

## Research Article

### Legal Principles and Solutions to Combat Money Laundering in the International System

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**Abstract:** This study focuses on combat money laundering legal principles and solutions to in the International System. As its clear Money laundering is the attempt to disguise the proceeds of illegal activity so that they appear to come from legitimate sources. Money is laundered through banking systems and credit institutions, non financial institutions and non financial economic activities. Combating money laundering phenomenon dates back to the 1980s. In 1989, Financial Action Task Force was set up to combat money laundering which published forty recommendations pertaining to money laundering in 1990. In 1997, it published an important document titled as Core Principles for Effective Banking Supervision. Also Basel Committee on Banking Supervision offered its ninth special recommendation to further reinforce international standards of anti- money laundering in 2004. At the end of the study, experiences of U.S., European Union and jurisdictions pertaining to combating money laundering are presented.

**Keywords:** Banking system, international system, legal principles, money laundering

#### INTRODUCTION

Money laundering is the process of concealing or changing the illicit nature of the proceeds so that they appear to come from legal sources. In the other words, in the money laundering process, dirty money obtained by illegal measures is converted into clean money and is replaced in the body of economics. This is a common method used by criminals to gain profit from illegal activities (Asadi, 2003). Since criminals footprints chain are evident in financial and banking transactions, all criminals refrain from using such financial tools as cheque, credit card, smart card, etc., and apply cash. Also due to lack of advantage over other financial tools including large volume, transportation problems and decrease in purchasing power over time, cash is inevitably given to money launderers by the criminals so as to be entered into the body of economics during a process and then into the country business network. (Myers, 1998).

There is a relation between delinquency and currency demand. This relation has been changed between 1980s and 90s (Jazayeri, 2009; Salami, 2003). In this decade, a sudden increase in crimes has raised cash demand; however, nowadays increase in delinquency reduces currency demand. In the other words, 10% increase in crimes results in 10% decrease in currency demand and 6% decrease in money total demand. The change in this relation stems from the change in money laundering methods and in locating banking systems and cash towards parallel financial markets and also growth of non monetary tools and increase in barter (as with exchange of a weapons ship

with drugs) (Buchanan, 2004). The money obtained from illicit activities is mainly deposited into foreign banks by underdeveloped and developing countries and when the money laundered it is entered legally into the developing countries along with other currencies (Asadi, 2003).

As per a statement ratified by UN General Assembly in June 1998 (Statement S-20/4), it was estimated that at least 20 billion \$ is laundered annually. Consequently money laundering process influences at the macro economic level and all levels (Andrew and Burrell, 2003). Money laundering is a complicated, continuous, long term group process that is frequently carried out in large scales (Buchanan, 2004). Due to undesirable effects of money laundering, international committees have undertaken measures to combat it. So according to the importance of Combat Money Laundering in international economy in this study Legal Principles and Solutions to Combat Money Laundering in the International System will be investigated.

#### MATERIALS AND METHODS

International measures to combat money laundering and to formulate global solutions date back to the mid 1980s. In 1989, Financial Action Task Force was set up to combat money laundering. Financial Action Task Force on Money Laundering published forty recommendations pertaining to money laundering in 1990. Then, the above mentioned recommendations were revised in 1996 (Shijia and Xu, 2009).

Furthermore, Basel Committee on Banking Supervision published an important document titled as Core Principles for Effective Banking Supervision in 1997 (Vaithilingam and Nair, 2009). One of the principles mentioned in this document is the regulations pertaining to understanding customers. These principles seek to eliminate the possibility of misusing banking systems by criminals. Following September 11 attacks in 2001, Financial Action Task Force on Money Laundering offered eight recommendations as regards combating terrorism financing. One of the most essential objectives of the above mentioned group is implementation of these recommendations in all countries. Indeed, the recommendations are known as international standards and indices for evaluating countries money laundering plans by FATF; as such, Financial Action Task Force on Money Laundering assesses money laundering plans of different countries and adjusts them with these recommendations every year. The members of the task force increased to 31 in 2000 and to 33 in 2003. Now it has 34 members, considering two countries Korea and India as the supervisor members from 2006 (Perez *et al.*, 2012).

