

DOI 10.31489/2023L2/75-81

UDC 343.3/7

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AML in Kazakhstan: Progress, Challenges and Future Prospects

This academic article aims to analyze the current state and dynamics of developing the Anti-Money Laundering (AML) process in the Republic of Kazakhstan. The article reviews the regulatory framework for AML/CFT in Kazakhstan and discusses the government's efforts to combat money laundering in the country. The article also examines the role of financial institutions in implementing AML/CFT measures and the challenges faced by them. Based on the study and analysis of the national legislation of the Republic of Kazakhstan, the current problems of the formation and development of a system of counteraction to the legalization of criminal incomes are considered, and as a result, necessary measures will help to realize a necessary level of counteraction in the country. Also, the attention is focused on new money-laundering techniques such as using digital assets, which are actively used by criminal networks nowadays. In addition, the article highlights the recent developments and initiatives taken by Kazakhstan to strengthen its AML/CFT regime.

Keywords: money laundering, criminal proceeds, financial monitoring, financial institutions, Financial Action Task Force (FATF), digital assets, Financial Monitoring Agency, financial operations.

Introduction

Money laundering is recognized by global society as a serious threat to all countries, which is transnational in nature and can undermine the economic system of the country. The laundering of the proceeds of crime has a negative impact and effect on the economic activity of the state, affecting fair competition and increasing the size of the shadow economy.

The Republic of Kazakhstan is a rapidly developing country in Central Asia with a growing economy and a well-established financial sector. However, like many other countries, Kazakhstan faces the challenge of combating money laundering and terrorist financing.

In Kazakhstan, in January-October 2022 the country recorded 42 criminal offenses on legalization of money and other property obtained by illegal means — 55.6 % more than a year earlier. The established amount of damage for the period amounted to 3 billion tenge — twice as much as a year earlier [1].

An important threat to the Republic of Kazakhstan is the problem of capital flight, which for many years is directly linked to money laundering. According to international ratings, Kazakhstan is among the 20 countries with a “stable” outflow of capital abroad. National Bank data show that from 2010 to 2021, the gross outflow of direct investment from Kazakhstan (mainly to Cyprus, the Netherlands, the Cayman Islands, and Seychelles) amounted to about \$4.5 billion per year or \$53.4 billion for the entire period [2].

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The issue of digital assets, which in recent years have become developed in the country, deserves separate attention. Nowadays, digital assets pose a particular danger, facilitating the use of new methods of laundering criminal proceeds. The new payment systems facilitate money launderers' criminal activity. These systems are more convenient than cash as they allow large sums of money to be moved with ease, transactions are possible without the direct involvement of the persons concerned, which favors the use of fake buyers and false identities, the absence of credit risk, as there are usually prepaid, obstructing service providers from obtaining complete and accurate customer information, which allows us to conclude that it is necessary to take measures of legal regulation in this direction [3].

The government of Kazakhstan has recognized the threat posed by money laundering and has taken various steps to prevent it. This article analyzes the current state and development of the AML process in Kazakhstan, and proposes measures needed to improve the fight against this type of crime.

This article aims to determine the current situation and development of the AML/CFT system in Kazakhstan, identify the main problems of combating money laundering in the country, and develop a set of recommendations to improve the national system of combating criminal activity in the research.

The realization of the goal necessitated the solution of the following main issues: the scientific and theoretical foundations of the concept of money laundering were studied; the main directions of combating money laundering in Kazakhstan were identified; active role of financial institutions in the implementation of AML measures was determined; the measures necessary for the process of combating this type of crime were proposed.

Methods and Materials

In the process of writing the article general and special scientific methods of knowledge of social and legal reality were applied, such as analytical, formal-logical, comparative-legal, and system-structural.

The theoretical basis consisted of the works of well-known Kazakhstani and foreign scientists, who have made considerable input into the development of methodology of research of such crime as money laundering; a literature review on money laundering was made; materials of criminal cases and court decisions were studied; data of statistical reports of the Committee for Legal Statistics and Special Accounting under the General Prosecutor's Office of RK on the number of registered criminal cases were analyzed.

Results and Discussion

The term "legalization" is used interchangeably with the term "laundering" of funds obtained by criminal means. According to P.V. Zhubrin's definition, legalization of criminal proceeds should be understood as the commission of transactions and financial transactions disguised as legitimate transactions with criminal proceeds in order to conceal their criminal origin and give legitimacy to their possession, use and disposal [4; 7].

