

## Effects and legal implications of money laundering in Iranian law

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**Abstract:** Recent international programs and documents have introduced Money laundering as a transnational organized crime, through the world. In money laundering, money launderers do some actions to take the dirty money gained from criminal acts such as drug trafficking and extortion, fraud and ... away from the source to make it look legitimate and the best way to do this is by entering the money in financial and banking systems. Money laundering as a financial crime has significant negative impacts like: the spread of corruption in society, undermining the private sector, reducing government revenue and strengthened financial resources and networks of offenders and thereby reduced state authority, on economic growth and development. These consequences and negative effects persuade the states to sync with international organizations in taking preventive action steward this crime and detecting offenders and punishing them .In this regard, the Islamic Republic of Iran is among the countries which tried to deal with this phenomenon, using the Anti-Money Laundering Act, consisting of twelve articles and seven not eosin 1386andits executive emulations and supervision by the central bank in order to prevent money laundering in financial markets.

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### 1. Introduction

By evolution of traditional phenomena and emerging new components, such as expanding population and increasing social diversity, emerging industry, science and technology, life style changes, move to urban areas and the construction of social formation, government- country was formed (Mc Ayor, translated by Ibrahim Ali Kani, 1349, P 8-10). Government – country is a trace of social relations superiority and inferiority in the certain realm and political-legal structure including three retractable elements: territory, population and political power. Thus, along with transnational and international societies, preliminaries for international community were available and the early international community was the creation of states will and resulted from their collective presence to collaborate to achieve the common interest. Since human society; whether international, national or transnational, is described by evolution and dynamism, in which everything is subordinated to this principle and passing the time form and content are changed. From a legal standpoint, anything stable in society which establishes a stable social environment would undoubtedly be regarded as the core of public order. Social phenomena are a function of the time. Of sociological criminology,

criminal phenomenon believed to be stable if it returns to human history. But what is remarkable is that the way it was committed has changed with regard to the passage of time. This ratio has no impact on the evolution of legal rules. Continuity of legal rules and social developments has led the permanency of legal rules to be a relative phenomenon. Hence what is responsible for the gradual development of legal sciences the dynamics of social relations. This set of rules is intended to regulate the relations, rationally. Another point is that time would increase the complexity of social relations and new scientific and humanitarian issues arise. This way, while facing new obstacles against human solidarity, some problems will be solved and the collective relations are more organized and there will be greater sense of dependency among human beings. A new feature of the international community is the positive and negative phenom on inhuman relationships. Criminalization of crimes or organized crimes is a crucial social reaction towards violation of international public order that entails civil and criminal liability. Therefore, the economy globalization and development of intercultural relations provided a fertile ground for these crimes to grow. Various forms of organized crimes include drug trafficking, the

establishment of centers of corruption, bribery, laundering the money gained by organized crime and even terrorism which result in a grave concern to the international community (Bagherzadeh, Money Laundering, 1388, P 13-17).

One of the biggest global concerns of human society is to how deal with transnational organized crime and to eradicate the crime in cooperation with the governments all around the world. In the early 90's, human society has found that the crimes mentioned above have higher importance and disadvantages over traditional-transnational crimes, so that even they could threaten the political independence and existence of certain states (Almasi, 1383; P 9).

### Chapter one

Money laundering: Money laundering dates back to Money producing crime. Like other crimes, laundering illegal income is not a new phenomenon and dates back to the human need to hide their wealth from curious and jobber eyes. But in modern times, someone named Allan Capone formed a gang for the first time, whose work was assailant and extortion. Misrepresenting their illegal income, they have established a laundry and pretend they get their income this way. So, the term money laundering was formed, rooted in the maintenance of the property by the Mafia in America in the 1920sand 1930's. The term money laundering first entered the press for the Watergate scandal that led to the impeachment and resignation of Richard Nixon, President of America, and in 1982 noted in the law books of America. Money Laundering Control Act 1986is the first statute in America that explicitly considers laundering proceeds of certain offenses, such as drug trafficking as crime. But the idea of money laundering criminalization introduced after the extent of organized crime in the world. Especially after September 11 2001, terrorist attacks in the United States of America, new realities on how to finance the organized terrorist groups were cleared to the world's political leaders and economic managers. At the international level, effortssuch asthe UN Conventionor the Convention on Narcotics Drugs and Psychotropic Drugs, Statutes of the Basel Committee, the Europe Union's Charter of1990, the Palermo Conventionand, were done to combat these phenomena. In Islamic Republic of Iran, regarding the transit route of drug exposure, the subject of combat money laundering was considered, until the Law 1386 was passed by Parliament and mechanisms against this phenomenon were explained. Laundering necessitates the commitment of some initial independent and profitable crime to launder the income gained in this way. Original of fensecommitted theproceeds ofwhichare used is called primary or main offense, and there is no

