

The Legal Nature of the Crime of Money Laundering*

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Abstract:

The phenomenon of crime money laundering is an important and one of the most serious financial crimes that have emerged in the era of the digital economy. This crime is also called the the crime of white-collar. It is well known that whiteness is a symbol of serenity and purity. Criminals of money laundering are called themselves so, to appear as innocent people in their community, and this enables them to hide their crimes.

Despite the fact that commercial banks represent one of the most important tributaries of money laundering globally because of the magnitude of the banking and financial system, and easily pass the suspicious transactions and hide the sources of the money, but the criminals alerted strictly controlled on the banking business, and became the subject of money laundering is not a bank fertile environment for washing with the vast majority of criminals have noticed all criminals strictly controlled the work of banks, especially when the exhibits offender stages of the washing stage replacement then phase coverage then the merger which stages the degree of complexity, prompting the perpetrators of these crimes to change their destination in the washing, as has become a safe haven only the perpetrator is running money with someone else out of his money legitimately, they are considered one of the most successful means to commit the crime and the attainment of the result with the difficulty of detection and the advantage that it does not have an impact and thus remains the offender is a step or more of the powers of investigation, and the investigation and trial. Which means that legislation should be amended to tighten punishment for those involved washing partner, the confiscation of all his assets and shut down all of its projects, which originated the project.

Keywords: definition , money laundering , stages , solutions , Elements

الطبيعة القانونية لجريمة غسل الأموال

ملخص :

تعتبر ظاهرة غسل الأموال جريمة من أهم الجرائم المالية الخطيرة التي ظهرت في عصر الاقتصاد الرقمي

وما يسمى جرائم ذوي الياقات البيضاء والتي سميت كذلك ، دلالة الصفاء والنقاء حيث يبدو هؤلاء في المجتمع بوضعهم الاجتماعي الذي يمكنهم من إخفاء جرائمهم . وبالرغم من أن البنوك التجارية تمثل أحد أهم روافد غسل الأموال عالمياً وذلك بسبب ضخامة النظام المصرفي والمالي ، وسهولة تمرير العمليات المشبوهة وإخفاء مصادر الأموال ، إلا أن المجرمين تنبهوا للرقابة الصارمة على أعمال البنوك ، وأصبح موضوع غسل الأموال لا يشكل لدى البنوك البيئة الخصبة للغسيل لدى الغالبية العظمى من المجرمين فقد تفتن جميع المجرمين للرقابة الصارمة على أعمال البنوك ، خاصة حينما يسلك الجاني مراحل الغسيل من مرحلة الإحلال ثم مرحلة التغطية ثم الدمج وهي مراحل على درجة من التعقيد، مما دفع بمرتكبي هذه الجرائم إلى تغيير وجهتهم في الغسل إذ أصبح الملاذ الآمن الوحيد لمرتكب الجريمة هو تشغيل الأموال مع شخص آخر أصل أمواله مشروعة ، فهي تعتبر من أنجع الوسائل لارتكاب الجريمة وبلوغ النتيجة مع صعوبة كشفها وتمتاز بأنها لا تترك أثراً وبالتالي يبقى المجرم على بعد خطوة أو أكثر من سلطات التحري ، والتحقيق والمحاكمة . مما يعني وجوب تعديل التشريعات بتشديد العقوبة على من يثبت تورطه بعميلة الغسل كشريك ، بمصادرة جميع أمواله وإغلاق كافة مشاريعه التي أصلها مشروع .

الكلمات المفتاحية: تعريف ، غسيل الأموال ، مراحل،

الحلول، العناصر

The Paper's Approach

The paper takes an analytical descriptive approach to study the MONEY LAUNDERING compliance solutions , by searching in the sources that have pointed to or dealt with the subject in any way through the scientific references.

Practically, we will discuss as much rules as possible in connection with the MONEY LAUNDERING “ in order to achieve the paper’s major objectives.

The Paper's Importance:

This paper is of vital importance at two levels:

1. **Theoretically:** This paper adds some knowledge to the legal library concerning of

the money laundering , and constitutes the basis of studies to be conducted in the future by researchers interested to know about the money laundering .

