

Special Legal Procedures to Prevent the Exploitation of E-Commerce Transactions in Currency Smuggling and Money Laundering

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Abstract

Technical development has brought about many positives in the commercial field. Still, it has not been without negatives resulting from the misuse of modern technologies in commercial transactions illegally, perhaps the most prominent of which is the commission of currency smuggling and money laundering operations through electronic means, which have become one of the major challenges facing countries today. By exploiting modern electronic payment methods, and using cryptocurrencies such as Bitcoin is used to hide the identity of financial assets and make them easily transferable around the world. These currencies provide high confidentiality, making them attractive to criminals. In addition to the use of money transfer platforms, applications such as “Zelle” and “Venmo” are used to transfer illicit funds and hide them across multiple accounts, complicating investigators’ efforts to track the funds. E-commerce platforms are used to conduct quick transactions and hide illicit funds in minutes or even seconds. In addition, some exploit the foreign currency sales window and electronic payment cards to achieve their goals in this area. Since currency smuggling and money laundering have become a major threat to the national economy, they lead to: Decline in purchasing power: Currency smuggling leads to a decrease in the value of the national currency, which causes a decline in the purchasing power of citizens, Increase in poverty and crime: Decline in purchasing power leads to an increase in the poverty rate, which contributes to the spread of crimes such as theft and bribery, in addition to economic losses, as currency smuggling deprives the state of due taxes, which leads to large losses in the state budget, in addition to the occurrence of waves of inflation, as currency smuggling leads to an increase in the prices of goods and services, which increases inflation rates. Therefore, it was necessary for the legislator to develop advanced and flexible legislation aimed at confronting the misuse of means of technological development in currency smuggling and money laundering. It became necessary for the active banking authorities, headed by the central banks, to monitor, follow up and diagnose the new means invented by currency smugglers and money launderers in order to develop instructions and regulations that would limit these suspicious operations and protect the national economy.

Keywords: *Commercial Transactions, Currency Smuggling, Money Laundering, Iraqi Law, Economic Crime.*

Introduction

Importance of the research : The Iraqi legislation in force has shown the measures that should be taken to reduce economic crimes in general, and the crimes of currency smuggling and money laundering in particular. Some of these measures are of a supervisory nature over the work of banks and financial institutions, and some take the form of auditing and verifying customer data and preserving information related to their financial transactions.

Research methodology: In our research, we will follow the analytical approach, which is based on analyzing the legal texts related to the research topic.

Research structure: Based on the above, we will divide this topic into two paragraphs. We will dedicate the first paragraph to: To study the control of electronic commercial transactions through banks and financial institutions, we devote the second paragraph to researching the procedures for auditing and investigating customer data and preserving information related to electronic transactions.

Supervision of Electronic Commercial Transactions Through Banks and Financial Institutions.

The Iraqi legislator stressed the necessity of financial oversight and auditing, as oversight has become a major role in protecting the existence, continuity and strength of the state. Since the state's economy represents the backbone of the state's existence, establishment and survival, it has become necessary to

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protect this vital economy, in addition to the developments in financial oversight with the development of the state and its institutions until it became an important pillar of the administration in the modern state, in addition to planning, organization and guidance. Contemporary financial oversight and financial auditing are no longer limited to administrative procedures related to auditing accounts and financial transactions, but have gone beyond that by evaluating the administrative activities of the agencies subject to oversight, and knowing the extent of their efficiency and ability to achieve the desired goals within the specified time period.

The legislator stressed, in the preventive aspect, the necessity of monitoring the transfer of funds, whether it is a banking transfer through banks, or technically using modern means: such as electronic money transfer, or money transfer through non-banking financial institutions, meaning: those institutions that participate and contribute to money exchange operations, for example, making wire transfers of money, cashing checks or selling payment orders, or selling traveler's checks (traveler's checks). Examples of non-banking financial institutions include exchange companies and stock brokerage companies. These institutions are considered a dangerous outlet for money launderers, as they are not subject to the same strict control that banks are subject to (Mohammadin, 2004, 22). In light of the above, we will divide this paragraph into two parts, dedicating the first to studying financial and banking auditing, and explaining in the second: monitoring financial transfers.

Financial and Banking Audit

The duty of financial and banking audit falls on the internal control body that is affiliated with the same banking system or non-banking financial institution, in addition to the supervisory control carried out by the administrative head of the administrative institution, then the Federal Financial Control Bureau to conduct prior and subsequent control, and then sends the results it performs to the Public Prosecution Service or the Federal Integrity Commission if those financial and banking violations constitute a crime (). Through this, banking control, in its diversity and difference, revolves around three types, namely: internal control (internal audit) represented by the Ministry of Finance or the bank itself from within the bank. As for the second control: represented by the external control of the Central Bank of Iraq over banks, in which it seeks to control the financial and banking system to maintain its stability, safety and continuity. As for the third control: represented by the control of the external auditor over banks, who is registered in the register of accountants and auditors in the state in which the bank is located, the General Assembly appoints him, and his fees are determined annually by it, and his tasks assigned to him are determined from reviewing and examining information And documents, in addition to expressing an opinion on the validity, accuracy and credibility of the control systems, accounts and final statements, and the extent of their conformity with the accounting books and records kept in accordance with the accounting and financial laws, regulations and instructions (Subaih, 2006, 31). In light of this, we will explain in detail and accurately the types of financial and banking auditing and their administrative procedures, as follows:

