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A Legal Study on Combating Money Laundry and Terrorism Finance under Jordanian Laws

AMIR II Achievement of Market-Friendly Initiatives and Results

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Abstract

IBLAW was requested to assist USAID and U.S. Treasury in better understanding the Jordan legal framework, in which we performed this report along with a presentation presented to the USAID about general legislative process in Jordan. The presentation included description of the legislative process, order of precedence and description to the legal instruments available under Jordanian law.

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Executive Summary

IBLAW was requested to provide legal advisory services regarding Money Laundry and Terrorism Finance in Jordan and the legal and regulatory framework provided under the Jordanian Laws for combating such acts within this concept.

The Legal advice rendered in this report is based on our review to the following legislations, conventions and Security Council Resolutions:

- a) Jordanian Banking Law No. 28 of the year 2000;
- b) Jordanian Criminal Law No. 16 of the year 1960;
- c) Drugs and Psychotropic Substances Law No. 11 of the year 1988;
- d) The Guidelines No. 10/2001 on combating money laundry operations issued by the Central Bank of Jordan;
- e) UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988);
- f) International Convention for the Suppression of the Financing of Terrorism 1999;
- g) Security Council Resolution No. 1737 (2001);
- h) Security Council Resolution No. 1390 (2002).

1. An Overview of the Laws and Regulations Concerning Bank Secrecy

An Overview of the Laws and Regulations Concerning Bank Secrecy Under what conditions can the Central Bank or other Jordanian government bodies pierce bank secrecy to allow for information sharing with domestic and international law enforcement bodies?

The banking secrecy issue is a result of the Privacy Protection doctrine established under the provisions of the Jordanian Constitution according to which the private sphere of the citizen is to be protected and maintained from unlawful intervention unless the law states otherwise.

Under the Jordanian Banking Law No. 28 of the year 2000, banks are under obligation to observe the confidentiality regarding all accounts, trusts, and safe-deposit boxes of its customers and prohibited from providing directly or indirectly any information thereon provided that such prohibitions survives the termination of the relationship between the banks and their clients for any reasons whatsoever.

Furthermore, the aforementioned Law prohibits the bank's present and former administrators from providing any information or data on the clients or their accounts, deposits, trusts, safe-deposit boxes or any of their transactions, or disclosing or enabling others to have access to such information and data, provided that the same prohibition applies to anyone who, by virtue of his profession, position or work, may directly or indirectly have access to such information and data including employees of the Central Bank and auditors.

However, bank secrecy is in no way absolute and bankers obligation to maintain banking secrecy gives way to other legal requirements. In this sense, the Banking Law provides ways for such secrecy to be pierced where the client's consent is obtained, a decision issued by a competent judicial authority in a current litigation requiring a disclosure of information and data or due to one of the permissible situations pursuant to the provisions of the said Law.

Having said that the provisions of the said Law provides for situations where confidential information and data can be disclosed, we refer to Article 74 of the Banking Law which provides that secrecy principle does not apply to the following:

- a) The duties provided in law to be performed by the auditors appointed by the general assembly of a bank or by the Central Bank pursuant to the provisions of this Law.
- b) The acts and measures undertaken by the Central Bank pursuant to this Law or the Central Bank Law.

- c) The issuance of a certificate or statement on the reasons for the refusal to cash any check upon request of an entitled person.
- d) The exchange of information pertaining to clients on their debt balances in order to provide necessary data to ensure safety of credit granting, checks retained unpaid or any other act deemed necessary by the Central Bank due to its relevance to safety of banking providing that the exchange of information is between the banks and the central bank or any other companies or entities approved by the Central bank for the purpose of facilitating the exchange of such information.
- e) Disclosure by a bank, in full or in part, of statements on transactions of a client necessary to substantiate a claim of the bank in a judicial dispute between the bank and the client in respect of such transaction

Furthermore, and as long as acts pertaining to money laundry and terrorism are concerned, the Banking Law provides that if a bank learns that the execution of any banking transaction or the receipt or payment of funds is related to or could be related to any crime or illegitimate act, the bank shall immediately notify the Central Bank accordingly.

On the other hand, and notwithstanding the provisions of any other legislation, upon receiving a notice from a bank as stated above, or upon knowledge from another source that the bank has been asked to execute a banking transaction or to receive or pay funds related or could be related to a crime or an illegitimate act, the Central Bank shall issue an order to such bank to refrain from executing the transaction or receiving or paying the funds for a period not exceeding thirty days. In the meantime, the Central Bank shall notify any official or judicial authority of the matter provided that disclosure of information by a bank in this respect shall not be regarded as a breach of the obligation to maintain banking confidentiality and such bank or the Central Bank shall bear no consequent liability.