Surveys on international experiences regarding anti-money laundering plans indicate that there is a general consent on the main elements of any money laundering system at the international level (Ellis, 2007). Knowing these principles will contribute countries in formulating anti- money laundering acts as well as implementing anti- money laundering plans. The most important principles that all banks and financial institutions are obliged to meet in order to combat money laundering are namely:

- Identifying customers (Jobman, 2003; Heshmati, 2001)
- Classifying customers on the basis of risk and applying accurate criteria for identifying risky customers
- Monitoring clients operations flow and diagnosing suspicious cases (Sadeghi and Hossein, 2003)
- Detecting suspicious cases and reporting to authorities (Keshtkar, 2010)

Since this crime is more prosecuted in developed countries, then experiences of some countries are presented in the following.

## **RESULTS AND DISCUSSION**

In this section some countries experience and then especially Iran investigated.

**Some countries and jurisdictions experiences in combating money laundering:** Nowadays more than one hundred countries have incorporated money laundering combat into their domestic laws and have regarded it as a crime (Baker and Scholar, 1999). For example, U.S. Money Laundering Control Act of 1986, UK Anti- Money Laundering Act of 1994, Scottish Act of Revenues generated from Crime of 1995, are among independent laws pertaining to money laundering; whereas in Japan money laundering was considered as a crime in Drug Law of 1991 (Madani and Malek, 2003). On the other hand, various practices have been adopted in different countries domestic regulations regarding separate penalties for the original crime and money laundering or sufficiency of one penalty for both. So in some countries these two crimes are punished independently and punishment of the original crime is not in contradiction with punishment of money laundering<sup>1</sup> (Pahlavanzadeh, 2009).

In 1986, U.S. Congress ratified a new law titled as Anti- Money Laundering Act. In this Act, money laundering is regarded as a crime. It contains four crimes:

Laundering monetary documents; conscious measure in any depository financial transactions, withdrawal, transmission or conversion by financial institutions through using revenues generated from a criminal act;

As per this Act, foreign institutions are obliged to report if they keep interbank accounts and/or correspondent accounts 33 in financial institutions. Also all non banking institutions including brokers, stock traders and commodity traders must report (Behzad, 2005). Also the United States ratified The Right to Financial Privacy Act in 1982 by virtue of which the documents pertaining to the individuals financial status is available if it is related to the legitimate pursuit of legal authorities and it is required to inform customer about the disclosure. On the other hand, this country enacted The Electronic Communication Privacy Act in 1986 and provided strict criteria for listening to electronic communications by legal authorities (Bortner, 1996).

Also in 1990 all the member countries of European Union eliminated the restriction pertaining to the transmission of capital among countries and residents of the European Union and licencing of united banking activity in this year provided the stage of financial institutions activities in the European Union. So through liberalizing financial institutions to combat money laundering in 1991, the first anti- money laundering guideline was ratified in the European Union. This guideline was based on four recommendations of FATF. Among the above

mentioned guideline items, obligation to identify customers, to keep records and to report suspicious operations can be mentioned. Second corrective guideline was enacted in 2001. In this guideline, a broad range of crimes whose revenues may be entered into money laundering process was clarified; because due to strict laws governing banks, launderers tried to launder revenues generated from crimes through non banking financial institutions and through such professions as attorney, accounting and via enterprises, casinos and dealers of valuable stones. Among criteria provided in the above mentioned guideline that the member countries are bound to meet, following items can be referred:

- Obliging financial institutions to formulate principles and regulations of preventing money laundering
- Obliging financial institutions and vulnerable jobs against money laundering to identify customers with valid identity documents when opening accounts or offering financial services including renting a safe deposit box
- Identifying customers in all transactions above 1500 Euro and keeping data pertaining to customers at least for five year after they cut the relation with the institution
- Obliging the institutions to identify and report suspicious cases to the respective authorities, there is no certain threshold and all suspicious cases must be reported (FATF Annual Report: 2007-2008).

In Iran, Anti- Money Laundering Bill of 2002 is one of the main government measures in this regard.

**Iran legal measures to combat money laundering:** Anti- Money Laundering Bill of 2002 was prepared by Ministers of Economic affairs and Finance, Intelligence and the Judiciary and brought to the parliament. At the present juncture, preparation of anti-money laundering bill is the mere measure undertaken in this regard; because money laundering in Iran is regarded as a crime with no victim (Alizadeh, 2003).

