

Anti-Money Laundering under Iraqi Law

Ahmed Hasan

a.hasan@tamimi.com

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It is necessary to comprehend the dangers associated with money laundering and terrorist financing activities, through the use of banks and financial institutions as a means to pass through dirty money earned from committing various types of organized criminal activities.

Money Laundering is defined in the Iraq Anti Money Laundering Law [No. 93 of 2004] (“AML Law”) as:

“The administration of, or the attempt to administer, a financial process employing revenues from unlawful activity; or anyone who sends or transports a monetary instrument or sums representing revenues of a given illegal activity, with the knowledge that such monetary instrument or the property belongs in a certain way to illegal activity, intention of helping to carry out illegitimate activity, profiting from illegal activity, to protect those who administer the illegal activity from judicial questioning, or shielding, hiding the nature, the source or the ownership of the monetary instrument in order to have power over the revenues of the illegal activity.”

The Central Bank of Iraq has within its organizational framework the Anti-Money Laundering Office that is directly connected to the Governorship of the Bank. This Office includes specialized Sections that issue directives and policies from time to time to the certified banks, money transfer companies and money exchange businesses. The Central Bank established the Money Laundering Reporting Office to receive reports related to money laundering issues. The duties of this Reporting Office are:

1. Collecting, treating, analysing and publishing testimonials related to financial transactions;
2. Participating in carrying out the Iraqi policy to prohibit money laundering and criminal activities, including terrorism financing;
3. ‘Terrorism Financing’ is defined by the AML Law as: “Anyone who offers or requests someone else to offer money, support, financing or other related services, intending or knowing that it is possible to be used totally or partially to carry out activity, which provides a benefit to a terrorist group with the intention of causing death or grave bodily harm to a civilian person who has no active participation in promoting the status of armed hostilities.”
4. Cooperating, collaborating and exchanging information with the Iraqi governmental authorities and the relevant entities of other states and international organizations to fight money laundering and the financing of criminal activities;
5. Investigating statements received and taking the necessary steps. The Office has the right to take these steps and prepare regulations to be approved by the Central Bank as needed to carry out its obligations;
6. Upon becoming reasonably suspicious of a transaction or that certain monies have been earned from an illegal act, the Office would inform the relevant judicial authority and the investigation authority;
7. Answering inquiries from financial establishments and offering guidance related to the manner of the Office’s operations.

The Iraqi Central Bank and the Money Laundering Reporting Office may also liaise with foreign authorities that supervise financial establishments or markets, as well as foreign criminal authorities, in order to exchange information and documents needed to carry out its duties in the fight against money laundering.

The Central Bank issues necessary regulations and periodically distributes lists related to financial activities which might form suspicious transactions, including money laundering, criminal financing activities, transactions that employ funds accessible to a criminal organization, or transactions designed to avoid reporting or registration conditions. The Central Bank has the right to carry out site audits at financial institutions.

The Central Bank also provides lists of persons and organisations, often based on lists produced by the United Nations Security Council, which financial institutions should monitor against transactions. Upon the discovery of a transaction by a listed person or organisation, a report should be filed with the Central Bank.

The obligations of financial institutions in relation to money laundering:

1. Verification of the client's identity.

When an account is opened, or when a transaction or series of eventual transactions whose value exceeds five million Iraqi Dinars per customer (whether a natural or juridical person) are carried out, the financial institution must obtain the legal name of this customer and his permanent or correct complete address, telephone or fax number and (in the case of natural persons) the date and place of his birth. Juridical persons must provide the incorporation statement, the nationality and the place of incorporation. If the total value of the transaction or of the series of transactions is less than one million Iraqi Dinars, the financial institution needs only the name and address of the customer. The financial institution must verify whether the name of the customer appears on the list provided by the Iraqi Central Bank and report any suspicious transactions to the Iraqi authorities.

2. Identification of the beneficial owner of the funds

The financial Institution must request from the customer a written statement about the owner of the monies in cases where it becomes evident that the customer is not the owner, or the ownership of the monies are subject to suspicion, or the transaction is for an amount higher than one million Iraqi Dinars.

3. Additional verification of identity

The financial institution ought to take additional steps to verify the identity if it has a reason to doubt the identity of the customer or the beneficial owner of the funds. In case the financial institution cannot form a reasonable image regarding the identity of the customer or the beneficial owner, it must report any suspicious transactions to the Money Laundering Reporting Office. Also, when the financial institution transfers an insurance premium payment or distributes or refers a benefit earning to a person, it must verify the identity of the beneficial owner, if it becomes evident that the beneficial owner is not the designated one according to the contract.

4. Additional verification of the purpose and nature of the transaction

The financial Institution shall immediately verify the source of the funds, the nature and the intended purpose of the transaction. Also, it must verify any suspicion whether the funds consist of revenues resulting from a criminal activity or intended to finance a crime. The financial institution must immediately report to the Money Laundering Reporting Office if it is believed that the proposed transaction or series of transactions are suspicious and seek the advice and directives of the Reporting Office. It must follow the guidance and instructions of the Money Laundering Reporting Office and the financial institution, its director, any officer, employee or agent shall not be liable according to any Iraqi law or regulation. When the financial institution requests an investigation, the respective assets must be frozen until it receives directives from the Money Laundering Reporting Office.

5. The obligation to report suspicious transactions over 2 million Dinars

The financial institution must report to the Money Laundering Reporting Office in the case of having reason

to suspect a transaction – whether it was done by the customer or by another party – where the transaction or transactions total more than two million Iraqi Dinars. This reporting must be done as soon as possible and before the elapse of fourteen days after the date of the event leading to the suspicion. The financial institution must keep the records in separate files, which contain all the details related to the reporting. These files must be conveyed to the Iraqi Central Bank and to the Money Laundering Reporting Office as well as to the judicial prosecuting authorities. These records must be kept for a minimum period of five years after the date of reporting to the Money Laundering Reporting Office.

6. Reports of fund transactions over 15 million Dinars

Every financial institution must organize a report for the Money Laundering Reporting Office for every deposit, withdrawal, currency exchange or other transfer through or to the institution that deals with fund transactions, or by using any other type of monetary instrument, which exceeds fifteen million Iraqi Dinars.

7. Reports of currency transfers over 15 million Dinars

The Iraqi Central Bank requires everyone to provide reports related to the transfer of currency or any other monetary means, with a value over fifteen million Iraqi Dinars, from or to Iraq. The report shall include the following:

- The judicial identity of the person who provides the report;
- The origin, destination and transit point of the currency or the monetary instrument; and
- The amount and type of the monetary instrument.

Conclusion

Money laundering activities are a threat to the national and global economy, both in real and reputational terms. The Iraqi government is tackling this threat with the AML Law and we continue to watch with interest as financial institutions act in compliance with its provisions in a combined effort to reduce the effects of organised crime on the Iraqi economy in particular and the global economy as a consequence.