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### Comparative aspects of money laundering problems in Afghanistan and Kazakhstan law

**Abstract.** The purpose of this study was that money laundering correctly as a dangerous phenomenon for the authorities would be introduced in all aspects, serious and clear strategies for legislative, judicial, executive and administrative to combat this phenomenon, the solution for this serious problem and the crisis in Afghanistan and Kazakhstan criminal be found. In this research we analyzed and compared money laundering crime and Ways of Coping with it in Afghanistan and Kazakhstan criminal law through rules and precise studying of resources which are exist in this context including of valuable and valid books and articles which we are looking for analyzing, describing, comparing and ways of coping against this crime in criminal law of Afghanistan and Kazakhstan.

In this article we had tried to answer to this question that what money laundering is? What is the harmful effects of money laundering and how can we prevent it from damage? How dirty money is washed? What penal responses have been predicted to crime of money laundering in the Afghanistan and Kazakhstan criminal law? With this assumption that lack of strict rules and contained punishment of that, and Poor Performance of government against perpetrators have been made easy money laundering crime and perpetrators can include the income derived from crime in economic system easily.

Also as the problems and the obstacles fighting against money laundering and the rate of Perpetration of this crime are compared in Afghanistan and Kazakhstan. In this regard, the necessity for developing appropriate criminal policy in both country against money laundering is considered. It is result that lack of rules and regulations with appropriate punishment and weak performance of government against this phenomenon can increase and make easy money laundering and its perpetrations approaches, therefore, this issue must be considered in Codifying economic, financial, and criminal policies.

**Key words:** Money laundering, proceeds of crime, Afghanistan and Kazakhstan law.

#### Introduction

The phenomenon of money laundering as a new phenomenon has been imported from international criminal law in domestic law, this crime is a secondary crime that is perpetrated after predicate offense that produce material and financial interests, the aim of this activity is to hide the illegal origin of the property, money laundering is the procedure by which great amount of illicitly obtained money, from terrorist activity, drug trafficking or other serious crimes, is given the appearance of having originated from the legal source. One of the characteristics of this crime is difficult to detect, because criminals use very sophisticated methods.

The high rate of money laundering in the world, its universal and organized features and without victims of this crime; its adverse impact on

economy and political stability of country and its strong relationship with other crimes increase the necessity of criminalization of this phenomenon in the world and also in Afghanistan and Kazakhstan. Therefore the anti-money laundering law has been ratified in 2014 in Afghanistan. And the 218 article of penal code of Kazakhstan has recognized it as a crime as well as. And henceforward such an activity must be limited with an iron hand. So the nations of the world especially people of Afghanistan and Kazakhstan must join hands and adopt measures to dismantle syndicates busy in money laundering by resorting to offensive enforcement of law.

Despite the countless consequences of money laundering on the economic body, social, and cultural of society, still all aspects of this case are not known well to the authorities. So that policies

to combat this phenomenon in Afghanistan and Kazakhstan have not been defined clearly and practically money in the capital markets, a serious limitation in money laundering for those who have not been enforced. Therefore for coping with it at first step we need to recognize this phenomenon and then we can find various approaches to fight against with. Since this phenomena in majority of legal system has recognized as crime, international and regional conventions also emphasized on its criminalization. Kazakhstan and Afghanistan also recognized it as a crime, here we need to discuss about money laundering definition, Methods, stages and The Purposes of money laundering, The effects of money laundering, Types of money laundering, Symptoms and characteristics of the crime of money laundering, Technique and methods of money laundering crime, Presented approaches and Contexts for combating money laundering, problems of money laundering will be studied comparatively in Afghanistan and Kazakhstan law as well as.