Internal Audit of Internal Control

It is the audit, inspection and control carried out by the executive authority represented by the Iraqi Ministry of Finance or the bank itself through the audit departments (self-control), or by specialized agencies (Subaih, 2006, 32), on its administrative apparatuses, the aim of which is to achieve direct supervision and control over banks by requesting statistics, data and periodic information from auditors who audit and inspect these statistics, data and information, as well as banking operations with the aim of serving the administration. As a result, it has become the auditor's duty to examine, audit and evaluate the internal control system within government institutions; To form a decision and opinion on the extent of determining the type and size of administrative and financial procedures that should be carried out to be able to evaluate the performance of government institutions (banks), and we must not forget to point out that one of the most important objectives of this control is to reduce cost, effort and time, as well as protect government institutions from fraud, error, losses and financial waste, and also ensure the flow of information and data to the higher administrative bodies in a correct, accurate and timely manner. In this context, it is also possible to ensure the commitment of public employees to the plans, strategies and administrative policies approved by the administration (Al-Ghalbi, 2010, 100).

External Audit

It is the audit process carried out by an external auditor or other competent administrative bodies concerned with financial and accounting oversight of the entities subject to audit and oversight. After completing the audit, these administrative bodies submit a report on the financial data and information subject to the audit to the entities subject to the audit regarding the validity and integrity of the information contained in the financial statements and the extent of their conformity and agreement with the information contained in the original accounting and financial books, documents and records (Farajallah, 2020, 312) . In addition, the Iraqi legislator referred to the tasks of these oversight bodies in clause (a, e) of paragraph (first) of Chapter Eight entitled (Tasks of Oversight Bodies) of the Iraqi Anti-Money Laundering and Terrorist Financing Law No. (39) of 2015 AD in force () , provided that this type of audit is practiced by the Central Bank of Iraq and the Federal Financial Supervision Bureau, which we will explain in detail and accurately, as follows:

Central Bank of Iraq

The Central Bank of Iraq inspects, examines and audits the financial entities subject to auditing, which aims to verify the direct supervision and control of its affiliated banks by requesting statistics, data, information, periodic documents, monthly, quarterly and annual budgets from the employees of the Central Bank of Iraq who audit the data, information and banking operations, to ensure that banks comply with banking laws, regulations and instructions, as well as to protect and maintain depositors' funds and public funds from waste and tampering (Saeed, 2018, 26) . The Central Bank of Iraq also provides adequate protection in the relative stability of the value of the national currency to contribute to achieving economic growth (Abu Ahmed, 2020, 81).

As for the means of control of the Central Bank, it is done in two ways: The first: through the office control department within the Central Bank of Iraq, whose employees audit the bank, and oblige all banks to submit data, information and periodic statements reflecting their financial position, budget and statements. Information and data related to loans and deposits are submitted to the Central Bank of Iraq () . When the department's employees discover financial errors and violations, they submit a report to the management of the Central Bank of Iraq regarding the violating bank, and the Central Bank of Iraq, in turn, notifies the bank's board of directors of the results of the inspection () . As for the second way: it is the field control of the Central Bank of Iraq: This administrative activity is carried out by the Field Inspection Department from within the Central Bank of Iraq by conducting regular and irregular field visits; in order to examine, audit and inspect the work of banks, which is represented in the banks' commitment to the laws, regulations and banking instructions, noting that the audit and inspection of banks is once a year, except for representative offices, which are inspected at least once every two years () .

We must not forget to point out the interest of the specialized committees formed by the Bank's Board of Directors. (Al-Ali, 2013, 56), which was mentioned in Article (65) of the Instructions for Facilitating the Implementation of the Iraqi Banking Law No. (4) of 2010 AD in force, namely: The Audit Committee (Audit Committee), its duty is to review the accounts and audited financial statements, follow up on the reports of the Internal Audit Department and study them and make recommendations regarding them, and audit all banking operations including all procedures related to combating money laundering and terrorist financing, and this is what Article (1) () of Chapter Three of the regulatory controls for banks and non-banking financial institutions related to combating money laundering and terrorist financing confirmed.

Federal Financial Supervision Bureau

There are two types of audit departments affiliated with the Court, whose tasks are legal and advisory, including: the central audit departments and the audit departments in the governorates, whose tasks are as follows:

Central Audit Departments: These departments undertake the implementation of auditing and oversight activities in the entities subject to auditing and oversight, and the Financial Oversight Board determines the

scope of their work and activity, pursuant to the internal regulations of the Bureau No. (1) of 2012 AD in force .

Provincial Audit Departments: The Bureau Law and its internal regulations No. (1) of 2012, in force, specified the number of audit departments in the governorates as eight audit departments () , but in reality and truth there are (6) audit departments, represented by the first, second, third, fourth, fifth and sixth audit departments. As for the tasks and powers of the Bureau within the scope of auditing, it supervises and audits the accounts and activities of the entities subject to supervision and verifies the soundness of the disposal of public funds according to the purposes allocated to them without waste and squandering, by revealing deviations, errors and financial violations, by ensuring their effectiveness and application of accounting and financial laws, regulations and instructions . It is worth noting that all of these previous procedures carried out by the Federal Financial Supervision Bureau It will reduce and limit currency smuggling and money laundering crimes.