2. **Scientifically:** It provided the investigation authority, the judge and the lawyers enlightened information in the absence of a text. Hypotheses
 - » What does money laundering mean? Its definition was it the result of legislative efforts or a” fiqh “ matter?
 - » Why does fighting money laundering reduce overall crime?
 - » What methods are used to launder money?
 - » Is the money laundering regarded as an offence or is it so perilous that it might be considered as felony in terms of incrimination and punishment?
 - » If money laundering is a crime, what are the main elements that constitute it?
 - » Is there any criminal intent behind the money laundering ?

Introduction

Money laundering, as a phenomenon, was spreading so rapidly due to the rise in illegal activities like illegal drugs and human trafficking, slavery, currency counterfeiting, trading in chemical, biological & nuclear weapons and stolen artifacts & antiquities, also the fact that such activities are linked to political and administrative corruption and the hidden⁽¹⁾ or shadowy⁽²⁾ economy they represent, which made the task of estimating precise amounts of laundered money annually, extremely difficult, as to variety of estimations among the different monetary organizations, however, according to the IMF, the amount of money being laundered is estimated to be between 450 Billion and 5.1 Trillion annually, an equivalent of 2 to 5 % of the world’s GNP (Gross National Product), where the numbers may not reflect the actual amount, or the amount of money directed to fund terrorism around the globe, or estimates of laundered money in the Arab countries.

It is also worth mentioning that money laundering activities are dependent, primarily

on money generated by illegal means, called dirty money “ Largent sale “, which differs from “ Black Money” or “La’ argent noire”, which was generated by legal means, but kept in secret accounts to evade income taxation. World community was provoked by its grave threats, resulted in mobilization of resources and efforts to counter this phenomenon.

Money laundering is a crime that does not differ from other crimes in general, thus, elements of a crime must be present, along with a previous crime to generate funds, for its commission, therefore, the methodology to base this research on, will be defining money laundering as a crime, its stages, addressing involved elements, legal nature of the crime, what kind of punishment should an accomplice or partner receive, does face the same charges as the perpetrator of the crime? Which countries or regions makeup a fertile ground for criminals to commit this type of crime?

First Topic

Money Laundering Definition & Its stages

Defining Money Laundering

Criminal science Scholars and criminologists were not able to put together a comprehensive and a preclusive definition to this type of crime, as to its recentness and the kept up pace by criminals with modern technology, while attempts to develop a solid and specific definition lacked essence, in their content, due to the vast number of methods utilized to commit this type of crime, and the fact that most definition had some form of discrepancy with one another with regard to money laundering objective, location and nature of this criminal phenomenon⁽³⁾.

In March of 1990, European Union defined the term, money laundering, as follow: “It is the transfer or diversion of money and properties, with prior knowledge of the criminal sources of such properties, for the purpose of concealing its illegal origination or assisting anyone committing this type of criminal act”.

In reference to UN charter with regard to trafficking of narcotics and mind altering drugs of 1988, it never had a definition for the criminal act of money laundering, it had only mentioned the terms like "illegal money and revenues", also mentioned in Article 3, paragraph B, clauses 1&2, that "Each country shall take all necessary measures, to prosecute the following acts, within its domestic law, in the event that such acts were premeditated and intentional, (Concealing or disguising the true nature of the money, its source, location. Disposition, diversions, any litigation attached to it and ownership while being aware that it was generated via criminal acts...etc)⁽⁴⁾.

First Demand

Stages in money laundering

Money laundering involves three basic steps to disguise the source of illegally earned money and make it usable: placement, in which the money is introduced into the financial system, usually by breaking it into many different deposits and investments; layering, in which the money is shuffled around to create distance between it and the perpetrators; and integration, in which the money is then brought back to the perpetrators as legitimate income, or "clean" money.

The scheme of money laundering will pass through 3 complex stages:

Placement stage, Where the Dirty Money will be presented to the bank in small increments to be deposited into bank accounts, so the owner of this large amount, is able take this dirty money off his/her hands⁽⁵⁾, also be able to divert the money to the targeted location while the deposited money, that was obtained via criminal acts, are credited in a legitimate billing cycle, therefore, this stage is considered to be the riskiest in the scheme, since the money are subject to have its source exposed, thus, uncover the criminal act that generated it, or trace back the money through surveillance of the depositors. Money laundering operations prompted specialized agencies to intensify their efforts to uncover attempts to deposit suspicious money in financial institutions, and to enforce certain measures and procedures to curb any

attempts to bring illicit money undetected, like the establishment of the (Financial Action Task Force on Money Laundering) in 1989, recommendations adopted by the Action Committee FATF⁽⁶⁾ to combat this type of crime, and standards put in place by (BASEL) Banking Supervision Committee with regard to identity verification of banks clients .