#### **A Brief History of Money laundering**

The idiom money laundering is believed to have started in the USA from Mafia groups who got considerable amounts of money from prostitution, gambling, blackmail and bootleg liquor. Utilizing laundromats as a mechanism of validate their funds, the Al Capone laundromats' are idea to have triggered money laundering as a technique for legitimizing the proceeds of crime. Lacey Lansky was The Mob's bookkeeper, and is thought to have been one of the first, and probably the most influential, money launderer of his time. Utilizing Swiss bank account provision to combine the first laundering methods, Lansky applied the 'loan back' concept, which meant that illegitimate money could be concealed as debt provided by agreeing banks from other countries.(1)

#### **Definitions of money laundering**

The action of money laundering is not a new form of criminal activity, although the use of this idiom and its coalition within the law implement paradigm is relatively new. According to Interpol (2011), money laundering involves an effort to conceal or hide the identity of incomes got illegally in order to make them become visible as if they have been acquired from legal sources. Money laundering is a procedure by which the illegal source of assets got or generated by criminal activity is concealed to unclear the link between funds and the native criminal activity' (IMF, 2011). There is an agreement between scholars as to the definition of the idiom money laundering. He (2010) for

example, defines money laundering as a procedure whereby the origin of dirty money is hidden to make it become visible legal, and afterward become usable, negotiable and transferable. {1, 2}

Money laundering as a crime has Characteristics as Follow: A complex and continuous process, money laundering is a secondary crime, money laundering is an organized crime, money laundering is a transnational crime, money laundering is intellectuals' crime, mainly done on a large scale, money laundering has different aspects, is beyond from laundering money, Lack of need to transfers, Hiding action is considered, It is a crime with the new title. (3)

#### **The Purposes of money laundering**

The money laundering perpetrators from money laundering have different purposes that the most important of them can be summed up in 3 cases.

Preventing illegal resource discovery and predicate offenses: the legitimate blazon of money and proceeds crime is method that by it can be ill-gotten gains with peace of mind and convenience used without the fear and anxiety of the main sources are being discovered.

Tax evasion: When incomes was more and consequently it Great wealth is more Naturally, such a thing, attract more attention of the tax collectors and police officers for collecting tax ,therefore, the perpetrators of this crime through seemingly legitimate transactions such as stock trading, securities. . .they starts...through it can, on the one hand divestment attention of the tax collectors and police money are washed , in addition of legal avenues with the robes of the legality and blazon Legitimate it for taking more advantage of use.

Exploitation of the proceeds of crime: The Money launderers have not ability and inclination to take care of their sudden wealth, enormous and unlawful, they want to be barrier the confiscation proceeds of criminal acts and Interested in Investing this assets in different field In addition to the exploitation without risk from the incomes generated by crime Even can obtain greater income.(4)

#### **The effects of money laundering**

Economic effects of the money laundering: the phenomenon of money laundering has detrimental economic effects on the economic system and this is perhaps the most important cause of criminalization of this action .Including the adverse economic effects of money laundering be Instability in the economy and financial markets, the people distrust on financial system, Forced and unwanted changes in money demand and drastic changes in interest rates and therefore unpredictable capital between

countries, weakening private sector, the failure of the privatization program countries, reducing government control over economic policy, reduce government revenue, corruption structure and severe damage to the credibility of the government and economic institutions named.

**Social effects of the money laundering:** Money laundering norms, social norms, dignity and ethics of mass destruction and also undermine democratic institutions. Money laundering, economic charge of businesses, governments and citizens to criminals and criminal organizations to be transferred, which makes the community a harmful effect on all members of society. Also creates serious social problems of unemployment and increased economic volatility. On the other socially destructive effects of money laundering, is that society's material and intellectual capital that should be spent on development and all-round development of society, to combat the phenomenon and its dire implications.

**Political effects of the money laundering:** Money laundering destroys the short-term political legitimacy and in long term political development challenges and become the cause of divestment confidence of the people of the state. money laundering and politics have reciprocal relationship ,in this way the economic corruptors have tendency to relationship with political authorities, and seek to involve them in different ways their criminal activities and this will lead to political corruption. On the other hand when political authorities a country are corrupts, they provides field of better for their money laundering activities. In addition, it strongly reduces public confidence in the political system. {5, 6, 7,}

### **Stages of Money Laundering**

The most common kinds of felons who requirement to launder money are drug traffickers, public officials and corrupt politicians, embezzlers, mobsters, and terrorists. All these are in requirement of well laundering conduits as they deal often in fractional currency, which reasons a lot of logistics problems. Money laundering has three basic steps, Vis:

**Placement:** the laundryman imports dirty money into a lawful financial establishment. This is the dangerous step of the process as it imports large quantity of cash, which fiscal institutions are needed to report to authorities.