Monitoring Financial Transfers

Currency smuggling and money laundering operations are carried out in many ways and forms ranging from simple to complex and according to the circumstances of the operation. Modern technologies have played a dangerous role in developing financial transfer methods . Perhaps smuggling, front companies, or carrying out some physical actions are among the simplest and oldest methods of transferring money. (Muhammadin, 2004, 17), and as for financial and banking transactions within banks by money launderers, they are characterized by complete secrecy and high confidentiality (Al-Omari, 2000, 252) , whether through traditional (old) methods or modern methods to avoid the detection of their criminal operations within the scope of money laundering crimes, including: money transfers, and external transfers of funds that are tainted by illegal activities, and also one of the methods used by money launderers to transfer their funds across countries is the international transfer of funds, when they transfer their illegal funds outside the country away from the illegal source from which they obtained them, in order to launder these funds and return them to the country of origin after giving the legal character to these funds, as for financial transfers, the goal is to hide their illegal sources, as well as the difficulty of tracking them, and transferring the funds obtained from crimes in another form (Qashoush, 2003, 23) , that is, in other words, changing the form of the obtained funds From illegal sources through its movement and transfer in bank accounts, or the purchase of real estate or the establishment of fictitious companies, and in light of the technical development, currency smuggling and money laundering It has increased in Iraq , whether through currency auctions or other means, and this requires coordination, follow-up and supervision by the Anti-Money Laundering and Terrorist Financing Office within the Central Bank of Iraq with the relevant competent administrative authorities, which are in direct contact with the Central Bank of Iraq in terms of the nature of their work with it, as external transfers cannot take place without the presence of these administrative authorities; Therefore, work must be unified between them. It is worth noting that the Iraqi legislator referred in paragraph (first) of Article Two of the Money Laundering and Terrorism Financing Law No. (39) of 2015 to the transfer or transportation of funds () . We must not forget to mention the money laundering operations that take place through the foreign currency buying and selling window and the external transfers of huge sums of money that take place through it, which leave the country under the pretext of foreign trade by importing goods and merchandise. In conclusion, we will explain some of the cases that were discovered by transferring money, according to the Anti-Money Laundering Office report for 2016, as follows: Description of the case: The Anti-Money Laundering Office received a report from Bank (C) stating that the work of their branch (Z) (S for General Trade) has financial transfers during a period of (15) fifteen days amounting to (forty-three billion, five hundred and ninety million Iraqi dinars), which exceeds its capital of (five billion Iraqi dinars) that are transferred to private banks, each of Bank (W, L), Type of crime: Suspicion of money laundering Funds, Suspicion indicators: The financial transfers of the aforementioned company exceed its capital, in addition to the lack of clarity regarding the sources of the funds and the beneficiaries, Reporting entity: A government bank, The tools used in transferring the funds: They are financial transfers via the payment system (SGT R) in the billions of dinars, Judicial procedures: The suspicion report was referred to the Public Prosecution Office () .

Money Transfer Control

The relevant legislations have imposed many types of restrictions and controls on the transfer and conversion of funds, and financial and banking operations inside and outside the country. In light of this, the Iraqi legislator indicated in paragraph (first, second, third) of Article (34) of the Iraqi Money Laundering and Terrorism Financing Law No. (39) of 2015 in force, which stipulated that: ((First: Every person is required, upon entering or leaving Iraq, to declare, upon request from a representative of the General Authority of Customs , the money, currencies, or bearer-negotiable financial instruments he carries or is transported inside or outside Iraq through a person, postal service, shipping service, or by any other means. The declaration includes the value of those currencies or instruments. Second: The General Authority of Customs may request additional information from the person about the source of the money, currencies, or bearer-negotiable financial instruments or the purpose of their use. Third: This information is referred in the text (first, second) of this article in an exact copy of the declaration form to the Anti-Money Laundering and Terrorism Financing Office)) () , in addition to that To activate the control over the movement and transfer of funds, Recommendation (20) of the recommendations of the Financial Action Task Force (FATF) was imposed, which stipulated that: ((Countries should encourage the development of modern and safe methods for managing funds so that financial and banking institutions are less vulnerable to exploitation in money laundering)) () . We should not forget to note that the Iraqi legislator has indicated in one of its legal texts the authority of the General Authority of Customs to seize funds from their bearer in the event of failure to declare them or provide fictitious and false information, and there is evidence of suspicion that they were obtained from a primary crime or illegal sources. The Anti-Money Laundering Office issues a decision to lift the seizure of the seized items and refer them to the judiciary within a period of (7) days from the date of notification of the decision () . The customs authorities also have the right and authority to search persons and inspect their luggage to verify the accuracy of the declared information, upon verification or suspicion in the event of a false, fictitious or illusory declaration or in the event of refusal to declare, or in the event of suspicion that the transferred funds are illegal funds () . In conclusion, the transfer of funds is monitored Through several forms, including: subjecting financial and banking institutions to oversight and supervision; to prevent money launderers from owning large shares in these financial institutions and preventing them from controlling them, subjecting some financial and banking operations to special oversight, and then oversight of some financial and banking professions and activities (Al-Sun: , 2008, 165) , as well as oversight of wire transfers of money, which we will explain in a precise and detailed manner as follows:

