




THE LEGISLATIVE BALANCE BETWEEN BANKING CONFIDENTIALITY AND THE ROLE OF INTEGRITY AND COUNTER-CORRUPTION COMMISSION IN COUNTERING MONEY LAUNDRY CRIMES



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ABSTRACT

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This study illustrates the role of Jordanian Integrity and Anti- Corruption Commission (IACC) in investigating and following up the cases of money laundering and banking frauds through banking transactions. This law was enacted in 2016 to fill up the legislative shortage and now a need is felt to review the performance and efficiency of IACC in countering crimes related to money laundering. The data for the current study was collected through documentation including legal archives, books and journals on Jordanian law and its implementation manuals. The explorative survey method was adopted in this study to understand the problem first and suggest useful remedies. Due attention was paid to triangulate the findings of the documentation survey from actual legal cases and suits filed in the Jordanian courts. The focus of the study however remained on understanding money laundering crimes and challenges faced to maintain the confidentiality of banks. The findings provided an exposure to numerous activities that this commission had been engaged since its inception and prove its success.

Contribution/Originality: This is the first study dealing with the legislative balance between banking confidentiality and the role of the IACC in combating money laundering in Jordan. This study contributes to introducing the implementation of IACC in bringing good governance in Jordan and ensuring transparency, Judicial Equality and Ethical Integrity.

1. INTRODUCTION

The Hashemite leadership in Jordan has strenuously worked towards combating corruption and complementing reform processes. The leadership unambiguously has recognized principles of integrity, transparency, justice and equality for good governance, which are also embedded in the religious and ethical values of the Jordanian society. Hence, in 2012, His Majesty King Abdullah II issued orders to establish a National committee to strengthen Integrity. A National Integrity Charter was prepared in February 2014 along with the implementation plan. Consequently, in June 2016 the charter constituted "Integrity and Anti-Corruption Commission" (IACC) replacing the existing Anti-Corruption Commission and the Ombudsman Bureau under law No. (13) of 2016.

The new Commission aimed at achieving long-term targets and consolidating national integrity, transparency of laws, providing equal opportunity to national institutions, and improving public funds management. The IACC Law also aimed at making amendments in previous laws. Another dimension of IACC was to bring Economical-Judicial reforms, establishing the principles of justice and accountability and good performance in public interest, ensuring adherence to principles of national integrity, fighting corruption and activating values and principles for good governance. In order to protect national public interest, IACC aimed at preventing suspicious acts and practices, and controlling acts of corruption through investigation and prosecution of corrupt acts.

Under Article 16(a) of the IACC Law following acts of corruption can be prosecuted crimes against job duties; crimes against Public Confidence and Trust; Economic crimes; Failure to declare or disclose investments; and all other acts or omissions that prejudice public funds; abuse of power; nepotism favoring friends and relatives; corruption offences related to international conventions. There are however some crimes excluded from its jurisdiction under Article 16(b) namely disputes and complaints between individuals; complaints within the jurisdiction of any other supervisory official body; and disputes already under consideration before courts.

Besides, there are numerous clauses under IACC that complements its implementation. Article 17 of IACC created a Prosecution Department comprising a team of well-trained prosecutors such as Judicial Officers, officials from other ministries, and police officers – to facilitate the commission work and investigation. Article 23 legislates the punishments for corrupt acts committed in violation of Article 16 without prejudice. Article 24 provides protection to witnesses under its Legal Witnesses Program, to keep their identities anonymous. Article 29 mandates that cases on corruption cannot be dropped or withdrawn, or stopped from prosecution and exempted from punishment. Article 30 allowed IACC prescribes allocation of a reconciliatory account for keeping the money and benefits derived from acts of corruption, recovered or seized, until such amounts are delivering to their rightful owners.