**Layering:** it includes sending money via different fiscal transactions to conversion its form and make it hard to pursue. Layering may include of different bank-to-bank transitions, wire transfers between accounts in several names in several

countries, construction trust fund and withdrawals to regularly vary the amount of money in the arithmetic, changeable the money's currency, and buying great-value items to conversion the form of money.

**Integration:** the money re-enters the mainstream economy in legitimate-looking form. This may involve a final bank transfer with the account of a local business in which a launderer is 'investing' in exchange for a cut of the profits.(3)

### **Technique and methods of money laundering crime**

Money Laundering is more complex and varied way and to factors such as the type of offense, type of economic system, laws and regulations of the country where they were contrary to the kind of regulation that depends on the country where the money was to be cleansed. The most common and important method of money laundering are that money launderers attract the attention of law enforcement operations to reduce money laundering has become a large amount of cash in small amounts Or directly invested in banks or with financial instruments such as Czech and so on purchase and deposit them in other places and other methods of laundering money invested in stock and bond markets, investment in enterprises and create a temporary fake charitable organization, investing in the gold market, participate in the auction for arts and old (antique) and transfer money to countries with free banking regulations such as Switzerland noted.

The use of fraudulent transactions and face in the process of money laundering is prevalent. Smugglers traditionally, through the banking system, method and apply stellar explosion,((The deposit account opened with money and clean and dirty mixed with repeated orders by wire transfer in writing, telegraph, telephone, fax and .... Money transfer to multiple accounts in different countries. In other words, the ways and instruments of perpetration of money laundering can be summarized as follows: Methods related to the use of bank like Filtration of money, Open an account with fake identity, Large Transaction Through the close, Formal and fake loans, Smurfing, Use of banks brokers, Electrical transfer and use of smart cards and Tax havens. Methods related to the use of financial institutions non-bank likeremittancealso the use of NYSE and buy and sell stocks and securities the use of insurance institutes. Money laundering Methods without using financial institutions like trafficking of money, Use of Casino, Use of Non-Profits and Charities, the use of market art and antiques and

jewelry and the use of professionals also using the coverages of legitimate business, use of monetary and financial havens and use of electronic money are the methods of money laundering.(8)

Totally the major way and method of money laundering in 11 cases can be summed: Transfer and removal of money, the foreign currency assets, Multi-line banking operations, Use Bngahay charity, The transfer of ownership, Buy and sell shares, Industrial Participation, Cooperating with agents and traitors, The purchase and sale of real estate and urban land multiple, Because of the secrecy and money and income, Buy Jewelry. (9)

#### **Money laundering in Kazakhstan**

In Kazakhstan the rapid economic growth largely on oil, gas, mineral resources, the privatization process and its geographical position is based. These elements, together with the organized crime, instability in the region, issues related to transparency in the management of natural resources (especially energy) and the need to encourage foreign investment; has attracted attention of money launderers in Kazakhstan. Although, Kazakhstan is a development country and has a modern banking system also it is a financial center for Central Asia. But unfortunately, the lack of adequate regulations on money laundering, corruption, the organized events of money laundering and cash smuggling, economic crimes, the transit Kazakhstan for drugs from Afghanistan puts this country at potential risk of laundering money. (10)

in Kazakhstan money laundering criminalized for first time by Article 30 of the 1998 anti-drug law, which makes it unlawful to wash money in relationship with the sale of unlawful drugs. In 2000, of Article 193 «Legalization of illicitly got Funds or Other wealth» in the Criminal Code of KZ laid the basis for better development of the AML/CFT legal system in the state. In 2004, KZ was one of the states that established the Eurasian Group on struggling Money Laundering and Financing of Terrorism. The first applied stages for establishing the national AML/CFT system in KZ was development, in 2008, of the fiscal intelligence unit – the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan. in 2009 «On combating Legalization (Laundering) of illicitly got incomes and Terrorism financing resource « was adopted and accepted and came into force in 2010. «On corrections to some Legislative actions of the Kazakhstan on struggling Legalization (Laundering) of unlawful incomes and terrorism financing « adopted and accepted with the AML/CFT rule, introduced the suitable corrections

and amendments into 26 legislative actions of the state that ordered the actions of the entities theme to fiscal monitoring, their industry regularizer and state representations.(11)