Subjecting Financial and Banking Institutions to Control and Supervision

The administrative authorities responsible for monitoring and supervising financial and non-banking institutions in countries are required to take appropriate administrative, legal and regulatory measures to prevent money launderers from owning large shares in banks, preventing them from controlling them, and also preventing them from managing them, as well as applying administrative regulatory and supervisory measures for the purposes of preventing money laundering and financing terrorism. In addition, the Iraqi legislator has determined cash payments, which is a prominent and broad step in determining money. The legislator aims, through this administrative measure, to prevent the laundering of large sums of money by purchasing precious metals, luxury cars, private planes, or commercial stores, or by investing this money in fictitious, fictitious companies (Al-Sun: 2008, 166).

Subjecting Some Financial and Banking Operations to Special Supervision

Modern national legislation and international documents have imposed special supervision on some financial and banking operations, especially international money transfers, financial transactions that exceed the legally specified amount, and financial and banking transactions related to natural or legal persons belonging to countries that do not have systems to combat money laundering and terrorist financing, or have systems that are insufficient to achieve their objectives in combating money laundering and terrorist financing. We will explain this special supervision on financial and banking institutions in a precise and detailed manner as follows:

International financial transfers: The supervision of international financial transfers, whether in cash or securities, is subject to some types of direct and indirect supervision, from and to outside the country. National legislation has defined them in two ways: First: The person making the financial transfer, which does not exceed the legally specified amount, which is (10,000) ten thousand US dollars or less, or the transfer through financial and banking institutions or an intermediary for them, in other words: The person making the financial expression cannot complete these transfers through persons or individuals directly. (Age: 2008, 1 6 6), as for the second method: the competent administrative authorities, such as the Ministry of Finance, the Central Bank of Iraq, the General Authority of Customs , and the competent security authorities concerned, are obligated or notified of all international financial transfers immediately, especially those that are not carried out through financial and banking institutions or their intermediaries, provided that the notification includes mentioning the nature of the financial financing, its real value, in addition to the name and address of both the sender and the recipient () .

Supervision of financial and banking transactions that exceed the legally specified amount: The controls for declaring funds entering and leaving Iraq have indicated that: ((A_ Amounts less than (10,000) ten thousand US dollars or its equivalent in other currencies without declaring them, B_ Amounts exceeding (10,000) ten thousand US dollars to (20,000) twenty thousand US dollars, provided that they are declared, with the necessity of presenting what supports the purpose of entering or exiting these amounts, and in the event that supporting documents are not available, the traveler shall submit a pledge to bring those documents after (30) days from the date of the declaration, C_ It is prohibited to enter or exit amounts exceeding (20,000) twenty thousand US dollars or its equivalent in other currencies, and the process of entering or exiting these amounts shall be through financial institutions exclusively, D_ It is prohibited to enter or exit any amounts exceeding (1,000,000) one million Iraqi dinars until they are declared, and the amount shall be seized and legal measures shall be taken against it))() , and through this text Legally, we believe that if the financial transaction exceeds the legally specified amount (10,000) ten thousand US dollars, and even if there is no suspicion of money laundering, but the financial transaction was carried out for illegal purposes and objectives, or its sources were illegal () , then financial and banking institutions must scrutinize, examine, inquire and ask the customer about the source of the funds, their purpose and goal, as well as the identity of the parties benefiting from them. This is what is called imposing control over suspicious transactions (Kabish : 2020, 165)

Supervision of financial and banking transactions that do not have laws and legislation to combat money laundering or whose legislation may be weak in combating money laundering and terrorist financing: Financial and banking institutions must scrutinize and examine the nature of business relationships () and financial transactions that they conclude with natural and legal persons who are from countries that do not have laws and legislation to combat money laundering, or whose laws may be weak and unsound and do not rise to the required level. They must also ensure that this is also adhered to by their foreign branches in most countries of the world and the companies in which they contribute and have a majority stake in, in accordance with the procedures stipulated in the laws, regulations, instructions, statements, controls and orders issued pursuant thereto, to the extent permitted by the legislation of the countries in which these branches and companies operate.