Last, but not the least, in general, the ultimate goal of the Commission is to protect the national interests in the following aspects:

- Preventing any encroachment on public funds or illicit profits that threaten treasury revenues, and undermines the role of the state in providing the basic services to the citizens and reducing level of justice in the distribution of development gains.
- Contributing to achieving public security to the utmost degree.
- Enhancing citizen confidence in the state and its institutions.
- Consolidating the spirit of citizenship and belonging.
- Contributing to sustainable development by enhancing investor confidence in the integrity of state institutions, and ensure that the Commission is a secured haven for those who feel injustice and extortion.
- Promoting country's reputation at the external level, and show the bright image of Jordan and the integrity of its citizens.
- Creating a safe and functional environment, conducive to excellence, creativity and sincerity.
- Confirming citizen's right to legal immunity from any potential harm that may result from decisions, actions, and practices of public administration.

The main role of the Integrity and Anti-Corruption Commission is to combat corruption in all its forms and levels, through; the establishment and application of national integrity standards in state institutions; the development of a national environment that rejects corruption; the construction of a protective wall that prevents corruption before it occurs; the application of law enforcement if prevention efforts have failed to prevent cases of corruption; rectifying the performance of the public administration through addressing complaints of public employees and clients, related to its decisions, procedures, practices.

IACC should also motivate foreign investors to take into consideration that Jordan is an attractive hub for future enterprises in the Middle East, since Jordan is located in the heart of the Middle East, and could be considered as a safe area compared with some of its neighboring countries.

2. PROBLEM STATEMENT

This study takes up the issue of banking confidentiality in the context of Jordanian banks. Banking confidentiality in all forms is considered one of the biggest obstacles that hinder the work of IACC particularly in their investigation of money laundry crimes. Banking confidentiality aids IASS in investigating money laundry crime. As a legislative principle, members of IACC cannot obtain and access the financial transactions, or transfers, withdrawals or deposits of the monies or cheques for anyone who is a suspect of committing money laundry crime, since the legal and regular commitment of the bank requires keeping the secrets and banking transactions of the customers.

For this reasons and due to the existence of legal texts that make banking confidentiality an obstacle that hinders the members of the judicial overseeing dept. from knowing the activities of money laundry, not to forget they cannot gather information and make investigations regarding this crime, since it has a special complex type and requires access and having all banking transactions and operations as well as the financial movements of any person.

Hence, comes the problem of this study as the Jordanian Law of Integrity and Counter- Corruption Commission No. (13) of 2016 gives the commission – within the qualitative specialty – the right to investigate and follow up those who commit money laundry crimes and on the mean time, the law does not allow the staff of the judiciary the right to have and access all kinds of banking transactions, not to forget that the Jordanian Banks' Law No. (28) of 2000, prohibits thereof and does not allow the banks to have financial or banking operations for any persons without a request from judicial entities or by the concerned party/person it/him self. This means that there is a legislative shortage which is reflected on the performance and efficiency of the Commission in countering such crime.

Accordingly, this study will define the concept of money laundry, confidentiality and the exception for the banking confidentiality as per the Jordanian laws.

The data for the current study was collected through documentation including legal archives, books and journals on Jordanian law and its implementation manuals. The explorative survey method was adopted in this study to understand the problem first and suggest useful remedies. Due attention was paid to triangulate the findings of the documentation survey from actual legal cases and suits filed in the Jordanian courts. The focus of the study however remained on understanding money laundering crimes and challenges faced to maintain the confidentiality of banks.

3. LITERATURE REVIEW

3.1. Concept of Money Laundering

The law of money laundry and terrorism funding no. (46) of 2007, article (2) defined money laundry crime as: any act that intends to gain or own money or act thereof, or trapper, manage, keep, exchange, deposit, investment, or manipulation therein, or transfer thereof or any other act with an intention to hide or camouflage its resources or their real nature, or location, movement or how to deal with them or in terms of their ownership or the rights relevant thereof, or preventing the knowledge of the one who committed the crime of obtaining money, provided that they are gained from any of the crimes stipulated in article (4) of this law.