With increase in political and economic pressures on Iran, the global pressure for formulating and implementing anti- money laundering act in this country raised. UN and the World Bank notified that money laundering problem has reached a dangerous stage in Iran and it can paralyze the country economics unless Iran enacts anti- money laundering bill. Even the World Bank and European Union threatened that providing Iran does not enact anti- money laundering bill, they will cut their relations with Iran. So the government decided to prepare and enact the anti-

money laundering bill in Islamic Consultative Assembly. However, preventive forces consisting of rentiers and privileged classes, smugglers and Mafia gangs began to oppose. Besides criminals, some scholars and experts opposed formulation and enforcement of this act. Chairman of the Central Bank of the Islamic Republic of Iran was one of the opponents. The mere concern about ratifying such a bill was capital flight and entering into underground economy and/or financial markets in the shade (Nabizadeh, 2007).

The bill preface is as below (Sadeghi and Hossein, 2003):

- With respect to the necessity of preventing conversion, transmission or possession of proceeds generated from illicit origins, -with reference to negative effects of money laundering process on national economy including development policies, creating unsustainability in the economic status and capital flight.
- With regard to the necessity of effective surveillance on commodity and cash flow, improving transparency level and financial discipline in the country economics, -in order to adopting an integrated process in combating money laundering and removing problems, needs and the legal gap and in conjunction with supporting any healthy economic activity, the following bill is submitted to pass due process:

**Article 1:** Any act or omission that is undertaken to conceal the illicit origin of the proceeds is called money laundering and it is regarded as a crime as per this Act.

**Clause 1:** The amount of the proceeds is determined in the executive bylaws of this Act and it is changeable.

**Article 2:** Illicit properties means any proceeds gained as a result of commitment of an offence including bribery, embezzlement, collusion in the government transactions, fraud, smuggling and crimes pertaining to drugs, prostitution, gamble, lucre and robbery and/ or properties that have remained with persons illegally.

**Article 3:** Those who engage intentionally and with knowledge in one of the below acts will be sentenced to returning the assets and the proceeds derived from the crime comprising the original assets and the profits there of (and if non existent, the equivalent or the price):

- Conclusion of any kind of contract pertaining to these properties and either actual or formal transmission of them.

- Acceptance, possession, acquiring or any kind of usage of these properties.

**Article 4:** Any people who intentionally and with knowledge commit one of the below acts is sentenced to cash fine (the equivalent or the price of the assets):

- Not providing legislation authorities with information that is gained based on his legal or professional obligations from subjected properties of clause 1 of Article 1.
- Providing government authorities or other legislation authorities with any inaccurate information.
- Undertaking administrative measures including registering in the Real Estate Registration Office, Official Documents offices and municipalities and banking operations in banks, financial and credit institutions and loan funds.
- Disclosure of the information gained from combating money laundering by government officials and other individuals stated in this law or its use by them for their own benefit or the benefit of others.

**Clause 1:** In case of using afore-mentioned information for their own benefit or the benefit of others, the offenders will be sentenced to the penalties provided by this study and distraiment of the gained revenues.

**Article 5:** The board of ministers is allowed to decide on the below items and the related regulations in the executive bylaw of this article in conjunction with this Act:

- Obliging systems, entities and other persons to:
  - Provide information
  - Provide required documents, manner and time of keeping
  - Determine identity
- Criteria of diagnosing suspicious cases.
- Prediction of systems, legal persons and related authorities that will be allowed to diagnose suspicious cases.
- Giving permission to systems and legal persons to stop services in suspicious cases.
- Determining type, examples and scope of services mentioned in the clause "d" and conditions and criteria of stopping or continuing services.
- Preparing the list of government systems, firms and institutions whose name must be explicitly mentioned to be included into the Act and non governmental public entities and other persons

who are bound to meet the regulations pertaining to any of the above clauses.

**Clause:** Persons allowed to primary diagnosis of suspicious cases are bound to report these cases, identified by Article 8, immediately to the government authorities. If approved, the related services are stopped as per executive bylaw regulations. The persons for whom these services have been stopped may sue if they regard it as opposing the related rules.

**Article 6:** Offenders who are not deemed as steward or accessory in money laundering are sentenced to below penalties by competent court or board of administrative offenses.

- Authorities of government systems and public non governmental entities are sentenced to the penalties provided by Article 576 of Islamic Penal Code (Tazir and deterrent penalties) enacted in 1996.
- Other persons are sentenced to six months to five years deprivation of any membership or employment to the related profession for each offence.

**Article 7:** The High Council on Anti- Money Laundering-chaired by the first Vice President and membership of the Ministers of Economic Affairs and Finance, Commerce, Intelligence and Justice, Governor of Planning Management Organization, Governor of the Central Bank of the Islamic Republic of Iran and the General Attorney will be formed with the following duties:

- Policy making, guidance planning and offering necessary bylaws regarding implementation of the Law.
- Commenting the required bylaws and bills.
- Coordinating the relevant organizations.
- Adopting measures for participation of private, cooperative and non governmental public sectors in combating money laundering.