Supervision of Financial and Banking Activities and Some Non-Financial Professions and Businesses

National legislation and international conventions have agreed to impose regulatory and supervisory controls and restrictions on banks, exchange companies and gambling halls through which huge amounts of money are transferred that are not subject to banking and financial laws, regulations and instructions, which increases the difficulty and lack of knowledge or discovery of their true sources. To limit the confidentiality of these financial transfers, the current Iraqi Anti-Money Laundering and Terrorist Financing Law requires natural and legal persons working in exchange companies, entertainment venues and gambling halls to inform the competent authorities in advance to obtain a license to practice the profession through the regulatory authorities that are the competent authority to license and authorize the specified non-financial businesses and professions or supervise them or ensure their compliance with the requirements required to combat currency smuggling and money laundering, including: the Central Bank of Iraq, the Securities Commission, the Insurance Bureau, the Ministry of Commerce and Industry and others () , as

well as verifying the identity of customers through data and documents or information from reliable sources (), provided before starting any business relationship with them that exceeds the legally specified amount, in addition to recording these financial transactions that The exchange companies conducted it under the same period, and the owners of the specified non-financial businesses and professions keep the records, documents and papers for a period of five years from the date of termination of the relationship with the customer or from the date of closing the account or executing a transaction for an occasional customer, whichever is longer... (), as for the specified non-financial businesses and professions (), including: real estate brokers whenever they start buying and selling real estate for the benefit of customers, goldsmiths and dealers in precious metals or gemstones whenever they participate in financial and banking transactions, lawyers and accountants when they prepare, implement or conduct financial transactions for their customers, and service providers of companies, trust funds and other companies when they prepare and conduct financial transactions for the benefit of the customer on a commercial basis, through this, all of these non-financial businesses and professions are subject to oversight and auditing in the event that they transfer illegal funds, and verifying their commitment to the obligations stipulated by the regulatory authorities, which are subject to their supervision and oversight under the Iraqi Anti-Money Laundering and Terrorist Financing Law in force ().

Procedures for Verifying and Investigating the Identity of Customers and Keeping Their Records

One of the important things that would prevent currency smuggling and money laundering is the necessity for banks and financial institutions to verify the identity of the customer and investigate him according to the global principle of the commercial work of these banks and financial institutions called the principle of (know your customer), so that the bank or financial institution does not initially promote a commercial transaction for a natural or legal person with suspicious activity. In addition, these entities must keep records of commercial transactions in general and electronic transactions in particular for their customers, and we will highlight these procedures in the following two paragraphs.

Verification and Investigation of Customer Identity

The financial center allows financial and banking institutions to collect many data and documents for their clients, as an effective mediator in distributing credit. Through this center, it is required to conduct investigation, verification, and collect information about the applicant for opening a financial or banking transaction or a bank account, in order to reach a decision to accept or reject his request, as banks avoid dealing with individuals who are not trusted to deal with (Safar, 2001, 156) . Opening any financial or banking transaction basically requires the financial institution's confidence in the applicant, whether a natural or legal person. This confidence requires banks to know the client and be aware of everything related to him, including his eligibility, address, profession, and reputation. This work is supported by the financial institution's capabilities and capacities to collect information about clients (Al-Shawarby , 2006, 145) , in addition to monitoring the client's banking and financial operations. In light of the above, we will explain this in detail and accurately as follows:

Investigation and Verification of the Client's Personal Identity and Eligibility

When a customer submits an application to open a bank account or conduct a financial transaction, the bank studies the application and exercises oversight and auditing of the data and documents included in the application. To ensure the validity and soundness of the legal authority of the applicant on the one hand, and the personal worthiness and financial position to deal with him on the other hand, in order to avoid illegal money laundering operations that harm the bank, or cause harm to others for which the bank may be held accountable (Al-Yamani, 2009, 35) . In addition, verifying the personal identity of the customer and his legal capacity is the right of the bank when the customer enters into financial and banking transactions with the bank. However, the process of exploiting the bank by money launderers by passing their illegal money has become an obligation on banks imposed by law. This contributes and helps protect the reputation of banks and maintain the integrity and soundness of administrative procedures within banks (Qarman, 2004, 115) . Through this, the name of the applicant, his place of residence and the activity he practices are determined, as well as verifying his legal capacity (Barbari, 1986, 37) . The personal identity of

the applicant is considered one of the important data that the bank investigates before approving the acceptance of the customer's application, as a legal act in order to find A legal link between the customer and the bank (Bayes , 2010, 327) , and as a result, verifying the identity of the applicant in order to prevent the customer from carrying out illegal activities through the bank: such as money laundering operations, which was confirmed by the principle of Know Your Customer, contained in Article (1) of Chapter Two of the regulatory controls for financial and non-financial institutions, regarding combating money laundering issued on 9/19/2019, which stipulated that: ((Banks must, according to this principle, identify all their customers in proportion to the degrees of risks related to them...)) , and the Iraqi legislator obligated financial institutions in general and banks in particular not to open an anonymous account, or with fictitious names or keep them () , and the recommendations of the Financial Action Task Force (FATF) also emphasized the need for financial institutions to identify customers and collect complete information about them, which proves the truth of their personality and work through a fixed working mechanism that does not allow the creation of a fictitious or fictitious account, or an account that includes misleading or incorrect information .