**Statistics:** From the starting of 2004, the government Agency for struggling Corruption and Economic Crimes reported in Kazakhstan 421 registered money laundering cases in all \$107 million. In last 2014, two companies with bank fake has been charged by the Almaty prosecutors office. The two companies were accused with unlawful activities resulting in the washing of \$7 million aboard a course of five months. According to the Prosecutor's Office, these crimes were conducted with the help of bank employees, making them especially difficult to detect. The detection of felonies including money laundering companies is even-handedly low matching to the Prosecutor General of Kazakhstan, and the above figures perhaps do not reflect the true territory of these crimes in Kazakhstan.(12)

Therewith, when police discover such crimes, they Prosecutors often do not prosecute. Matching to the Prosecutor's Office, almost only one ten criminal proceedings is de facto brought to court. Republic of Kazakhstan does not an offshore fiscal station. There are no banks or offshore companies. Available law does not favor fiscal centers and offshore banks. Foreign banks, involving American, Turkish, Dutch, and Russian firmly-fixed fiscal establishments have offices in Kazakhstan. The GOK helped in collection the E.O. 13224 roster among Kazakhstanian banks. In 1997 Kazakhstan be annexed to the 1988 UN Drug Convention, and in December 2000 the state signed the UN agreement versus Transnational Crime. The GOK signed in 2000. (13)

#### **The average level of money laundering risk in Kazakhstan**

Kazakhstan was among the countries with an average level of money laundering risk, according to the assessment of the Basel Institute on Governance. The global index of anti-money laundering (Anti-Money Laundering, AML), Kazakhstan took 75th place with an estimate of 5.94. Rating AML formed in 2012. Countries of the world are evaluated on a scale from 0 (low risk) to 10 (high risk). In the formation of the authors of the rating assessments are based on the data of the FATF (Financial Action Task Force on Money Laundering), the World Bank, Transparency International and the World Economic Forum. Taking into account factors such as the risk of corruption, money laundering, financial and social transparency, political and legal risks.



Evaluation of Kazakhstan in 2012 has deteriorated significantly. So, in 2012 it was 5.12, and in AML ranking in descending order (from the country with the lowest risk of money laundering) of Kazakhstan took the 39th place, while moved to the 85th position in 2013, and in 2014 – on the 88th.(14)

### **Criminalization of money laundering in penal code of Kazakhstan**

Article 218. Legalization (laundering) of money and (or) other property, received by criminal way:

1. Involvement of money and (or) other property, received by criminal way, to the legal cycle, by settlement of transactions in the form of conversion or transfer of property, representing the incomes from criminal and (or) administrative infractions, concealment or suppression of its true nature, source, location, disposition, movement, rights to property or its ownership, if it is known that such property represents incomes from criminal and (or) administrative infractions, as well as possession and use of this property or mediation in legalization of money and (or) other property, received by criminal way, if these actions are committed in significant amount, – shall be punished by the fine in the amount of up to three thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to three years, or imprisonment for the same term, with confiscation of property.

2. The same actions, committed:

- 1) by group of persons on previous concert;
- 2) repeatedly;

3) by person with the use of his (her) official position, – shall be punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to five years, or imprisonment for the same term, with confiscation of property.

3. The actions, provided by first or second parts of this Article, committed:

1) by person, authorized to perform the state functions, or person, civil servant or person, holding responsible state position, equated with him (her), if they are linked with use of his (her) official position by them;

2) by criminal group;

3) on the large scales, – shall be punished by imprisonment for the term of three to seven years with confiscation of property, and in the cases, provided by paragraph 1), with deprivation of the right to occupy determined positions or to engage in a determined activity for life.

