

Iraq's New Draft Anti-Money Laundering Law

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This article considers a recent draft replacement AML Law in Iraq, which is a country that is recognised by the World Bank as a high-risk jurisdiction, suffering from high levels of corruption and weak financial control systems. This is largely due to the war and the relative infancy of the subsequent legal and financial systems. The draft AML law indicates an effort by the Iraqi government to bring Iraq's fight against money laundering to an international standard.

The Current Position

The Financial Action Task Force ("FATF") is an inter-governmental body that promotes the effective implementation of measures to combat money laundering, terrorist financing and other threats to the international financial system. One element of this work is the publication of a series of Recommendations that FATF members are called upon to implement. Although Iraq is not a member of the FATF, it is a member of the Middle East and North Africa Financial Action Task Force ("MENAFATF"), which itself is one of the Associate Members of the FATF.

A Mutual Evaluation Report on Iraq's compliance with the FATF Recommendations for combating money laundering and terrorist financing was conducted by the World Bank and adopted by the MENAFATF in November 2012 ("2012 Report").

The 2012 Report was based on the law in place at that time, which was Coalition Provisional Authority Order No. 93: Anti-Money Laundering Act of 2004 ("Current Law"). Iraq was identified as being 'compliant' with just two of the 49 FATF Recommendations then in place and 'non-compliant' with 36, the remainder being 'partially compliant'. The 2012 Report listed recommended actions, designed to improve Iraq's compliance, in order of priority. 'Criminalisation of money laundering' was at the top of the list.

A New Law

A draft AML law ("Draft Law") was issued in 2014 and approved by the Council of Ministers on 30 June 2015. It is, at the time of writing, being reviewed by Parliament for ratification. This new and enhanced law shows signs of improvement and a potential to tackle the issues highlighted in the 2012 Report.

Definitions

The Draft Law introduces a more in-depth 'Article 1: Definitions' and includes a number of new definitions so that the law can be interpreted correctly and clearly. It has been expanded to include internationally-recognised AML definitions and defines terms such as "terrorist act" and "terrorist organisation". The Draft Law contains a wider range of definitions than the Current Law, which also lacks the in-depth explanation of terms offered by the Draft Law.

In a major broadening of AML regulation, the Draft Law will apply to, and therefore impose requirements upon, financial and non-financial professionals such as accountants, lawyers, real estate brokers, and service providers, which are not covered by the Current Law. This is in addition to financial institutions, which are subject to the Current Law.

Money Laundering and Predicate Offences

Article 2 of the Draft Law defines money laundering as a crime that can be committed by transferring, converting, depositing, investing, exchanging or managing the proceeds of an unlawful activity, or by concealing the source of such proceeds.

The Draft Law broadens the mens rea of the offence, in that an offender will have committed the offence of money laundering not only if he actually knew that the funds were the proceeds of crime but also if he 'ought to have known' that they were.

Article 3 clarifies that a conviction for money laundering does not depend on the issuance of a judgment for the predicate offence. In comparison, the Current Law does not address any conditions in regard to predicate offences or the fact that money laundering is an independent crime.

Combating Money Laundering and Terrorist Financing Council

The Draft Law requires the establishment of a new Council for Combating Money Laundering and Terrorist Financing ("Council") within the Central Bank of Iraq ("CBI"). The Council should consist of representatives from the Ministries of Foreign Affairs, Justice, Commerce, Finance and Interior, the Anti-Terrorism Defence Unit and other government bodies.

The Council will be the authority responsible for supervision of AML and counter-terrorist financing. Its duties will include:

- Setting policies and AML and counter-terrorist financing programs;
- Developing standards and ways for discovering the methods of money laundering;
- Setting appropriate training programs for the employees who are specialised in combating money laundering and terrorist financing;
- Requesting financial institutions and other non-financial professions to submit reports regarding financial transactions;
- Outlining and evaluating the risks of money laundering and terrorist financing in Iraq.

The new Council will have a wide supervisory and regulatory role to minimise the threat of money laundering and related crimes.