Moreover, acts of terrorism and terrorism finance issues have been subject to codification under the Jordanian laws and in this respect we refer to the Jordanian Criminal Law No. 16 of the year 1960 which states that any action pertaining to any banking transaction specifically deposition of money at any bank or financial institution in the Kingdom or transference of such money to whatever destination are considered a terrorism crimes if it appears that such money is of a suspicious status and related to any act of terrorism. The provisions of the said Law give the prosecutor the powers to hold such money in a way of precautionary seizure and prohibit disposal of it until the investigation process is completed beside coordinating and cooperating with the Central Bank and any other related authority whether domestic or international in investigation process which investigation may logically include a sharing of relevant data and information.

It is worth mentioning that the above mentioned provisions of the Criminal Law have been implemented as a reflection of Jordan obligations generated from UN conventions related to combating money laundry and terrorism finance to which Jordan is a party (e.g. Vienna Convention 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and International Convention for the Suppression of the Financing of Terrorism 1999) as well as Security Council Resolutions (e.g. Resolution 1373/ 2001 and Resolution 1390/ 2002).

Therefore, we conclude that Bank Secrecy is not an infinite obligation on part of the banks in Jordan and that the Banking Law provides cases and situation where this veil can be pierced and any related information and data can be shared with domestic or international official and/ judicial authorities.

2. CBJ subpoena powers

What kind of administrative subpoena powers does the CBJ have, if any?

Under Jordanian laws, there are no subpoena powers vested in the CBJ regarding money laundry ad terrorism finance issues provided, however, that the CBJ is under obligation to inform the enforcement and judicial authorities of any suspicious banking transactions that come to its knowledge and provide all cooperation and coordination in this respect as formerly explained.

3. Penalties of Non-Compliance

According to the Banking Law, in the cases where the Central Bank is realized that a bank or any of its administrators has committed a contravention of the provisions of this law or any regulations, instructions, or orders issued pursuant thereto, the Governor of the Central Bank may take one or more of the measures or impose one or more of the following penalties:

- a) Addressing a written warning.
- b) Instructing the bank to submit a satisfactory program of measures to be taken thereby to eliminate the violation and rectify the situation.
- c) Instructing the bank to cease certain activities, or forbidding the bank from distributing dividends.
- d) Imposing a fine on the bank not exceeding one hundred thousand Jordanian Dinars.

- e) Instructing the bank to temporarily suspend from service any administrator, other than a member of its board of directors, or to dismiss such administrator, depending on the gravity of the violation.
- f) Removing the chairman or any member of the board of directors of the bank.
- g) Dissolving the board of directors of the bank and placing the bank under the management of the Central Bank for a period not to exceed twelve months. The Governor may extend the said period for up to twelve additional months.
- h) Revoking the license of the bank.

Provided that measures (d-h) above require the prior consent of the CBJ Board before imposition.

4. Protection from bank confidentiality civil liability suits

Piercing the banking secrecy obligations within the legal framework provided above is not considered a breach by the banks of its obligations rather than compliance by the banks of the legal requirements provided by the laws and instructions issued pursuant thereto and, therefore, the banks will not be held liable for such compliance.

Moreover, Banking law's provisions also provide the banks with full protection against bank confidentiality civil liability suits by stating that disclosure of information by a bank within the above mentioned legal framework shall not be regarded as a breach of the obligation to maintain banking confidentiality and such bank or the Central Bank shall bear no consequent liability.

5. Laws relating to Money Laundry and Terrorist Finance

What current laws deal with money laundering and terrorist finance?

- a) Drugs and Psychotropic Substances Law No. 11 of the year 1988

This Law covers crimes related to illicit dealings with drugs and psychotropic substances including importing, exporting, planting, manufacturing, commercializing and other ways of illegitimate dealings with drugs and psychotropic substances and penalizes every person who illicitly deals with such materials and imposes sanctions that reach in some cases to execution.

Moreover, Article 15 of this Law gives the prosecutor the authority to investigate the resources of the money owned by persons who commit such crimes to ascertain

whether the resources of such money are linked to such crimes or not, in addition to granting the court the right to seize and expropriate such money.

b) The Banking Law No. 28 of the year 2000

As previously mentioned, this Law provides that if a bank learns that the execution of any banking transaction or the receipt or payment of funds is related to or could be related to any crime or illegitimate act, the bank shall immediately notify the Central Bank accordingly.