According to S.B. Chernov, the laundering of "dirty" money refers to any activity or transaction that is implemented in order to disguise the sources of origin, existence, distribution, redistribution and consumption of funds obtained as a result of a crime [5; 15].

P. Gilmour determined money laundering as an organized activity, whereby well-connected individuals operate collectively to pursue power or control and are motivated to conceal illicit funds from law enforcement [6; 45].

Summarizing the above positions of modern views on money laundering, we can say that all of them, despite the diversity of points of view, converge in the main one — money laundering is any operation implemented in order to disguise the origin of criminally acquired money and other funds, deliberately giving them a legitimate appearance.

The problem of anti-money laundering is becoming increasingly important both in Kazakhstan and around the world, which predetermines the creation of mechanisms for its suppression both at the international and national levels.

To launder the proceeds of crime, criminals use various schemes such as:

- Online Gambling: enables individuals to remit high amounts of money in a relatively anonymous and untraceable way. Criminals may use online gambling platforms to deposit illicit funds and then withdraw them as apparently legitimate winnings.

- Round Tripping: Numerous funds circulate through a significant number of money transfers from the account to the account of various companies and organizations before ending up with the money launderer.

- Reselling Assets: Criminals who launder money can purchase expensive property for cash and then sell it to make the money legal.

- Creating a false paper trail: The intentional use of documents to disguise the true sources, owners, and locations of criminally derived proceeds.
- Cryptocurrency: Cryptocurrency offer a high degree of anonymity and can be easily transferred across borders without the need for intermediaries such as banks. Criminals can use cryptocurrencies to hide the origin of illegal proceeds and transfer them without a trace to other parties.
- Smurfing: Smurfing relates to the technique of placing by dividing the total amount of money into smaller pieces.

Realizing the high degree of danger of criminal capital, and its adverse effect on the economy, politics, and society, the UN, the Council of Europe, and FATF (Financial Action Task Force on Money Laundering) indicate in their documents the need to strengthen the combat against money laundering by applying legislation, law enforcement, scientific and other measures of law enforcement, scientific and other prevention of such crimes [7].

At this stage, the government of Kazakhstan has already taken a number of significant actions to combat money laundering and terrorist financing. One of the most important decisions was the creation of the Financial Monitoring Agency (FMA), which was based on the President's personal instruction and FATF recommendations. This organization is intended to carry out control and implementation functions in the sphere of AML/CFT. The FMA has also established a system of suspicious transaction reporting conducts financial investigations and ensures the effective functioning of the financial monitoring system in the Republic of Kazakhstan.

Kazakhstan is a member of the Financial Action Task Force (FATF), an intergovernmental organization main purpose of which is to develop international standards to combat money laundering and terrorist financing and to monitor their implementation by member countries. Another important step for Kazakhstan was its membership in the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) in 2004, as a result of which the country passed several mutual evaluations by the EAG and FATF to assess its compliance with AML rules. In 2019, Kazakhstan underwent its third mutual evaluation by the FATF and was found to have made considerable headway in improving its AML/CFT regime since its previous evaluation in 2011. However, the evaluation also identified areas where Kazakhstan could improve its AML/CFT framework, such as enhancing the risk-based approach, strengthening the supervision of designated non-financial businesses and professions, and increasing the effectiveness of asset freezing and confiscation measures.

Since then, Kazakhstan has taken action to eliminate the weaknesses revealed in the Mutual Evaluation Report and has made strides in implementing the FATF recommendations. For example, Kazakhstan has made a number of significant changes to AML/CFT legislation, in particular introducing updated rules for certain categories of non-financial businesses and professions. Kazakhstan has also improved its cooperation with other countries and international organizations on AML/CFT issues and has intensified its endeavor to promote public understanding of AML/CFT risks.

The AML regulatory framework in Kazakhstan is mainly governed by the Law on Combating Legalization (Laundering) of Illegally Obtained Income and the Financing of Terrorism, which was passed in 2009. Under the AML Law, various entities, including banks, insurance companies, and other financial institutions, as well as non-financial institutions such as casinos, real estate agencies, and dealers in precious metals and dealers in precious stones, are required to implement AML measures. These measures include, first, customer due diligence (CDD), second, mandatory systematic monitoring of transactions and control of customer relationships, and third, immediate reporting of suspicious customer transactions to the Financial Intelligence Unit (FIU).

