or in the acquisition. In Moroccan law, possession and use of property known to derive from bribery constitute, in themselves, the laundering described in the first indent of Article 574-1. In French law, such facts would not meet the definition in Article 324-1, there being no assistance in an operation of placement, concealment or conversion; at most they would amount to handling. Let the possessor be, not the wife, but the perpetrator of the bribery himself, and the gap becomes complete: a launderer in Morocco, since the text covers the act performed "in the interest of the perpetrator", he cannot in France be a handler of the proceeds of his own offence. The characterisation of laundering then exists on only one side of the Mediterranean.

**29 Third scenario: acts committed in France by a dual national residing in Morocco –** Lastly, take a Franco-Moroccan settled in Rabat who, during stays in Paris, assisted in operations converting the proceeds of a fraud. France has territorial jurisdiction; but the person, having returned to Morocco, is not extraditable from there. The French authorities then have no route to a judgment in his presence other than official denunciation of the facts to the Moroccan authorities, which may prosecute on the basis of Article 708 of the Code of Criminal Procedure, the accused being Moroccan and having returned to Morocco, provided that the facts meet the Moroccan definition of laundering – which is the case for fraud. France admittedly retains the power to try the absent defendant in default; but the conviction cannot be enforced against his person so long as he remains in Morocco, and the Moroccan judgment, once irrevocable, will be relied on in support of any subsequent application. In practice, it is the Moroccan forum that decides.

**30 The limit: a predicate offence outside the list –** These scenarios share the condition that the funds derive from a listed offence. Let them derive from a tax fraud committed in France, and the reasoning is reversed: their reinvestment in Morocco is not laundering there, while France, competent in respect of its national only in so far as the facts are punishable under the law of the place, would come up against precisely the absence of a Moroccan offence. The list in Article 574-2 thus draws, for the dual national, the boundary between funds that expose him in Morocco and those that expose him only in France.

## C. – The Moroccan national prosecuted in France or in the European Union

**31 The principle: yes, and more widely than in Morocco –** A Moroccan national, even one with no connection to France, may be prosecuted there for laundering once an act of placement, concealment or conversion has been performed on French territory: opening an account, a transfer passing through a French bank, acquisition of real property, subscription to the capital of a company. The nationality of the offender is immaterial, as is the place where the predicate offence was committed. And because the French text covers any felony or misdemeanour, the prosecution may succeed where Moroccan law would have seen no laundering at all.

**32 Fourth scenario: misuse of corporate assets –** The manager of a Moroccan public limited company draws from the company's treasury sums which he uses to buy an apartment in Paris through a Luxembourg company. Misuse of corporate assets, criminalised by the Moroccan law on public limited companies, does not appear in Article 574-2: unless recharacterised as breach of trust, there is no laundering within the meaning of Moroccan law. In France, the underlying facts are punishable as misuse of corporate assets; the acquisition is a placement, the interposition of a foreign company a concealment. The offence in Article 324-1 is made out, and the case law of 2010 and 2021 leaves little doubt as to jurisdiction.

**33 Fifth scenario: the presumption and funds taken out in breach of exchange-control regulations –** A Moroccan trader has built up abroad, without any authorisation from the Office des changes, assets which he moves between several accounts opened in the names of companies with no activity, before investing them in France. In Morocco, the exchange-control offence not being a predicate offence, the characterisation of laundering is closed. In France, the prosecution need not even look for the predicate offence: if the material, legal or financial conditions of the circuit can have no justification other than to conceal the origin or the beneficial owner of the funds, they are presumed to derive from a felony or misdemeanour, and it is for the defendant to prove their lawful origin. Showing that the funds derive from a regular commercial activity rebuts the presumption; but the defence will then have to set out, before the French court, the person's position under his own exchange-control regulations. To this is added, for physical movements of cash, the obligation to declare to customs any transfer of EUR 10,000 or more (Monetary and Financial Code, art. L. 152-1), breach of which frequently feeds the presumption.