**Clause:** The Minister of Economic Affairs and Finance is Secretary of the Council and the Secretariat of the Council will be established at the Ministry of Economic and Financial Affairs.

**Article 8:** required organization for surveillance, inspection, prevention of fading the evidences of money laundering, making a legal claim and preliminary investigation, accurate implementation of this law and necessary administrative mechanisms for realizing its objectives are determined by the Ministry of Economic

Affairs and Finance proposition and the Board of Ministers ratification.

**Article 9:** Executive By-laws are prepared by the Ministry of Economic Affairs and Finance by gaining the opinion of the High Council of Anti- Money Laundering and will be ratified by the Board of Ministers.

The proposed bill is the translation of different types of foreign laws on money laundering and it has not the necessary consistency with the specific economic conditions of Iran (Ardebili, 2003). The official part of Iran economy particularly in the industrial productions sector, is so much vulnerable. This bill, if ratified, will provide the stage for catchpoles to impute money laundering to individuals and factories and so impede production, liquidity and financial and monetary transmission in these centers.

In general, two groups of measures are being undertaken by the government regarding money laundering. First group of measures is regarding prevention of producing dirty money (the origin of dirty money comprises criminal activities, economic corruption, smuggling and etc.). Second group is related to preventing penetration of dirty money into the country economic cycle. Appropriate measures are being undertaken in this regard; in conjunction with implementation of one hundred and twenty third principle of Constitutional Law of the Islamic Republic of Iran, Anti- Money Laundering Law comprising of 12 Articles and 7 Clauses was ratified by Islamic Consultative Council in Jan 22, 2008 and was approved by the Gaurdian Council in Feb 6, 2008. About one year later by virtue of one hundred and twenty eighth principle of Constitutional Law, Executive By-law of Anti- Money Laundering Act was ratified in Feb 11, 2009.

**Article 1:** The following definitions shall apply for the purposes of the terms and phrases used herein:

- Act means the Anti- Money Laundering Act passed in 2007.
- Customer/Client means a customer and/or any person, whether the customer (his good self), his attorney or legal agent who applies to natural persons and legal entities to benefit from services, carry out deals, transfer funds and precious possessions (such as gold, jewels, antiques, valuable artistic works and the like).
- Initial Identification means entry of the particulars declared by the customer and checking with his identification records and, if acted by the attorney

or agent, entry of the attorney's or agent's particulars in addition to those of the customer.

- Full Identification means precise identification of the customer at the time of providing base services as referred to in paragraphs (d) and (f) of article 3 in the present by-law.
- Credit Institutions means banks (including Iranian banks and branches and subsidiaries of foreign banks based in the Islamic Republic of Iran) , non-bank credit institutions, credit cooperatives, interest-free loan funds (qardh al hasanah-a benevolent loan free from Riba-usury), leasing companies, investee companies, foreign exchange offices and other individuals and entities that act as intermediaries to exchange funds.
- Suspicious Transactions and Operations means the transactions and operations that persons, based on the availability of information and/or the reasonable grounds, suspect that such transactions and operations are carried out for the purpose of money laundering activities.

**Note:** Reasonable grounds mean the existence of the circumstances which shall make any reasonable person investigate the origin of property and depository or other related operations. Some of these suspicious transactions and operations include:

- Financial transactions and operations related to the customer which shall go far beyond his anticipated level of activity
- Detection of forgery, false statement and/or false report by the customer before or after any deal is carried out including the time when the base services are provided as well
- The transactions in which it is, in any manner, identified that the true interested party at least out of the fictitious transacting parties has been another person or other persons
- The business transactions above the applicable designated threshold which are inconsistent with the customer's area of activity and his known business goals and targets
- The transactions in which the legal domicile of the transacting party has been located in highly dangerous (in terms of money laundering) regions
- The transactions above the designated threshold from which the customer has withdrawn before or during the course of transactions or has, after the conduct of transactions, nullified the agreement without any reasonable cause
- The transactions which, based on the normal conduct of business defined by the competent

authorities involved, are complex, unusual and without any apparent economic purposes