Covering up stage or ALYERING: this is executed through a chain of complex transactions, to conceal any ties between the illicit funds and their original source which is a criminal act that produced them, by conducting multiple, consecutive financial transactions. Or successive funds transfers between accounts, with the intent to conceal the illegality of the source and the source itself that generated the funds, while doing so, perpetrators were attempting to give the procedure sense of normalcy and legitimacy⁽⁷⁾, that added to the difficult task of uncovering the sources of such funds. What complicated matters even more, is the diversion of funds into accounts in countries where absolute financial secrecy is a guaranteed by banks to their clients, like Switzerland, Panama and the Bahamas.

Consolidation or (Integration) and laundering stage: is considered the final stage, where the illicit funds are fused into public economy via pumping funds to purchase real estate and properties, ultimately, will imply legitimacy of the illicit fund and enable.

Money launderers utilization of funds in profitable venues in an overt fashion, as if, was generated by legal means⁽⁸⁾, ultimately, making it difficult to it trace back to the source or distinguish from legitimate funds⁽⁹⁾ .

Second Demand

Elements of the Crime of Money Laundering

It evident from the previous discussion that the criminal act of Money Laundering shall have present elements that are available in a typical crime:

First Part: Material Element

The following Three prerequisites are required in the Material Element:

First: Activity

Activity in money laundering is usually followed by the Source Crime that resulted with the production of illicit funds, therefore, it is mandatory for the perpetrators to conceal their sources by Laundering them, such source crimes are: trafficking of illegal drugs, guns trade, and prostitution, that made the main objective from such activities

Is to conceal the source of the funds produced by a criminal act in an attempt to impart legitimacy on the illicit funds, **stipulated in the 1988 Vienna Treaty a follows:**

1. Diversion or transfer of funds upon prior knowledge of its illegal sources. Like trafficking of Narcotics, and other similar crimes, assisting anyone who committed such acts, in evading prosecution.
2. Concealing or disguising the true nature, source, the location, means of disposition, any litigation attached, or true ownership, although, prior knowledge of the funds illegal sources and the fact that it was generated via criminal acts punishable by the law.
3. Acquisition, possession or use of funds, with prior knowledge, at the time it was received, that it was generated by a criminal act punishable by the law

Second: Criminal Results

The net result is a valid component of the material element of a crime, since the net result can alter the world beyond and people's lives as to the effects of criminal behaviors, and money laundering is no different from other crimes, where the perpetrators aspire for the objectives or the end result from the moment they began their criminal activities, therefore, if the net result was a success of merging funds, as the last stage of money laundering, it will be an easier task to diverge, circulate and rotate funds within the

fiscal economy with being subjected to the threat of exposing the source, fear of having the funds pursued confiscated and prosecution of offenders.

This will be followed by the next stage, where investing the funds in other criminal acts represents the most dangerous stage⁽¹⁰⁾.

Third: Relationship of Causality

Relationship of Causality in this crime falls within the connection between Action with End result, cause and Effect⁽¹¹⁾, in the sense that, activities mentioned in all its forms, has led to the criminal end result. As a final stage, to convert funds from illegal sources to legitimate ones, by inserting them into legitimate businesses to become part of the legal economy.

Funds and revenues earned via criminal means, will, then, be diverted, transferred or kept in the possession of someone else for the purpose of concealing their criminal source, and to give the impression that the funds were generated via legitimate means without revealing the identity of the perpetrators or their accomplices who committed the money laundering crime⁽¹²⁾.

Second Part: Moral Element Criminal Intent

This part is based on intent and prior knowledge, where the perpetrator is well informed of the elements of a scheme that formulates money laundering crime, also, to enable the justice system to prosecute such cases, offenders must have prior knowledge, funds were earned through criminal or illegal act⁽¹³⁾.

Second Part: Judicial Element

As stated in the Judicial part that, there shall be no criminal prosecution or punishment unless stipulated in a legislated law, directing law makers to legislate penal codes that criminalize such phenomenon, and agree on treaties to criminalize money laundering⁽¹⁴⁾.