In addition to the AML/CFT law, Kazakhstan has issued a number of regulations and guidelines to assist in the enforcement of AML/CFT policies. For example, the FMA has issued guidelines on risk-based AML/CFT supervision and guidelines on the implementation of the AML/CFT law for subjects of financial monitoring. The National Bank of Kazakhstan has also developed and issued regulations on AML/CFT measures aimed at banks and other financial institutions. In addition, an essential step for the Republic of Kazakhstan has been the implementation of various international standards and best practices in the area of AML, including the recommendations of the FATF.

Financial institutions play a crucial role in implementing AML measures in Kazakhstan. They are required to conduct customer due diligence, monitor transactions, and inform about any suspicious transactions in the FMA. However, financial institutions face several challenges in implementing AML measures, such as inadequate resources, lack of AML expertise, and insufficient technology infrastructure.

According to the FMA of Kazakhstan, which is responsible for implementing AML measures and regulating financial institutions, the number of suspicious transaction alerts provided by financial institutions in Kazakhstan increased from 25,524 in 2020 to 27,196 in 2021 [8]. The FMA has attributed this increase to the improving AML awareness among financial institutions and the general public, as well as the strengthening of the AML regulatory framework in the country.

To monitor the current money laundering situation, Kazakhstan conducts an audit that determines the current state and threats in this area. In 2021, the second national AML risk assessment was conducted, following which the main risks, threats, and vulnerabilities were identified.

Using statistical techniques and data in the criminal law sphere, we can conclude that a high risk of AML crimes is: tax crimes, illegal economic activity, corruption, embezzlement of budget funds, fraud, and drug trafficking.

A high AML/CFT risk is assigned to the banking sector, the sector of microfinance organizations, as well as the gambling business. Based on national risk assessment results, all participants in the AML/CFT system are implementing measures aimed at reducing the identified risks and vulnerabilities.

According to T. Mussin, expert in the field of compliance and AML/CFT, an important role in implementing these measures is assigned to an AML/CFT expert (in international practice — AML Officer or Money Laundering Reporting Officer) of the organization, who is responsible for complying with all requirements in combating AML/CFT on the basis of legislation, international FATF recommendations and requirements of internal documents of the organization [9].

As Compliance Officer I. Kojumov noted, the role of a Compliance Officer is to ensure that employees and the company comply with legal requirements, including foreign ones if they have or may have an influence on the company and internal company rules. For companies providing financial services, Compliance Officer's role is to help the company achieve its strategic goals while managing the associated regulatory and financial crime risks [10].

In general, the dynamics of the state of development of the AML / CFT system in the Republic of Kazakhstan in the period from 2019 to 2021 show positive results. The number of financial monitoring entities covered by the AML/CFT system increased from 6,000 to 9,000, including 2,000 entities from the financial sector and 7,000 entities from the non-financial sector [11].

However, despite the implementation of laws and regulations, the AML system in Kazakhstan faces several challenges. Some of the main challenges include:

- Weak implementation of AML laws: There are reports of weak implementation and enforcement of AML laws and regulations in Kazakhstan. This is partly due to a lack of resources, capacity, and training among law enforcement and regulatory authorities.

- Capital flight: Each year huge amounts of illegal money are transferred out of the country by citizens, including officials. However, there are still no accurate estimates of the scale of this problem.

- Risks of using digital assets in money laundering and terrorist financing. The lack of approaches to identify all participants in transactions with digital assets is a challenge to the current global AML/CFT system and necessitates its improvement.

- Corruption: Corruption remains a significant issue in Kazakhstan, which could undermine AML efforts. There are reports of corruption in the financial sector, including money laundering, which can be conducted through banks and all other relevant financial organizations.

The problem of identifying the ultimate beneficiary: Identifying the ultimate beneficiary is an important means of ensuring the transparency and legitimacy of business [12; 181]. The lack of transparency in the ownership structure of legal entities creates opportunities for illicit activities such as money laundering and terrorist financing.