**34 Foreign tax fraud –** Whether the proceeds of a fraud committed solely to the detriment of the Moroccan tax authorities can be the subject of laundering punishable in France is a more delicate question. The 2010 judgment reasons on underlying facts "punishable in France" under a French-law characterisation; yet the offence of tax fraud in the General Tax Code protects French tax. Directive (EU) 2018/1673 nonetheless ranks criminal tax offences among criminal activities (art. 2) and requires Member States to punish the laundering of property derived from conduct that occurred in a third country, where that conduct would have constituted criminal activity had it occurred on national territory (art. 3(3)(c)), save that they may require, for offences other than the most serious, that it also be an offence in the country of commission (art. 3(4)). Prudence dictates that the risk be treated as real, all the more so since the presumption of Article 324-1-1 makes it possible, here again, to bypass the debate on characterisation.

**35 The European Union –** The reasoning holds, *mutatis mutandis*, throughout the Member States. The 2018 Directive requires them to establish jurisdiction where the offence was committed in whole or in part on their territory or by one of their nationals (art. 10), to punish laundering by a maximum term of imprisonment of at least four years (art. 5), to criminalise self-laundering by conversion, transfer or concealment (art. 3(5)) and to allow conviction without a prior conviction for the underlying criminal activity or identification of its perpetrator (art. 3(3)(a) and (b)). The Moroccan national is not subject to the European arrest warrant as between himself and Morocco; but, if arrested in another Member State, he may be surrendered to France under that instrument, laundering of the proceeds of crime being among the offences for which verification of double criminality is abolished (Framework Decision 2002/584/JHA, art. 2(2)). A trip to Spain or Belgium is then enough to give effect to a French prosecution which the absence of extradition from Morocco had paralysed.

**36 Defences –** A Moroccan national so prosecuted has four lines of argument. He may challenge jurisdiction by showing that no constituent fact was performed in France, the mere transmission of orders from abroad to a foreign bank being insufficient. He may contest the physical element by establishing the absence of any positive act of placement, concealment or conversion. He may rebut the presumption by

documentary proof of the origin of the funds, which presupposes a traceability that business practice in Morocco does not always provide. Lastly, if he has already been tried in Morocco for the same facts, he may rely on the authority of the Moroccan decision; but that plea, as has been seen, has certain effect only as against extraterritorial heads of jurisdiction, and is of no avail where the acts of laundering were committed in France.

## Conclusion

**37 Two conceptions of laundering –** At the close of the comparison, the opposition between the two systems is not merely one of degree. Moroccan law remains attached to a *derivative* conception of laundering: it remains the accessory of named offences, which the prosecution must identify and prove to be the source of the property; in return, any knowing contact with that property, down to mere possession, is criminalised. French law has evolved towards an *autonomous* conception: the predicate offence is no more than an abstract precondition, which the court may presume from the opacity of the operation alone; in return, the text requires a positive act forming part of an operation.

**38 Practical lessons –** For the practitioner of Franco-Moroccan business law, three lessons emerge. The first is that the lawfulness of a flow is not assessed within a single legal order: funds which cannot, in Morocco, be the subject of laundering may become so the moment they touch the French banking system or property market. The second is that dual nationality, far from protecting, concentrates the risk: it closes extradition in both directions, but opens two personal jurisdictions and makes the place of residence the effective forum of trial. The third is that proof of the origin of funds, which Moroccan law leaves to the prosecution, falls in France on the person whose arrangement can be explained only by a concern to conceal; documentation of origin, assembled in advance, is now the first of defences.

**39 Outlook –** It is reasonable to think that the gap will narrow. Mutual evaluations are everywhere leading to a widening of predicate offences, and the list in Article 574-2, already lengthened twice, is bound sooner or later to take in the criminal tax offences which the FATF standards rank among the designated categories. Until then, it is in the interval between Moroccan enumeration and French generality that, for operators on both shores, most of the criminal risk, and most of the advisory work, is to be found.

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