Note. A person, voluntarily declared on prepared or committed legalization of money and (or) property, received by criminal way shall be released from criminal responsibility, if his (her) actions do not contain the components of crimes, provided by second or third parts of this Article or other crime. (15)

### **Money laundering in Afghanistan**

Afghanistan is one of the poorest countries in the world and, after decades of ongoing conflicts and strife, it is still at an early stage of developing its legal and institutional framework. The main challenges that the authorities face are the precarious security situation (including regular occurrence of insurgency attacks), vested interests and corruption, capacity constraints, a large illicit narcotics sector, a weak business environment, and low human capital. The authorities believe that the major proceeds-generating crimes for money laundering in Afghanistan are: production and trade in opiates and cannabis, corruption, protection payments for legal and illegal movement of goods, smuggling, and kidnapping.

### **Criminalization and punishment of money laundering**

Afghanistan's AML framework is based on the «Anti-Money Laundering and Proceeds of Crime Law» (Law No 1142) which was issued finally as a new law for combating money laundering and Proceeds of Crime in 2014. Money laundering is punishable by imprisonment for two to ten years and/or a fine that may range between Af 50,000 and Af 50,000,000 (approx. US\$1,000 and 100,000 respectively – Article 52 of the AML LD). It therefore constitutes as a misdemeanor under Afghan law. Corporate entities are liable to a fine of not less than Af 5,000,000 and not more than Af 15,000,000 (i.e. approx. US\$100,000\_300,000). They may additionally be: a) banned for a period not to exceed five years from directly or indirectly carrying on certain business activities; b) dissolved if such corporation had been established for the purpose of committing the offence in question or it allowed its premises to be used for such purposes; and c) required to publicize the judgment in the press or in any other audiovisual media (16).

**Statistics:** To date, money laundering has rarely been investigated and prosecuted, and has not been sanctioned by the courts. There is therefore very little experience in the implementation of the money laundering offense and no case law that would establish the courts' understanding of the AML LD. The authorities explained that money laundering is primarily cash-based. It is worth noting

that in Afghanistan some hawaladars operate cross border correspondent relationships, which in the absence of a strong supervisory framework present opportunities for large scale money laundering through hawaladars. In relation to Pakistan, one hawaladar met by the assessors indicated that he transfers every year hundreds of millions of dollars which he justified as cash smuggling from Pakistan to Dubai. He explained this transit through Afghanistan by the strict exchange control restrictions in Pakistan which were reportedly easier to circumvent through the border between Pakistan and Afghanistan. He did not perceive this as a criminal activity, and indicated that the funds he is transferring are not related to drug trafficking. Four Afghan banks have correspondent accounts in Pakistan. (17)

There are also very developed financial relations with Iran; most of them are performed outside the legal framework. Recently, the U.S. Department of the Treasury designated the New Ansari Money Exchange, as a major money laundering vehicle for Afghan narcotics trafficking organizations, along with 15 affiliated individuals and entities under the US Foreign Narcotics Kingpin Designation Act. The US authorities believe that the New Ansari Money Exchange is at the center of an unofficial network of individuals, money exchange houses and other businesses operating throughout Afghanistan and in the United Arab Emirates. Between 2007 and 2010, the New Ansari Money Exchange is believed by the US authorities to have concealed illicit narcotics proceeds among the billions of dollars it transferred in and out of Afghanistan. There have been no successful prosecutions for money laundering. (18)

There are a small number of cases, twenty one, that have been analyzed by Fin TRACA and that were disseminated to the AGO. Overall, reliable statistics are scarce in Afghanistan. Money laundering may be investigated by several law enforcement agencies. The Major Crime Task Force (MCTF), which was established in 2010 to investigate corruption, organized crime and kidnappings (and related money laundering), indicated that it had investigated some 100 cases from its inception to January 2011. Money laundering was investigated in 17 of these cases; The Counter-Narcotics Police of Afghanistan (CNPA) investigated money laundering in 23 cases (all of which were also related to terrorism financing); No information was provided on the number of cases investigated by the ANP.