necessity to prove the prior crime for subsequent money laundering conviction. If the primary convict is not prosecuted or punished for any reason, be pardoned, died or escaped, but the property gained from the crime is knowingly laundered, money laundering charges will be confirmed. Offense of money laundering and the proceeded financial crime are two different offenses, apart from each other and yet the financial crime is always ahead of money laundering. In Iranian law, the original offense, the business transactions apparently legal but illegitimate, should be confirmed to prove the offense of money laundering, referred to in Article 2 of the Commercial Code. Contrary to the crime of money laundering, the crime considered here is washing the income gained by the crime, not merely talking about the money. By the gains from the crime we mean any property resulted directly or indirectly from the offense. This property can be any material or immaterial asset like grants convertible to money, movableorimmovable, tangible orintangible, and legal documents indicating ownership orshareorinterest. Everyone, whether natural or legal, in groups or individual, is subject to a punishment. Money laundering is a criminal offense separate from the prior one, so the legislature on the implementation of paragraph (b) of Article (2) of the Anti-Money Laundering, declares both offender and complier deserved to be punished. Basically, without spiritual element in intentional and unintentional crimes, no crimes could be attributed to the person. However, in financial crimes, the mere commission of a criminal act or violation of law, regardless offault or knowledge or intention or fault of offender, the crime would be realized. Documents relating to money laundering, including the Palermo Convention, use intentionally and knowingly for the money laundering and it is considered an intentional crime. Thus, to realize the money laundering offense, the perpetrator shall be informed of the criminal and illicit nature of assets. Knowledge of the illicit nature of the property is so important that without this knowledge the acts would be considered as routine business practicesby Iranian legislator, and the offender also shouldhave general and specific bad intention. The general intent means to commit the act of abuseknowingly and voluntarily by intentionally and do money laundering knowingly and specific intent means to commit intentional and expect the result. Asking a criminal result in money laundering is misrepresenting the illegitimate wealth and trying to hide its illicit origin.

### Chapter Two

Money laundering concept: According to 1961 Edition "Words and Phrases", the legal publisher Bakhtar, laundering means washing and ironing, or drying. This definitionwas laterexpanded andis now

expressed as exchanging the funds derived from criminal activities in different ways without tracking the illicit source. In 1988, the Convention against illicit traffic in narcotic drugs and psychotropic substances, UN declared hiding or concealing the nature, source, or actual ownership status of proceeds from drug offenses or drug-related acts, as crime. Money Laundering Control Act of 1986 America, knows the person who knowingly attempts the financial transactions involving proceeds derived from specified unlawful activities to apply or promote them and to conceal the origin of the proceeds, as money laundering convict. According article 4 of act the proceeds of serious crimes in Botswana 1990, a person who deals the money or property gained from some offense, whether the crime takes place in Botswana or somewhere else, or receives, possess, conceals, assigns or enters Botswana while he/she knows or reasonably should know that the property has a direct or indirect illegal source, is considered as to commit laundering crime. Also, pursuant article, Commission for Europe Community Council to enact guidelines for the prevention of using the financial system, adopted in March 1990 with the purpose of money laundering, money laundering means to convert or transfer assets while knowing it has gained from criminal activities, to conceal the illicit origin of the property or to help any person who committed such a crime, in order to evade the legal consequences of his behavior. Finally, the definition of money laundering was completed in Council of Europe Convention on Laundering, in August 1990 in Strasbourg and at paragraph 1 of Article 6 of the Convention on gaining, acquisition or using the assets derived from illegal sources, as well as any partnership or stewardship or conspiracy to commit, assist, encourage, facilitate and concealment of any relevant offense relating to money laundering was added to Europe community guidelines. Also, according to the publication, the Chamber of Commerce and Industries and Mines of the Islamic Republic of Iran 74, money laundering refers to the activities implemented to move the money from illegal transactions including the drug trade, the terrorist activities and various crimes aiming to change the form, origin, specifications, type of money or interest or the ultimate guilty, and the fact these actions launder the illegitimate and dirty money. Carl Levin writes in the article "Private banking, money laundering": money laundering occurs when criminals are trying gains from criminal activities to be misrepresented as legitimate income. Money laundering means that individuals or organizations try to portray the illegal actions as correct and introduce the income as driven from a legal source. In other words, producing money by illegal sources is called money laundering. International Criminal Police Organization so

provides this definition: Money laundering is defined as any act to hide or alter the identity of a illegal income as driven from a legitimate source. According to the above definitions, we can say that money laundering refers to any action taken to legitimize or justify illicit funds or illegal properties.

As mentioned earlier, the Islamic Republic of Iran Parliament passed the Law on Anti-Money Laundering in 92/11/02, which was approved by the Guardian Council in 92/11/17, and offered the following definition in Article 2 of the a foresaid Act. According to Article 2 of the law against money laundering, money laundering is:

(A) The acquisition, ownership, possession or use of proceeds of illegal activities with the knowledge that is derived directly or indirectly from the offense.

(B) To converse, exchange or transfer of benefits in order to conceal the illegal origin, while knowing that the money is directly or indirectly gained from the offense, or help the offender to exclude from legal consequences of committing the crime.

(C) To conceal or disguise the true nature, origin, source, location, transportation, relocation or return of property obtained by crime, directly or indirectly.