We must not forget to point out that financial institutions, business owners and non-financial professions take due diligence measures towards customers, including:

- Identify and verify the identity of the customer and the beneficial owner through documents, data or information from reliable, independent sources.
- Identify and verify the identity of any person acting on behalf of the client, and ensure that such person has the authority to act in that capacity.
- Understand the purpose and nature of the business relationship, and may request additional information in this regard.
- Identify the ownership and control structure of legal persons and legal arrangements.
- Continuous monitoring of all matters relating to the business relationship and examination of any transactions undertaken to ensure that they are consistent with the client's information, business activities, risk profile and, where necessary, the sources of his funds.
- As for the implementation of due diligence measures by financial institutions, business owners and designated non-financial professions, this is done in the following cases, including:
- Before and during the opening of an account or establishment of a business relationship with a customer.
- Carrying out a transaction for a casual client whose value exceeds the amount determined by the Chairman of the Council in a statement issued for this purpose and published in the Official Gazette, whether it is a single transaction or several transactions that appear to be related. If the value of the transaction is unknown at the time of its execution, the identity of the client must be verified as soon as the amount of the transaction is determined, or when it reaches the prescribed limit.
- Conducting an electronic transfer in favour of a casual client in an amount exceeding the amount specified by the Chairman of the Council in a statement issued for this purpose, and published in the Official Gazette.
- Suspicion of money laundering and terrorist financing.

- Doubt about the validity, accuracy or sufficiency of the identification data previously obtained about the customer's identity.

Financial institutions and designated non-financial businesses and professions also take a set of due diligence measures, as follows:

- Financial institutions and designated non-financial businesses and professions may postpone verification of the identity of the customer or beneficial owner until after the business relationship has been established, within the limits prescribed by the regulatory authorities.
- The rules for customer due diligence for financial institutions shall be determined by instructions issued by the Governor.
- If any of the financial institutions and designated non-financial businesses and professions fail to comply with customer due diligence measures, the account may not be opened, the business relationship may not be initiated, the transaction or any operations may not be executed, the business relationship, if it exists, must be terminated, and the office must be informed regarding the customer.
- Financial institutions, business owners and designated non-financial professions shall apply due diligence measures towards existing customers based on relative importance and risks at appropriate times, taking into account the validity and sufficiency of the data previously obtained. The Iraqi legislator also indicated in one of its provisions of the Iraqi Anti-Money Laundering and Terrorist Financing Law in force, the adoption of due diligence measures by financial institutions, which stipulated that: ((Eighth: Not to deal with shell banks, or enter into business relationships with them, or correspondent banking relationships with them or with the institutions to which they are sent that allow the use of their accounts from shell banks. Ninth: Not to deal with any financial institution that provides its services to financial institutions that are banned globally)) (). It is worth noting that financial institutions must exercise due diligence regarding the business relationship and its nature, and audit the financial and banking transactions that are conducted during the period of this relationship; to ensure and protect the coordination of these financial operations that have been implemented, with what the financial institution knows about its customer and his business activity, including knowing the source of his funds.

In light of the above, we will explain and clarify the audit, investigation and verification of the natural and legal person, as follows:

- Natural person: A natural person enjoys the freedom to make any lawful act, and a natural person acquires legal personality by force of law. The Iraqi legislator has indicated some forms of natural persons who practice non-financial businesses and professions specified in paragraph (ninth) of Article (1) of Chapter One entitled (Definitions) of the Anti-Money Laundering and Terrorism Financing Law in force, including (): real estate brokers, goldsmiths, dealers in precious metals or gemstones, lawyers, accountants, service providers for companies, trust funds and other companies, the client, the occasional client, and the real beneficiary (). In addition, banking instructions require the client submitting the application, if he is a natural person, to be known to the bank directly, or to be known to the bank, or to identify himself by means of an acceptable identification card. Paragraph (b) of Article (1) of Chapter Two of the Controls for Banks, Financial Institutions and Specific Non-Financial Institutions Regarding Anti-Money Laundering issued on 9/19/2016 (), included a number of the following data, documents and papers: "A copy of the personal or family card Or a passport or other identification documents . As for non-Iraqi foreigners, a copy of the passport is required, provided that he has a valid residence permit in the Republic of Iraq. In this regard, in verifying the identity of clients, the Rusafa Criminal Court, which specializes in integrity, money laundering and economic crime cases, issued its ruling on 8/14/2016, which includes the following () :

- Legal person : A legal person means a group of persons seeking to achieve a specific goal or a group of funds allocated to achieve a specific purpose. The legislator grants it an independent legal personality distinct from the persons who established it or manage its activity. This depends on the will of the legislator who determines it according to the degree of protection. If the applicant is a legal person such as a company, the bank is obligated to verify its identity by requesting a copy of the certificate of incorporation, the bulletin issued by the Iraqi Ministry of Trade, attaching copies of the company's internal regulations and their amendments, in addition to the names of major shareholders and members of the board of directors, their titles and the term of their election, and the names of the authorized persons. By signing on behalf of the company or branch () , and paragraph (2) of Article (1) of Chapter Two of the regulatory controls for banks and non-banking financial institutions regarding combating money laundering and terrorist financing issued on 9/19/2016, referred to the information that the bank investigates regarding the legal person, which stipulated that: ((If the customer is a legal person, the data and documents proving the nature of the person and his legal entity, his name and residence, his financial structure, his activities, and the data of the persons authorized to deal with the account under an official authorization, as well as the names and addresses of the main shareholders and members of the board of directors)) () , and the Iraqi legislator referred to the obligations of financial institutions and non-financial businesses and professions specified on the legal person in paragraph (third) of Article (12), and paragraphs (first, second) of Article (13) of the Anti-Money Laundering and Terrorist Financing Law in force, which stipulated that: ((Third: Adherence to the names submitted to it It is prohibited to deal with them, whether they are natural or legal persons, and decisions have been issued against them by local or international authorities related to money laundering and financing of terrorism)) () , and with regard to paragraph (first, and second) of Article (13), it states that: ((First: A - The obligations imposed on financial institutions under the provisions of this law, regulations, instructions, internal regulations and statements issued pursuant thereto shall apply to the branches of institutions operating outside the Republic of Iraq and their subsidiaries, in which they own a majority stake, if these provisions do not conflict with the legislation in force in the countries concerned, B - Financial institutions shall apply these obligations at the level of the financial group, including the policy and procedures for exchanging information within the financial group, Second: Financial institutions that have branches or subsidiaries in which they own a majority stake in countries whose laws prohibit the application of the provisions of this law shall be obligated to notify the supervisory authority of that)) () , and the recommendations of the Working Group (FATF) emphasized the opening of accounts on their behalf, and complete information must be obtained about them and the nature of their business, including: (local companies, or companies and institutions And trust funds).