It is noted here that the Jordanian legislator used various terms to express the criminal act committed by the convicted in the crime of money laundry. It used the terms ownership, which means owning the things, and transport, meaning the movement of monies from one place to another within or outside the borders of the state,

and the term: management, which mean limiting acting in the monies by any means. In addition, it used the term, transfer, which means conducting banking or embanking acts through changing the shape of the monies whether to movable or movables or shares or other forms, it also used the term (manipulation) in the value, which means, changing the value of the monies by increasing or decreasing and not using their real value.

The researcher thinks that the legislator restricted himself by mentioning all forms of the criminal act relevant to money laundry. It was better to use an expression that may absorb all of the current forms or any forms that could be imagined in the future or mentioned as an example but not limited thereof. Moreover, it is noted that the Jordanian legislator has expanded the scope of money laundry crime, where he considered the place of money laundry crime as monies obtained from any crime that is subject to punishment in accordance with the regulations in force in the Kingdom or the crimes that are stipulated by international agreements on which Jordan ratified to consider them as money laundry crimes.

In addition to that, the criminal jurisdiction contributed in mentioning some concepts of this crime. There are those who defined them as: compound economic and financial operations with the aim to give legal capacity on the monies gained through illegal activities or through hiding the real source of the monies so that the criminals will be able to make use of them in a legal and correct way (Al-Khateeb, 2005). On the other hand, this crime has been defined as: including or merging the monies gained illegally – such as trading in drugs or weapons- to legal monies which result in difficulty to sort these monies¹.

The above said concept stated that money laundry crime revolves around the idea the availability of illegal monies gained through committing specific crimes, with an attempt to hide their source and make them legal, consequently, money laundry crime is related with illegal monies with an attempt to make them legal, and therefore, money laundry crime can be defined as: giving legal capacity for monies gained through illegal way.

It is worth mentioning that money laundry crime is considered an independent one from the original crim. The Jordanian law punishes it even if the original one is not subject to punishment (Al Qalyobi, 1992) especially knowing that money laundry crime is a crime that is a branch of the original one committed by the convicted. Here, there should be an original crime committed, such as trading/ tracking in humans, drugs, weapon smuggling and other crimes. Accordingly, the convicted attempts to make these monies legal through employment in investment and real estate projects that are considered originally legal.

3.2. Concept of Banking Confidentiality

Banking confidentiality is considered among the most important aspects for the banking work; the banks-based on legal rules and regulations- should comply to keep the secrets of customers and their transaction, unless if the law stipulates otherwise (Awadh, 1987).

The secret of banking business is represented in all matters, information or facts that related with the bank's knowledge through a banking transaction or due to it, whether the customer declared it or not in terms of his deposits, monies, banking facilitations, loans, guarantees and the cheques that a customer withdraws on the bank and other documents (Mohammed, 2006).

As a result, it becomes clear that banking confidentiality is related with two parties: the customer and the bank. The customer's interest is hidden in having literary benefit in keeping his accounts and financial transactions. If the bank uncovered the secrets of the customer, then it may cause damage to him², while the bank's interest is

¹Article (4) of the Law of Money Laundry and Counter-Terrorism , No. 46 of 2007.

²Article (73) of the Jordanian Banks' Law, No. 38 of 2000 and amendments stated: it is prohibited for any current or former bank administrators to disclose any information or data about the customers, their accounts, deposits, their treasures or any of their transactions, nor to uncover them or allow others access them other than in the cases allowed in accordance with the rules of this law. This prohibition applies for all those who access – due to their job or task- during his work either directly or indirectly on such data and information, including the employees of the Central Bank and account auditors.

represented in a material benefit in terms of investing the monies deposited by the customers. In addition, there a literary benefit relating with the reputation and development of the bank in terms of investing the customers' monies and thus preserve their interests. Accordingly, the bank's non-adherence with the confidentiality, results in mistrust between the customers and the bank, which in return, negatively affects the bank (Salamah, 1988).