On the other hand, and notwithstanding the provisions of any other legislation, upon receiving a notice from a bank as stated above, or upon knowledge from another source that the bank has been asked to execute a banking transaction or to receive or pay funds related or could be related to a crime or an illegitimate act, the Central Bank shall issue an order to such bank to refrain from executing the transaction or receiving or paying the funds for a period not exceeding thirty days. In the meantime, the Central Bank shall notify any official or judicial authority of the matter provided that disclosure of information by a bank in this respect shall not be regarded as a breach of the obligation to maintain banking confidentiality and such bank or the Central Bank shall bear no consequent liability.

c) The Jordanian Criminal Law No 16 of the year 1960

As we stated before, this Law stipulates that any action pertaining to any banking transaction specifically deposition of money at any bank or financial institution in the Kingdom or transference of such money to whatever destination are considered a terrorism crimes if it appears that such money is of a suspicious status and related to any act of terrorism. The provisions of the said Law give the prosecutor the powers to hold such money in a way of precautionary seizure and prohibit disposal of it until the investigation process is completed beside coordinating and cooperating with the Central Bank and any other related authority whether domestic or international in investigation process which investigation may logically include a sharing of relevant data and information

d) The Guidelines No. 10/2001 on combating money laundry operations

These instructions have been issued by the Central Bank of Jordan in accordance with the provisions of article 99/B of the Banks Law and applies on banks and money exchange bureaus.

These instructions define money laundry by saying that it means "Concealing the real source of illegal money (accruing from illegal deal), or giving false information on this source by any means, whether transferring money or exchange it for the purpose of concealing it or covering up its real source, as well as possessing, holding or using illegal money or investing it by any mean, such as buying movable or immovable properties and carrying out financial deals.

Moreover, these instructions affirm a very important principle which is (Know Your Client), and therefore imposes several procedural rules on part of banks and money exchange bureaus for the purpose of ascertaining the identity of their clients and also impose restrictions on some banking transactions and urge them to take the maximum caution regarding big, complex and/or unusual deals and operations and to lay down internal procedure for combating money laundry and improve coordination with the CBJ in this field.

They also provide a guidebook on combating money laundry operations by producing descriptive guidelines on stages and methods of money laundry for the purpose of educating the employees of the banks and money exchange bureaus and providing them with the .

- e) The International Convention for the Suppression of the Financing of Terrorism 1999 ratified by the Law No. 83 of the year 2003

According to Article 8 of this Convention, each State party shall take appropriate measures, in accordance with its domestic legal principles, for identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing any of the offences described in this convention, as well as the proceeds derived from such offences, for purposes of possible forfeiture and shall also take the appropriate measures for forfeiture of such funds.

Furthermore, States Parties shall afford one another the greatest measures of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of such offences including assistance in obtaining evidences in their possession necessary for the proceedings and states parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

- f) Vienna Convention 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Published in the official Gazette No. 3620 date 1/4/1989.

The Convention provides an effective strategy to counter modern international drug trafficking coupled with provisions to provide the law enforcement community with the necessary tools to undermine the financial power of the cartels and other groups. The Convention embraces the idea of taking the profit out of crime.

Article 3 (1) (a) of the convention imposes a strict obligation on each state party to criminalize a fairly comprehensive list of activities concerning drug trafficking which have a major international impact. These range from production and cultivation through to the organization, management, and financing of trafficking operations. In addition, the same article requires each party, to the extent that it is not contrary to its constitutional principles and the basic concepts of its legal system, to criminalize the acquisition, possession, or use of property, knowing at

the time of receipt that it was derived from drug trafficking, as well as conspiracy, aiding and abetting, and facilitating the commission of drug trafficking offences including money laundering.

It also acted to ensure that the concept of bank secrecy does not needlessly hinder the search for and the eventual confiscation of the assets derived from this form of criminal activities.

- g) The Arab Convention for the Suppression of the Financing of Terrorism 1998 ratified by the Law No. 11 of the year 1998

6. Implementation of UN Security Council Resolutions and UN Conventions

What kind of legislation does Jordan have on the books that allow for the implementation of UN Security Council Resolutions and UN Conventions like the 1988 Vienna Convention on Narcotics and the Convention on the suppression of the financing of terrorism? What kind of legislation does Jordan have to allow for the freezing of assets under applicable UN Security Council Resolutions?