As for the legal capacity of a legal person such as a company, it is considered to have legal capacity whenever its actual work is proportionate to the purpose for which it was established, as stated in its articles of association, which acquire legal personality from the date of issuance of its certificate of incorporation () , except for a simple company, which acquires legal personality from the date of depositing a copy of its contract with the Registrar of Companies .

Investigating and verifying the customer's reputation, profession, and address, and monitoring his banking operations:

The bank pays great attention to the applicant's reputation. After the bank verifies the information and documents related to his personal identity and eligibility, it learns about his behavior (Al-Shawarby , 2006, 146) . A person's reputation has two basic aspects: one is material with financial value, and the other is moral with moral value (Al-Shamaa , 2009, 48) The bank employee, due to his accumulated experience in the field of financial dealings with clients, can identify the reputation of the business by observing his culture, education, personal behavior, and social status (Ghali, 2015, 39) . Therefore, the Central Bank of Iraq has obligated all banks to verify the reputation of the client without specifying a specific method or entity that can be resorted to in order to know that () . As for the profession of the client, the bank seeks seriously and effectively to verify and investigate it. Therefore, verifying the profession of the applicant lies

in investigating his financial position, as banks want to deal with those who have a lot of money and are rich; To benefit from them in the financial transactions you conduct, and do not deal with business owners and those with illegal professions to be careful of them, and it may be a source of responsibility for the bank (Talaba, 2004, 43) . In addition, the Iraqi legislator indicated in paragraph (w) of Article (1) of Chapter Two of the regulatory controls for banks and non-banking financial institutions, regarding combating money laundering and financing terrorism issued on 9/19/2016, obligating banks to obtain accurate information and data about the customer's profession, which stipulated that ((w - obtaining accurate information about the person requesting to open the account, his activity and profession)) () , and from this legal text, banks are required to investigate and verify the profession of the applicant or may request a receipt for water fees from the applicant. As for the address of the applicant, the bank is keen to verify the address, as it is of great importance in terms of correspondence and communications, sending statements, and verifying the validity of the applicant's identity, which may be incorrect or forged, as verifying the address shows and clarifies whether the applicant's identity is correct or forged. The bank uses several methods to verify the applicant's address. It may send a representative from the bank to the address mentioned by the applicant, or it may ask the applicant for a recent water and electricity bill receipt, or a recent receipt proving the real place of residence, or the bank may send a postal message to the address mentioned by the applicant. If the message is returned to the bank, it indicates that the address is incorrect, and vice versa (Talabeh, 2020, 41) . As for the instructions of Rafidain Bank, the process of verifying the address is verified by presenting the residence card or job ID in order to verify the address () . As for monitoring the customer's banking operations, special monitoring is imposed on financial transactions that exceed the amounts specified by law, or financial transactions that take place in complex and unusual circumstances, or financial transactions carried out by natural or legal persons belonging to countries that do not have systems and laws to combat money laundering operations, or weak application of international standards for combating money laundering (Taher, 2008, 13) , and We fail to note that the Iraqi legislator did not address the banks' commitment to special oversight of some financial and banking transactions in the current Iraqi Anti-Money Laundering and Terrorist Financing Law () , but it mentioned specific cases in which the bank takes due diligence measures when they occur .