Within the scope of these protected interests for both the customer and the bank, the following question can be raised: is there a high interest for the state that can be preferred on the above said ones especially in case there is a suspicion of committing a money laundry crime and therefore, is it possible to suspend the principle of banking confidentiality to achieve the state's high interest through crime countering?

In order to answer this question, it was necessary to discuss the exceptions on the principle of banking confidentiality and money laundering which are stated as findings of the current study.

4. RESULTS, FINDINGS AND DISCUSSIONS

The Kingdom of Jordan is a member of Middle East and North Africa Financial Action Task Force (MENAFATF) which is engaged in the assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT).

The objectives of MENAFATF are:

- To adopt and implement the FATF 40 Recommendations on combating money laundering and financing of terrorism and proliferation.
- To implement the relevant UN treaties and agreements and United Nations Security Council Resolutions.
- To co-operate among each other to raise compliance with these standards within the MENA Region and to cooperate with other international and regional organizations, institutions and agencies to improve compliance worldwide.
- To work jointly to identify issues of regional nature related to money laundering and terrorist financing, and to share relevant experiences and to develop solutions for dealing with them.
- To take measures throughout the region to effectively combat money laundering and terrorist financing in a way that does not contradict with the cultural values, constitutional frameworks and legal systems in the member countries (Timothy, 2005).

So far MENAFATF has resolved numerous disputes and cases related to banking fraud, money trafficking, loans, these speak of the success and popularity of this institution in bringing justice in the MENA region. A few of these cases that were resolved are as under:

- Bank of Credit and Commerce International: Unknown amount estimating in billions, of criminal proceeds, including drug trafficking money, laundered during the mid-1980s and was seized.
- BTA Bank: \$6 billion of bank funds were embezzled or fraudulently loaned to shell companies and offshore holdings by banks former chairman and CEO Mukhtar Ablyazov. The case was discovered and resolved.
- Charter House Bank: Charter House Bank in Kenya was placed under statutory management in 2006 by the Central Bank of Kenya after it was discovered the bank was being used for money laundering activities by multiple accounts containing missing customer information. More than \$1.5 billion had been laundered before the scam was uncovered.
- Danske Bank + Swedbank: \$30 billion - \$230 billion US dollars laundered through its Estonian branch was revealed on 19 September 2018.
- HSBC, in December 2012, paid a record \$1.9 Billion fines for money-laundering hundreds of millions of dollars for drug traffickers and terrorists.

- Institute for the Works of Religion: Italian authorities investigated suspected money laundering transactions amounting to US\$218 million made by the IOR to several Italian banks.
- Liberty Reserve, in May 2013, was seized by United States federal authorities for laundering \$6 billion.
- Standard Chartered: paid \$330 million in fines for money-laundering hundreds of billions of dollars for Iran. The money-laundering took place in the 2000s and occurred for "nearly a decade to hide 60,000 transactions worth \$250 billion".
- BSI Bank, in May 2017, was shut down by the Monetary Authority of Singapore for serious breaches of anti-money laundering requirements, poor management oversight of the bank's operations, and gross misconduct of some of the bank's staff.
- Deutsche Bank was accused in a vast money laundering scheme, dubbed the Global Laundromat, involving secret Russian accounts that were transferred from European Union banks in Estonia, Latvia and Cyprus between 2010 and 2014. Newspaper sources estimated the total value of laundered currency to be as high as \$80bn. The bank is also under investigation for its involvement in Europe's biggest banking scandal through Denmark's Danske Bank, which laundered €200bn, also from Russian sources.

Article (72) of the Jordanian banks' Law, required the bank to consider full confidentiality for all customers, their deposits, documents and treasures and it is prohibited to disclose any information either directly or indirectly without a written consent from the owner of the account, deposit or treasure, or by one of his inheritors or through a resolution from a competent judicial body that views an existing judicial dispute, or as a result for one of the case allowed in accordance with the rules of this law. Such prohibition continues even if the relationship between the customer and bank expires for whatsoever reason.