Second Topic

Punishment for an Accomplice or partner and the legal nature of the crime

Punishing an accomplice

Partner in this type of crime is an individual who will be considered accessory in committing, aiding, inciting, abetting, advising, facilitating, concealing and committing any of the elements mentioned above, shall receive similar sentence to the one handed down to perpetrators.

Personally, I would like to have laws amended to increase the severity of the sentence to anyone who participate indirectly in money laundering, by confiscating all the capital in the partner's possession and closure of any legitimate business a partner may owns⁽¹⁵⁾.

Even though, banks are considered one of the main venues for money laundering globally, as to the magnitude of the financial apparatus around the world, that provides easiness for money launderers to carry out suspicious transactions and be able to conceal the source of the funds⁽¹⁶⁾, however, Criminals became alert to the heightened surveillance, and the strict scrutiny that banks conduct of their clients, thus, making banks not the fertile environment once was, for the majority of criminals and became aware of the restrictions they must encounter at banks, forcing them to alternate methods to launder their illicit funds, especially when they begin the complex process of money laundering stages, from placement to concealment to the final stage of consolidating or the emergence of funds into the legitimate economy, had to find a safer venue by combining the illicit with an individual who happened to have a legitimate business with no suspicions surrounding him/her, as to the efficiency of this strategy that would achieve their objectives, making extremely difficult to trace back the source of the funds and criminals a step or more, away from law enforcements, courts and prosecution, therefore, laws must be amended , and punishments must increase in severity to all who are proven to be involved, as accomplices, accessories or partners, in money laundering, by confiscating all of their properties and completely, and permanently shut down all their legitimate businesses⁽¹⁷⁾.

First Demand

Legal Nature of the Crime of Money Laundering

The crime of money laundering and the original crime that produced laundered funds, are considered two faces to one coin, so, one cannot imagine the existence of money laundering without a preceding crime to produce funds, that makes money laundering a subordinate crime as pointed out by the United Nations charter to confront Transnational organized crime for the year 2000 in the First Article, Clause E that all properties acquired directly or indirectly from a crime are considered earnings generated from a criminal act.

This indicates that a predicate crime is a prerequisite for the occurrence of money laundering.

On the other hand Uncovering money laundering is also an effective crime-fighting tool in that it frequently helps restore stolen money or property to its rightful owner. For example, when money that was laundered to cover up embezzlement is discovered, it can usually be traced back to the source of the embezzlement. While this does not necessarily nullify the original crime, it puts the money in question back in the proper hands and parts it from the perpetrator.

Money laundering is also considered an economy involved crime, which is apparent from the means, utilized for the commission of the crime, such as investments in legitimate businesses, financial institutions, bank transactions, construction, service agencies, hotels and other financial and commercial activities⁽¹⁸⁾.

It is also considered a technical crime: due to the fact that many of the methods, instruments and technologies used by offenders are advanced and considered high tech that require Law specialist and Law firms, since the procedure used in money laundering requires modern techniques and methods that average criminal, who only possesses a low level of education may not be able to master, also requires the art in utilizing legally sound methods, especially in financial field and in the field of regular economy in general, to secure

an adequate concealment and legitimate cover up for illegal earnings from criminal offense⁽¹⁹⁾, therefore, legislations proceeded with the process of expanding judicial Incrimination to eliminate such a lesion, like prosecution of anyone who is involved with providing partnership, agreement, assistance, advise, facilitation, abetting, concealment or any other act punishable by the Law as was acted by the Saudi Legislator.

Second Demand

Money Laundering Places

Historically, methods of money laundering have included smurfing , or the structuring of the banking of large amounts of money into multiple small transactions, often spread out over many different accounts, to avoid detection; and the use of currency exchanges, wire transfers and “mules” or cash smugglers to move money across borders. Other money laundering methods involve investing in mobile commodities such as gems and gold that can be easily moved to other jurisdictions; discretely investing in and selling valuable assets such as real estate; gambling; counterfeiting; and creating shell companies⁽²⁰⁾. While these methods are still in play, any type of money laundering must also include modern methods that put a new spin on the old crime by making use of the Internet.

Money can also be laundered through online auctions and sales, gambling websites and even virtual gaming sites, where ill-gotten money is converted into gaming currency, then transferred back into real, usable and untraceable “clean” money⁽²¹⁾.