Keeping The Client's Records and Documents

The real purpose of keeping the customer's records and documents is to ensure and protect the provision of data and documents related to the customer or the banking transaction he conducted with the bank, and the bank is also allowed to monitor financial and banking transactions, as well as to submit them to the relevant supervisory and regulatory authorities in the event of suspicious transactions such as money laundering, which confirms the credibility and honesty of the bank, as well as to pay responsibility in the face of the regulatory and supervisory authorities to which it is subject; Because he is obligated to take precautions and caution when examining and preserving his records and documents (Al-Hamadi, 2015, 121) , and through that and in view of the importance of preserving the client's records and documents, the Iraqi legislator has organized in many of his laws, which we will study in succession, including: the text of Article (12) of the Iraqi Commercial Law No. (30) of 1984 AD, as amended and in force, which is related to keeping records and commercial books and everything related to the nature of his activity and trade () , therefore the Iraqi legislator made keeping commercial books a legal obligation on the natural and legal person who holds the status of a merchant, and the Iraqi legislator obligated in Article (16) of the Iraqi Commercial Law in force, merchants to keep an exact copy of letters, telegrams and other official documents that are sent or received and are related to his trade, and to keep them in a regular and clear manner () , and the Iraqi legislator also obligated the merchant and his heirs to keep commercial books and documents supporting the restrictions The records contained therein are for a period of seven years, starting from the date of marking the commercial book with the expiry of its pages or the cessation of the merchant's activity. The originals of letters, telegrams and telexes, or their copies, must be kept for a period of seven years, starting from the date of their issuance or receipt. The merchant is allowed to keep copies instead of the original for a period of seven years () . The Iraqi legislator has imposed a fine on every natural or legal person who violates the legal provisions related to keeping commercial books () . The recommendations of the Financial Action Task Force (FATF) also require financial institutions to keep all records and documents related to their clients and their local and international financial transactions for

a period of at least five years (). The bank may also keep records, documents, correspondence, telegrams, notices, books and statements in a modern electronic technical manner instead of the original, for the entire period specified by law, and they have the same effect as the original in terms of proof (). The Iraqi legislator imposed an obligation on banks to keep records and documents in Article (38) of the Banking Law No. (94) of 2004 in force, which It stipulated that: “ Banks shall keep in their files for at least seven years in Iraq the documents related to each of their transactions, which are: A- Customer identification records, B- Application documents and all contracts related to the transaction (including credit agreements , guarantees and mortgage agreements), and a signed written record of the disbursement decision by which it approved the transaction, C- Financial records related to counterparties (counters) including borrowers and guarantors, and any other documentary evidence on which the bank relied in approving the transaction, D- Account agreements with their customers, E- Any other documents specified by the Central Bank of Iraq in accordance with its regulations ” (), In addition, the Iraqi legislator referred in Article (11) of the Anti-Money Laundering and Terrorism Financing Law No. (39) of 2015 in force, to the preservation of records and documents, which stipulated that: “ The financial institution and the owners of the specified non-financial businesses and professions shall keep the following records, documents and papers for a period of five years from the date of termination of the relationship with the customer, or from the date of closing the account, or executing a transaction for a customer The object of whichever is longer, and it includes making them available to the competent authorities as soon as possible, first: copies of all records obtained through the due diligence process in verifying transactions, including documents indicating the identities of actual beneficiary customers, accounting files and business correspondence, second: all records of local and international transactions, whether actually executed or attempted to be executed, provided that these records are detailed to the extent that allows for the re-representation of the steps of each transaction separately, third: copies of the reports sent to the office and what is related to it until the expiration of (5) five years from the date of submission or the date of the final judgment in a lawsuit related to it, even if that period exceeds, fourth: records related to the risk assessment or any information determined from its implementation or update (), and the Iraqi legislator referred to the customer’s records and documents in paragraph (seventh) of Article (12) of the Iraqi Anti-Money Laundering and Terrorist Financing Law in force, which stipulated that: “ Seventh: Submitting all records to the courts and competent authorities upon request ” (), Paragraph (2) of Article (2) of Chapter Four of the Controls for Banks and Non-Banking Financial Institutions regarding Combating Money Laundering and Terrorist Financing issued on 9/19/2016 also indicated that the bank must take into account some conditions when keeping records and documents, which stipulated that: “ The bank must take into account the following conditions when keeping the records and documents stipulated in the previous clause: A- Keep all records, documents and reports in a secure manner, and keep backup copies of them in another place, B- The method of keeping must be easy and quick to retrieve the records and documents kept, so that any data or information requested is provided in a comprehensive manner and without delay ” .

it becomes clear to us that the Iraqi legislator has paid significant attention to preventing the risks of currency smuggling and money laundering, and has obligated the regulatory authorities, as well as banks and financial institutions, to take measures that, if implemented fully, correctly and with full transparency, would contribute to a large extent to preventing these crimes before they are committed.

Conclusion

Electronic commercial transactions in Iraq still need more supervision due to the spread of fictitious banks that sought to exploit the auction of foreign currency (dollar) by the Central Bank, to buy dollars at the official price, and then smuggle them out of Iraq, especially to neighboring countries that are subject to economic sanctions such as Iran and Syria. This requires tightening supervision of these banks, in order to avoid wasting foreign currency and harming the Iraqi economy, and avoiding imposing international economic sanctions on Iraqi banks.

The Anti- Money Laundering and Terrorism Financing Law No. 39 of 2015 did not include a text stating that the crime of money laundering is one of the crimes of economic sabotage, despite our conviction that it is one of those crimes, and even the most deadly to the country’s economy . Accordingly, we propose

amending the law as follows: Which allows for the imposition of a criminal penalty on the perpetrator of the crime as an original penalty, and the imposition of a secondary administrative penalty on him, which is not to be employed in public jobs, hold senior administrative positions, or be nominated for membership in the House of Representatives and local councils, etc.

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