It is noted here that the law defined to cases where it is possible to access banking accounts of the customers. The first case: a written consent from the owner of the account or deposit or treasure or any of his inheritors; The second case: a resolution from a judicial entity that is competent to view an existing dispute. Here, it is noted that there is not problem about access to the banking accounts for any customer once there is a suspect of committing a money laundry crime that is viewed before the court. However, the problem revolves during the initial investigation, namely the stage of data collection and inferences implemented by the staff of the judicial control.

The question raised here is: can the members of the judicial control proceeded in data collection and investigation of the money laundry crime within the scope of the Law of Integrity and Counter – Corruption texts? In other words, can the members of the judicial control view and access the accounts, banking transactions, money transfers and know the banking balances for any customer suspected of committing money laundry crime?

When answering this question we find that the Law of Integrity and Counter- Corruption has given the president and members the capacity of judiciary control enabling them to do their tasks. The council will name the employee who enjoys such capacity (Al-Otair, 1996). Accordingly, the president of Counter Corruption Commission and the members of the council and employees who enjoy the capacity of judiciary control through a resolution from the Council of the Commission shall implement the rules of this law, by proceeding in data collection and investigation for any corruption crime. As a result, this law gave the Commission the following powers³.

1. Investigating financial and administrative corruption and uncovering violations and data collection in relevant information, as well as starting investigations and proceeding with the necessary administrative and legal procedures.
2. The Commission may begin the necessary investigations to follow up any corruption issues either by itself or based on a notice received by any entity. If the result of investigation proved that the notice was false or

³Article (16) of the Law of Integrity and Counter Corruption Commission.

malicious, then the informant will be referred to the competent judicial entities as per the applied legal principles.

Therefore, the task of Counter- Corruption Commission is to investigate financial and administrative corruption and collecting data about any crime that are subject to its powers including money laundry crimes⁴. After investigating the crimes as a first action for inference as per the status, the public prosecution may start the procedures of lawsuit without making any inference procedures. However, the status quo shows the opposite; it might be difficult for the public prosecution to reach positive results without having enough information, and this can not be done through the judiciary control based on the human, material and scientific capacities it has, which may enable it collect data and present them to the public prosecution as the latter will make initial investigation that aims at enhancing and insuring the evidence⁵. This can be achieved through the judiciary control which in return, refer the case to the competent court in order to take the necessary actions to prevent such crimes (Nammour, 2013).

It could be said that the means of inference and crime investigations were not mentioned in the law of Principles of Penal Trials as an example, but the legislator provided the most important means since the essence of inference is data collection. Therefore, any act that may lead to any piece of information which result in uncovering the truth and achieve the purpose of inference is admissible to the employee of the judicial control as long as the members of this entity comply with the principle of legitimacy so that such work is compatible with the law both as a text and soul (Husni, 1988).

It is worth mentioning that among the most important tasks of the judicial control staff during the stage of data collection is to know the methods of money laundry and how to obtain enough information about all banking transactions and cash transfers, which may take place by depositing large amounts of money by individuals or a company that seems illogical, or through depositing or withdrawing of calques that have large amounts of money, or by increasing the size of cash deposits for any person without a clear reason within a very short period.

In addition, this relates to depositing cash amounts money on various stages or periods regardless of their value, but in total they are very large amounts of money, or by exchanging large amounts of money notes from small values with money notes that have large value without clear reasons, or by transferring large amounts outside the Hashemite Kingdom of Jordan, or receiving transfers from abroad, accompanied with instruction to pay in cash or by depositing large amounts of money using ATM to avoid direct contact with the bank employee where such deposits are not compatible with normal income of that person (Husni, 1988).