The AGO indicated that it usually investigates 5 or 6 cases of money laundering a year (in the Kabul district only) but has only investigated 2 cases

during the course of 2010. (By comparison, the AGO's Anti-corruption unit in Kabul has prosecuted some 1000 cases.). None of the money laundering matters has been brought before the courts. The Afghan money laundering offense covers most of the elements set forth in the Vienna and Palermo Conventions, and, despite the deficiencies that it still suffers from (in particular with respect to the list of predicate offenses), should have been sufficient to enable the authorities to prosecute and sanction money laundering to a larger extent. (17)

This lack of familiarity with the money laundering offense notably means that, in most cases, the authorities focus solely on the predicate and very rarely make use of the tools provided by the AML LD. This raises serious concerns because there is every indication that money laundering in Afghanistan occurs on a particularly large scale. Crime is both frequent and lucrative in Afghanistan: assets generated by drug trafficking is estimated at US\$4 billion a year; corruption is estimated to generate US\$2.5 billion a year. While no estimates exist for other asset generating offenses, the frequency with which crimes such as kidnapping and extortion occur would tend to indicate that, they too, generate large amounts of proceeds to be laundered. According the Basel AML Index report Afghanistan is one of the 10 highest risk countries in the 2016. (18)

#### **Presented approaches and Contexts for combating money laundering**

##### **For combating money laundering difference approaches and context are presented as follow:**

Legislative solution: Criminalization of money laundering in domestic law, anticipated punishments predicate offense, Identify criminal responsibility for legal entities.

Administrative and executive solutions: The fight against drug trafficking, Control and monitoring of foreign currencies, Inspections of individual and customs, Tax collection, responsibilities and obligations of financial institutions, Observance the principle of customer recognition, Keeping financial records, Report suspected cases (Reporting of Suspicious Transactions), Modification principle professional secrecy, Lack of knowledge to the customer about the reporting of suspected cases, Training of employees, Responsibilities and obligations of non-financial institutions and professional persons, Responsibilities and duties supervision, The establishment of financial intelligence units, Money transfers control, Supervision of banks and financial institutions, Prescribed of transportation method and delivery

under control, Approaches and preventive actions of money laundering.

Judicial approaches: Facilitate the discovery and proof of the crime, Accepting the presumption of crime, the use of informants and special techniques of investigation, Confiscation of property, International Judicial Co-operation, Evocation (Refer) of Penal cassation, Transfer of convicted, Extradition of accused and convicted. (19)

### Conclusion

Unfortunately in economy of Afghanistan and Kazakhstan so far due to the harmful effects of money laundering remain unknown consequences and significant action has not been taken or special sensitivity to cope with this phenomenon in society is not created. The only positive action in this field, in Afghanistan prohibiting money laundering law that was adopted in 2014 but so far has not been strong procedural aspect. Still Money laundering law has not been ratified In Kazakhstan especially in this field inadequate regulation and supervision of financial institutions, the lack of appropriate laws and regulations for financial institutions, the lack of common rules for financial institutions to identify excessive secrecy in financial institutions; Lack of an effective system of reporting suspicious transactions; inadequate requirements relating to commercial law for the registration of commercial activities; There are obstacles to international cooperation in the field of executive authority, Therefore one can safely result that Money Laundering is universal problem and challenge and must absorb global worries. Sans international

collaboration money laundering cannot be controlled.

Money laundering must be combated mainly by penal means and within the frameworks of international collaboration between judicial and law implement authorities . Last but not the least it is vitally significant to hold in mind that simple ratification of Anti-Money Laundering Laws are not sufficient, the Law implement Community must hold pace with the ever changing dynamics of money Launderers who constantly evolves innovative ways which assistance them to remain outside the attain of law. Money Laundering is a universal phenomenon with economic, political and social consequences which effects on the valence of societies and businesses negatively. The being of illegal streams produces economic falsifications such as the disordered use of the resources, disinvestment on legal economy, the weakening of the banking sector, the loss of attractiveness for FDI or the preferment of penal activities.

This essay is based on data collected for two different countries, Afghanistan and Kazakhstan, where it is possible to observe some differences and, consequently, get some clues about what can really matters to prevent Money Laundering. As results, this essay desires to show that AF and KZ with efficient legal systems and economically more oriented join to arrive better outcomes combating Money Laundering, which consequently enhancement the valence of these countries to attract FDI, diminish corruption or stress the bulk of transactions in Shadow Economy.

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