In recent years, Kazakhstan has taken several initiatives to strengthen its AML regime. In 2022, President Kassym — Jomart Tokayev approved the Concepts for the development of financial monitoring for 2022-2026, which aims to enhance the effectiveness of AML measures in the country. The strategy includes measures such as enhancing cooperation between government agencies, improving the regulatory framework, and increasing public awareness of AML risks. The key vision of development is to further strengthen the image of Kazakhstan as a responsible participant in the world system of combating money laundering using appropriate measures to protect the financial system and economy of the country from the real threats of money laundering and terrorist financing.

Kazakhstan has already taken important steps to combat money laundering in order to strengthen the national AML/CFT system. Some of the key initiatives include:

The return of assets: In 2022, the President decided to create an interdepartmental commission, headed by the Prosecutor General, to carry out comprehensive work on the return of funds illegally exported by citizens of Kazakhstan abroad. The head of state intends to personally supervise the work of the commission. Also within the framework of developing and improving this direction, Kazakhstan has introduced the institution of national public officials (NPL) — they now also fall under the control of subjects of financial monitoring.

Digital assets: Amendments to the AML/CFT legislation, which provide for the inclusion of persons engaged in business activities with digital assets in accordance with the Law of the Republic of Kazakhstan “On Informatization”, are currently being introduced [13]. The Agency has already signed a memorandum of cooperation with the international cryptocurrency exchange “Binance”. Its main purpose is to exchange information on the identification and blocking of transactions using digital assets obtained by criminal means, as well as those intended for money laundering and terrorist financing. To work effectively in this area, IT tools will be used to support the tracking of illegal financial transactions.

Enhancing the AML/CFT legal and regulatory framework: Kazakhstan actively applies the FATF standards as part of improving the national AML/CFT system, considering and addressing the deficiencies identified in the mutual evaluation reports. The adoption of the previously mentioned concept for the development of financial monitoring for 2022-2026 will also have a favorable effect on the regulatory framework in the field of AML/CFT.

Enhancing the role of the Financial Monitoring Agency (FMA): The FMA is the regulatory agency responsible for implementing AML measures and regulating financial institutions in Kazakhstan. The government of Kazakhstan is taking ongoing measures to strengthen the FMA's capacity and resources to improve its performance in combating money laundering and terrorist financing.

Implementation of a risk-based approach to AML/CFT: This approach is reflected in FATF Recommendation 1, which is the basis of the current methodology. Kazakhstan has adopted a risk-based approach to AML/CFT to implement financial monitoring measures when constructing a national AML/CFT system. The FMA has developed and issued risk-based AML/CFT supervisory guidance to assist financial institutions in implementing this approach.

Strengthening AML/CFT supervision: The FMA conducts regular financial monitoring of institutions to determine their compliance with AML/CFT regulations. An important step was the FMA's implementation of a new financial monitoring system for suspicious transactions in order to enhance its ability to detect and investigate money laundering and terrorist financing activities.

To address the problem of identifying beneficial owners, Kazakhstan has taken a number of important steps to improve its identification. In 2020, the government of Kazakhstan enacted amendments to the Law “On Combating Money Laundering and Terrorist Financing”, which obliged all legal entities to disclose their ultimate beneficiaries and inform the national register of beneficiary owners. The new amendments provide more specific and detailed requirements for beneficial ownership disclosure and establish administrative and criminal liability for non-compliance. The government has also been working to improve enforcement and raise awareness among businesses about the importance of transparency in beneficial ownership disclosure.

Kazakhstan has already established and continues to expand partnerships with other countries through memoranda of understanding to enhance global cooperation in combating money laundering and terrorist financing.

To improve anti-money laundering measures in Kazakhstan, such as strengthening the legal framework, increasing the transparency of beneficial ownership information, empowering financial institutions, and monitoring and preventing illegal activities of unsecured digital assets in the Republic of Kazakhstan are needed. Overall, Kazakhstan's AML initiatives demonstrate its commitment to strengthening its AML/CFT framework and combating money laundering and terrorist financing.

Conclusions

Money laundering is a global problem that involves concealing the source of illegally obtained funds by making them appear legitimate. Various methods are used, including online gambling, round-tripping, reselling assets, cryptocurrency, and smurfing. The formation of the AML system in the Republic of Kazakhstan began with the adoption of the law on AML in 2009. Kazakhstan has implemented measures to combat money laundering, such as establishing a Financial Monitoring Agency (FMA) responsible for implementing anti-money laundering (AML) measures, conducting regular inspections of financial institutions, and establishing a reporting system for suspicious transactions.