Moreover, money laundry operations may take place through the accounts of persons such as keeping various accounts for the same person and when he depots cash amounts. They all represent a large amount of money that is inconsistent with the nature of his work, or opening accounts with various banks within one geographical region, then transferring the balances of such accounts to one account then transferring them abroad. Or, implementing withdrawals of large amounts from an account where normal withdrawals implemented through it are relatively small, or from an account that received unexpected large amounts of money from abroad. In other cases, a large number of people deposit amounts in a specific account without a justified explanation. However, such crime can be implemented through dealing related with investment such as buying money notes to keep them in deposit funds with the banks, but such activity is not consistent with the position of that person. On the other hand, it may be through making borrowing transactions in return for reserving deposits of a company or companies abroad, especially if it is known as trading in drugs or human and other kinds of crimes, or by bringing large amounts of money from abroad for investment in foreign currencies or money notes, so that the size on investment is not

⁴Article (7) of the Law of Integrity and Counter Corruption Commission.

⁵Article (5) of the law states: based on this law, money laundry are a kind of corruption"

compatible with the nature of the customer's financial position, or buying or selling money notes repeatedly within unnatural conditions⁶.

On the other hand, among the steps that should be taken to counter money laundry operations are investigation and looking for the illegal monies and confiscating thereof, not to forget the study, analysis of monetary operations, data collection about the development of money exchanges. However, the implementation of such steps require uncovering the deposits that are available in the financial institutions especially the banks, which result in a clash with banking confidentiality (Sahfi, 2001).

It is noted that when this law was amended in 2014, a crime of money laundry was added to be among the qualitative speciality of the Commission, and at the same time this law did not give the members of the judiciary control the right to obtain or access the bank accounts as well as all banking operations, cash transfers and withdrawal movements for any amount by the suspect.

5. RECOMMENDATIONS

1. The study recommends the Jordanian legislators to add a text to the Law of Counter- Corruption that gives it the right to access and view all financial and banking operations, to be able to gather information about this crime easily. This can be achieved by giving the power to the IACC by asking the Central Bank to provide the Commission with all financial and banking operations and assets about a suspect during the initial investigation phase.
2. It is also urged that the Jordanian legislators should amend article (72) of the Banks' Law, by adding another case that allow the Commission access all financial and banking transactions for any suspects, which represents an exception for banking confidentiality.

6. CONCLUSION

Banking confidentiality is considered among the most difficult legal obstacles that fact Counter- Corruption Commission upon investigating money laundry crimes, since the Law of Counter-Corruption and its amendments No. 62 of 2006 is lacking to proceeded in the initial investigation stage since such legal texts exist without any amendmenmt. The inability of Counter- Corruption Commission to obtain information and investigate (by the judicial control) since the Law of Banks and amendments No. 28 of 2000 prohibits access to bank accounts unless if there is dispute under hearing before the judicial bodies, or based on a request of the concerned person himself.

The rapid development in banking business, which is based on information technology that link the local banks with the international ones, resulted in forming a suitable infrastructure to commit money laundry crimes. On the other hand, due to the negative dangerous effects caused by money laundry operations for all sectors especially the economic ones and mainly banks, which made the need to counter thereof among the priorities of the countries. As a result, this requires all public, private, local and international entities to take all necessary legal actions for prevention. Moreover, we notice that, from a practical perspective that the Commission sometimes receive complaints and information relating to suspicions of committing money laundry crimes. As a result, the Commission attempts to obtain information about the deposit and transfer transactions and follows up the monies not to forget access to the suspect's financial accounts. However, the obstacle of banking confidentiality which is claimed or justified by Money Laundry Unit represents an obstacle before data collection and investigation by the judicial control in the Commission. Furthermore, banking confidentiality cuts the road before following up the monies subject of money laundry by the competent entities that implement investigation. Consequently, this represents an obstacle before the investigation bodies when the issue requires uncovering some documents, or having necessary information to conduct investigation in money laundry activities (Hamadah, 2001).

⁶Al-Hammouri, Isam, *ibid*, p. 44

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