Combating Money Laundering and Terrorist Financing Office

The Combating Money Laundering and Terrorist Financing Office ("Office") shall be established within the CBI, as a public department having its own legal capacity and financial and administrative independence.

The role of the Office will be to receive and deal with suspicious transaction reports, including the receipt of proceeds of a predicate offence, money laundering or terrorist financing by financial institutions and other financial, commercial, and economical establishments. The Office is also responsible for representing Iraq in international organisations and at conferences that are related to money laundering and terrorist financing.

The Committee for Freezing Terrorist Funds

Another specialised committee within the CBI is the Committee for Freezing Terrorist Funds, which deals with the freezing of funds belonging to terrorists or other people specified or named by the United Nations Security Council's Counter Terrorism Committee, or those that are classified as a terrorist, either at a

national level or at the request of another country.

This committee will receive requests sent to the Ministry of Foreign Affairs from foreign countries regarding asset freezing for Iraqi residents, and decide if the request meets the criteria required for asset freezing.

International Cooperation

Whereas the Current Law does not deal with international cooperation and extradition, the Draft Law addresses the concerns of the 2012 Report by introducing a number of articles to deal with mutual judicial cooperation and the extradition of criminals involved in money laundering and terrorist financing crimes. These include specifying that:

- money laundering and terrorist financing are crimes for which Iraq will offer international cooperation on the basis of treaties or the principal of reciprocity;
- the offence alleged must be a crime in both countries (dual criminality);
- it is the act, rather than the classification or name given to an offence, that will be considered;
- (articles used in money laundering and terrorist financing offences may be returned to the requesting country; and
- Iraq will execute foreign judgments for confiscation in respect of money laundering and terrorist financing, subject to the rights of bona fide third parties.

In addition, the Combating Money Laundering and Terrorist Financing Office shall exchange information with its equivalent foreign entity, whether the information is requested or not. However, use of such information is restricted to the combating of money laundering or its predicate offences.

Penalties

The punishments in the Draft Law are undoubtedly harsher than those in the Current Law, whether for an individual, legal person or financial institution, and cover a wider range of topics. For example, the maximum penalty for the money laundering offence under the Draft Law is 15 years, as oppose to 4 years under the Current Law. The Draft Law punishes those who are convicted of a terrorist financing crime with life imprisonment, whereas the Current Law focuses more on fines and imposes imprisonment for not more than two years.

The Draft Law also outlines certain procedural action to be taken in circumstances where a financial or non-financial professional or institution violates any of the provisions set out in the Draft Law. For example, withdrawal of a license, restricting the power of managers or preventing those who violate the law from practising in the same field of work for a certain period.

Exclusion of Liability

The Draft Law addresses exclusion of liability, as does the Current Law. Article 50 of the Draft Law states that whoever reports, in good faith, a suspicious transaction or a violation of this law, or offers information or data related to it, shall be exempted from civil, criminal, or administrative liability, even if it later transpires that the report is incorrect.

Whistle-Blowing

Notably, whereas the Current Law addresses whistle-blowing and provides whistle-blowers with protection, this provision does not appear in the Draft Law. This is a major absence and creates a real disincentive for employees to report suspicious transactions in their workplace.

However, the Draft Law offers further exemption from punishment to those who notify the authorities of a conspiracy to commit a money laundering or terrorist financing offence, with the condition that the report must be made before the actual crime is committed. The court will have discretion as to whether to

exempt or reduce the punishment and will take into account whether the notification assists in capturing the remaining criminals.

Conclusion

The Draft Law demonstrates that the Iraq government is making serious efforts to improve the country's laws and regulations in order to ensure that it complies with international standards and is kept off the FATF blacklist. A Member of the Iraq Parliament, Mr. Haitham Aljabori, stated his concern in a news interview in August 2015, saying that "further delay in ratifying the new AML law, would put Iraq on the FATF blacklist".

We will keep watching with interest to see when the Draft Law becomes operational.

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