### Chapter three

Effects and losses of money laundering: Money laundering has enormous economic, social and cultural effects. More succeed the criminals and offenders in money laundering, more insolent in crime offenses and as a result, crime, violence and insecurity, narcotics and psychotropic drugs trafficking, women and children trafficking, and graft and corruption will spread in the community which leave undeniable effects on social life and cause disrupt financial markets, raised inflation, government structure corruption and damage the credibility of the government and economic institutions, unhealthy economic competitiveness that under mines private sector and cooperatives, foreign trade destruction, criminals and illegal actives wealth amassing and reduce the efficiency of the economy. Money laundering takes productive and public investments out of its path and develops informal markets and leads results in imbalanced financial markets. Money laundering facilitates the penetration of organized groups of criminals in legitimate businesses, and subsequently lead them to be tainted, and degrades ethics governing the jobs. Because managers and employees of financial institutions and other public servants, politicians and judicial authorities are exposed to major money, effortlessly. In fact, the policy and strategy of the criminal organization is to corrupt the economy and social and individual organization. Also, it is so costly for government to combat these financial and social concerns. To create the security and police agencies and

courts to deal with crimes, Bureau of Prisons, Drug Addiction, control borders, laws must be drafted and enforcement of these laws is costly for the country. Accordingly, Article 4 of the Anti-Money Laundering Act says: "To coordinate the relevant devices in collecting, processing, news, documents and data and reports received analysis, providing intelligent information systems to identify suspicious transactions and to combat money laundering offense, the Supreme Council for Combating Money Laundering is formed leading with minister of Economy and Finance, and in cooperation with trade, country Info and the chairman of the central Bank to perform the following tasks:

1 - To collect and obtain related information and to analysis and classify technically and professionally in a context where according to the provisions, there are violations.

2 - To provide and propose regulations necessary for the implementation of the Council of Ministers.

3 - To coordinate the devices concerned and to track the administration of law.

4 - To evaluate reports and to send them toward the judiciary, where the case is probably true or the possibility is important.

5 - To exchange experiences and information with similar organizations in other countries within the meaning of Article XI.

#### Chapter Four

The Money Laundering advantages: Money laundering is a three-step process: 1) "Placement"; means the deposit of cash from illegitimate sources in the context of financing through banks or financial institutions in countries with poor supervision on the banking and financial system. This point seems the most dangerous laundering stage for criminals, because at this stage there is still much evidence of the main source of money, and police and security forces can easily discover and prevent money laundering. At this stage, launderers usually divide revenue from criminal into small parts and deposit it into multiple accounts to escape the anti-money laundering regulations, Ordo placement by changing the illicit money into the checks and drafts and another way of money laundering is to create front companies and to open multiple accounts in the name of the company or their close relatives or charities and to fund these illegal revenues, gradually. 2) "padding"; means to conceal the relationship between the money and its illegal source so that the origin could not be realized in audits. This is done by creating complex layers of transactions, with the purpose of making audit obscure and keep the main parties identity unknown and make it impossible to trace the original source of the money transaction. This step is performed using repeated deposits and withdraws or transferring funds between accounts in

different banks. At this stage launderers intend to make a confusing hank very difficult to find the clue, if it's not impossible. 3) "Integration"; after the money launderers insert their illegal income into banking systems and conceal the origin, they insert their laundered money into legal financial markets for economic activities, confidently, and integrate their money with legal economy and formal financial systems by purchasing luxury and expensive goods investigating unprofitable economic activities indifferent regions of the world, or purchasing real estate, so that they could use it once more in other criminal activities.

#### 4. Discussion

The matter that huge income obtained from the organized crime is correspond to GDP of economic power parities of the world is not ignorable, and so, these organizations insert their illicit funds into the legitimate economic cycle. Due to the high volume of money laundered by common consensus, the global anti-money laundering requires responsibilities of the financial institutions, particularly banks, which the most important ones include: customer identification, records and suspicious reports maintenance. Financial institutions, especially banks, in addition to challenges on identifying numerous clients, while due to their profession are enforced considered as trusted and confident for their customers, are required to disclose information in suspicious operations, if necessary. Along with the financial institutions, anti-Money Laundering requires cooperation with other institutions, and government officials, because according to cross-border characteristics of this crime, if banks could at least cooperate and exchange the information between local agencies and block the funds from international cooperation and crime, the anti-money laundering action will be acceptable in banking systems. Clear and close link of laundering with criminal or illegal activities and its fundamental role in encouraging criminals and the continuity or even strengthen of organized crimes, call double determination to combat this phenomenon. One of the fundamental challenges facing the fight against money laundering in Iran is unknown consequences and harmful effects of it. Laundering may seem as a crime without a victim at first glance, and no there would be unpleasant states such as feelings of insecurity and fear of other crimes like murder, theft and... on money laundering among people, but regarding the fact that money laundering is a secondary complication of a prior crime such as drug trafficking and theft and other criminal activities, it is found that it may remain unknown as an invisible challenge in public mind just by bay factor like the lack of sufficient knowledge of the cause and nature of money laundering.

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