Kazakhstan faces challenges such as the weak implementation of AML laws, capital flight, risks of using digital assets in money laundering, corruption, and the problem of identifying the ultimate beneficiary. To overcome these challenges, Kazakhstan has taken several initiatives, including the return of assets, amendments to AML/CFT legislation for digital assets, strengthening the legal and regulatory framework, enhancing the role of the Financial Monitoring Agency, implementing a risk-based approach, improving the effectiveness of AML/CFT supervision, and establishing partnerships with other countries and international organizations. The country's recent initiatives are aimed at strengthening the AML regime and protecting its economy from the dangers of money laundering and terrorist financing.

Recent developments and initiatives undertaken by Kazakhstan demonstrate its efforts to combat money laundering and terrorist financing, and financial institutions have played a crucial role in implementing AML measures. However, there are still challenges to be addressed, and the government of Kazakhstan needs to continue its efforts to strengthen its AML regime.

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Қазақстандағы АЖ/ТҚҚ: прогресс, мәселелері және болашақ перспективалары

Мақаланың мақсаты Қазақстан Республикасындағы ақшаны жылыстатуға қарсы іс-қимыл процесінің қазіргі жағдайы мен дамуына талдау жасау. Сонымен қатар Қазақстандағы АЖ/ТҚҚ-ға қарсы заңнамалық базаға және ақшаны жылыстатуға қарсы күресте үкімет жүргізіп жатқан күш-жігерге шолу жасалған. АЖ/ТҚҚ бойынша шараларды жүзеге асырудағы қаржы институттарының рөліне, олардың алдында тұрған проблемаларға назар аударылған. Қазақстан Республикасының ұлттық заңнамасын және оны қолдану тәжірибесін талдау негізінде қылмыстық жолмен алынған кірістерді заңдастыруға қарсы күрес жүйесін қалыптастыру мен дамытудың негізгі проблемалары айқындалған. Осының негізінде елімізде ақшаны жылыстатуға қарсы іс-шараларды жүзеге асырудың негізгі бағыттарын ұсынуға әрекет жасалуда. Қазіргі уақытта қылмыстық қауымдастықтар белсенді қолданатын цифрлық активтерді пайдалана отырып, ақшаны жылыстатудың жаңа әдістеріне көңіл бөлінуде. Сон-

дай-ақ мақалада АЖ/ТҚК режимін күшейту және қылмыстық кірістерді алу мен заңдастыру жағдайларын жою бойынша Қазақстанның соңғы оқиғалары мен бастамалары қарастырылған.

Кілт сөздер: ақшаны жылыстату, қылмыстан түскен кірістер, қаржылық мониторинг, қаржы институттары, қаржылық әрекеттер жөніндегі жұмыс тобы, цифрлық активтер, Қаржылық мониторинг агенттігі, қаржылық транзакциялар.

Р.М. Жамиева, М.Г. Альбекова

ПОД/ФТ в Казахстане: прогресс, проблемы и перспективы

Цель настоящей статьи — анализ текущего состояния и развития процесса борьбы с отмыванием денег в Республике Казахстан. Авторами представлен обзор нормативно-правовой базы ПОД/ФТ в Казахстане и усилия, предпринимаемые правительством, для борьбы с отмыванием денег. Уделено внимание роли финансовых учреждений в реализации мер по ПОД/ФТ и проблемам, с которыми они сталкиваются. На основе анализа национального законодательства Республики Казахстан и практики его применения обозначены основные проблемы формирования и развития системы противодействия легализации преступных доходов. Представлена попытка предложения основных направлений реализации мер по противодействию отмыванию незаконных доходов в стране. Акцентировано внимание на новых методах отмывания денег с использованием цифровых активов, которые активно используются преступными сообществами в настоящее время. Кроме того, в статье рассмотрены последние события и инициативы, предпринятые Казахстаном для укрепления режима ПОД/ФТ и устранения условий для получения и легализации преступных доходов.

Ключевые слова: отмывание денег, преступные доходы, финансовый мониторинг, финансовые учреждения, группа разработки финансовых мер борьбы с отмыванием денег, цифровые активы, Агентство финансового мониторинга, финансовые операции.

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