The process of Money laundering is carried out at places⁽²²⁾ which are considered a fertile environment, **also favored by criminals, in an attempt to transform an illegal status t a legal one, and the most important and complex places are as follow⁽²³⁾:**

First: Commercial Banks: As for their advanced, complex and abundant financial systems, commercial banks are considered the most used in money laundering operations that gave offenders opportunities to conduct suspicious transactions undetected.

Second: Currency Exchange companies:

Following the use by banks, of installed High Tech Surveillance and Monitoring devices within their various locations, money launderers resorted to other financial establishments, where Currency Exchange companies topped the list of places for money laundering operatives, because of their weak monitoring apparatus, their modest control systems and their possession to current accounts in banks that will enable money launderers transfer of huge sums of money, via their accounts to other countries, and received by the recipient in a legitimate manner while evading any suspicion of the source⁽²⁴⁾.

Third: *Internet Gambling Clubs*: also termed “Virtual Casinos”, based on their online claim, their physical location is the Caribbean Basin⁽²⁵⁾.

Fourth: Smuggling

Oldest and simplest method used in money laundering, where money launderers conduct the operations themselves or by employing others to do the job, by using simple concealment methods to transport funds aboard air, ground or sea vessels⁽²⁶⁾.

Fifthly: Credit Cards:

According to this method, money launderers use credit cards at the porous ATM machines scattered around the globe, to purchase merchandize, or for cash withdrawals, where the bank that accepted the withdrawal will demand re- embarrassment for the full amount from the issuing bank, and the issuing bank deducts the money from clients account.

Should we, therefore, question the effectiveness of the current strategy? In fact, the strategies are sound, however, it must be noted that the objectives the international community set for itself in combating money laundering and terrorism financing are far from being attained, given the lack of universal implementation of the established standards. It is on this point that all efforts must henceforth be brought to bear, in order to ensure sufficient financial transparency for tracking the movements of funds of criminal origin. The mobilization of governments must be incessantly pursued, and the collaboration of both

the financial sector and more generally the private sector must also be thorough.

Lastly, money laundering is crucial for a criminal to run a successful operation. The money he makes is no good if he cannot use it to finance his operation and lifestyle. Therefore, attacking that aspect of his operation is one of the most effective ways to take down the whole thing.

Findings and Recommendations:

1. the crime of money laundering Require Previous crime

so we must tackle the problem at the root, and close the door of criminality, Such as eradicating sources terrorism, crime organization, prostitution and tighten sanctions on drugs and eradicating the sources of human trafficking .

2. Need to create training programs and curricula at law schools and schools of the gendarmerie and the police and banking institutes , so as to frame the human cadres capable of dealing with this phenomenon in places confrontation Field
3. The need to raise the level of workers in the field of criminal investigations because many of them are not familiar with the requirements of the investigation into the crimes of money laundering .
4. For banks, the danger lies in the lack of dissemination of evidence and control methods on all of its employees and limited only in the category of senior management, the behavior is wrong because the largest money laundering processes revealed mostly by professional staff noticed suspicious activities, whether customers or persons departments of the bank.
5. Restrict handle cash payments and transfers control.
6. Oversight of the financial operations of the ordinary, such as Operations that do not comply with the activity of the client , or with huge sums of money.
7. Controls on financial transactions with countries that have a weakness in controls

on money laundering, through the creation of a global network for all countries constitute security cooperation.

8. Put sanctions in the event of failure to report up to the point of withdrawal of bank license in and the confiscation of its own funds .
9. The need for a computer network in all sectors of the state, this network linked to the central bank, to see people's property and money .

Footnotes

1. Hidden economy is defined as a set of legal or illegal financial activities conducted by ordinary individuals, where earning go unreported, not claimed under the GNP data See for example the Anti-Money Laundering & Counter Terrorism Financing Act 2006 (Australia), the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (New Zealand), and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615) (Hong Kong. See also (for example) guidance on IMF and FATF websites similarly conflating the concepts .
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 25. The FBI in New York has followed some websites known for their deceptive practices and money laundering, with great deal of emphasis on gambling executives and managers, where it was evident, that such sites are indeed located in Carakao, the island of Antigua and the Dominican Republic. Following five months of extensive and complex investigations, charges were filed, many of sites executives & Managers were apprehended and arrested
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