- The Designated Threshold means conversion of the amount of one hundred and fifty million (150,000,000) rials cash or its equivalent into other foreign currencies and valuable commodities. The Council of Ministers (the Cabinet) may, where necessary, modify such threshold with a view to the country's economic conditions
- Cash means any type of coins and banknotes and checks of various kinds whose transfers have not been documented and are untraceable such as ordinary bearer checks and other checks whose bearer is a party other than the first beneficiary (such as the endorsed checks by third parties, travelers' checks, Iran checks and the like)
- The Designated Persons (Authorities) means all natural persons and legal entities referred to in articles (5) and (6) of law including the Central Bank of Islamic Republic of Iran (CBI), banks, financial and credit institutions, Stock Exchange, insurance companies, central insurance corporation, interest-free loan funds (Ghardh al hasaneh-a benevolent loan free from Riba-usury), foundations and charities and municipalities as well as notaries, lawyers, auditors, accountants, judiciary official experts and legal inspectors
- Designated Non-Financial Businesses and Professions means the persons (natural/legal) that engage in cash transactions with a high frequency and are prone to risks in terms of money laundering such as forward dealers in real estates and cars, jewelers, dealers in valuable cars and carpets and dealers in antiques and precious cultural products.
- Base Services means the services which are, as per the rules, considered to be pre-requisite and requisite for providing other services by the designated persons and, afterwards, the customer will apply to such authorities to benefit from frequent and continuous services such as opening accounts of any type with banks, obtaining trading codes on the stock exchange, obtaining business/economic codes, obtaining business cards and business licenses.
- Legal Entity's National Code means a unique number which is allocated to all legal entities subject to the decree no.H39271T/16169 of Apr. 18, 2009.
- Aliens' Specially Designated Number means a unique number which is allocated to all aliens associated with I.R.I. by the National Database for Aliens as per the decree no.H40266T/16173 of Apr. 18, 2009.

- Council means the Anti-Money Laundering Supreme Council.
- Secretariat means the secretariat of the Anti-Money Laundering Supreme Council as described in article (37).
- The Financial Intelligence Unit means a centralized and independent unit which is responsible to receive analyze and refer the reports of suspicious transactions to the appropriate authorities as described in article (38).

As inferred by the above mentioned Law, such crimes as embezzlement, bribery, robbery, gamble, establishing places of corruption and other illegal acts have been stipulated explicitly in the forty ninth principle of Constitutional Law. These crimes are approximately those that have been ratified in most Anti- Money Laundering Laws of the world countries. Hence it is evident that the required stage for combating money laundering phenomenon is provided in Iran (Rafiei and Parisa, 2008).

**Proposed legal solutions for reaching a favorite situation in Iran:** There are various laws in Iran Criminal Law literature and in spite of the fact that fraud elements are not fully existent in a specific act, the legislator has deemed the offender act as fraud due to the existence of the main element of fraud, i.e., deception in his act (Shams and Ebrahim, 2003). It must be noted that weakness and backwardness of the country banking system as well as lack of codified anti-money laundering laws and regulations has brought about money laundering phenomenon in banking system of this country.

To modify the current status, some suggestions are raised and the most important ones are as below:

- No doubt, training bank personnel (as one of the most important administrative organizations) plays an effective role in developing anti- money laundering literature and counter- terrorism finance and in implementing the related guidelines in banks more effectively and quickly. So it is necessary to make endeavor to train banks personnel and maintain the records of passing the courses of anti money laundering and counter- terrorism finance in the personnel educational portfolio (Drezewski *et al.*, 2012; Richard, 2005).
- Preparing software infrastructures for international banking networks is a matter of great magnitude. Implementation of many existing regulations is feasible in the light of an anti money laundering software (Vaithilingam and Nair, 2009).
- Bank top officials must moderate their usual insist on absorbing public resources and deposits at any

cost and seek its implementation in the shadow of law enforcement (particularly Anti- Money Laundering Law) (Dreżewski *et al.*, 2012; Richard, 2005).

### CONCLUSION

Contents of most international documents indicate that the scope of considering money laundering as being a crime must be extended to all serious crimes. In so doing, many countries that have ratified legislative measures required for combating money laundering have extended the scope of considering money laundering as being a crime by pursuing international recommendations or obligations; even in some countries, laundering the revenues generated from all crime have been absolutely considered as a crime. Yet in Iran with regard to legal weaknesses, a great deal of money laundering is occurred in banks and financial institutions that have provided a proper stage for money laundering criminals and money laundering phenomenon has irreversible effects on the country economic body. So it is required to assess the existing rules in the country and to prepare codified rules for combating money laundering.

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**End note:**

1: Spanish Penal Code, article 301 and Argentine Penal Code, article 278.