Concerning the UN Conventions, and according to the Jordanian Constitution Law, treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly (Parliament). Accordingly, and as UN conventions regarding combating money laundry and terrorism finance generally constitute provisions that require states parties to take major steps in criminalizing such acts that falls within the concept of money laundry and terrorism, freezing related funds and financial assets and prohibiting nationals from providing such funds and financial resources, we conclude that such conventions falls within the concept of treaties and agreements required to be approved by the Parliament . In this sense, and as previously mentioned, the UN and Arab Conventions for the Suppression of the Financing of Terrorism have been approved by the Parliament and ratified by the relevant Laws.

On the other hand and where Security Council Resolutions are concerned, Jordan, as member state of the UN, has adopted a wide range of measures pertaining to the implementation of the Security Council Resolutions in respect of Money Laundry and Terrorism Finance including amendments and additions to its current Laws generally constitute criminalizing of related acts and identification, detection and freezing or seizure of any related funds, in addition to major steps by competent authorities in combating money laundry.

Regarding Jordanian legislations that allow for freezing of assets under applicable UN Security Council Resolutions, we refer you to our clarification made under questions (3) above.

7. Difference between regulations and instructions

What is the difference between regulations and instructions issued by the Central Bank? Are instructions more or less binding than regulations? What is the administrative rulemaking/reg issuance process in Jordan? What is the process by which a regulation gets approved?

First of all, we would like to clarify the confusion occurs when the term "regulations" is used. In some cases, the term "Regulations" is used in the same context as instructions and in this case, there are no differences between regulations and instructions. However, the term "regulations" may sometimes be used as a synonym for the term "Bylaws" in which case regulations differs from instruction which differences will be addressed below and we we'll be using the term "Bylaws" instead of "Regulations" for convenience purposes.

Both bylaws and instructions are meant to regulate the different aspects of the related sector and both of them are binding provided, however, that bylaws always rank ahead of the instructions regarding enforceability. In other words, any instructions issued in contradiction with the provisions of current bylaws are considered null and void.

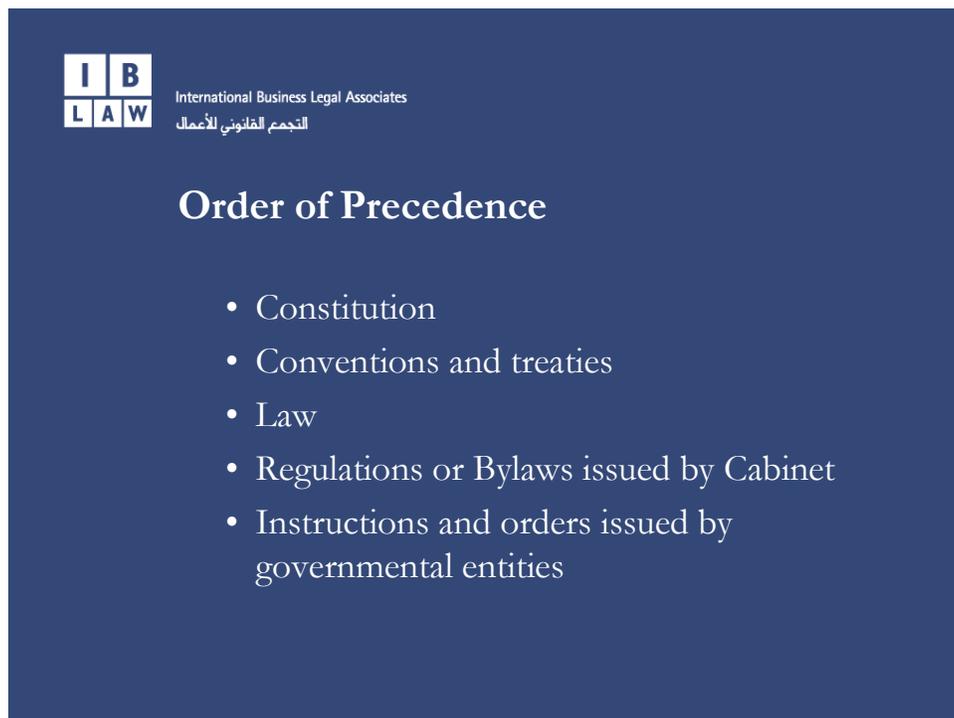
Moreover, for a bylaw to be officially issued, it has to go through a process that consists of several stages starting from drafting the provision of the relevant bylaw, then such drafted shall be represented before the Opinion and Legislation Bureau which has the authority for studying, verifying, commenting, amending and restating the bylaw draft for the purpose of assuring the legality and consistency of the provisions of the draft before presenting it to the Council of Ministers for approval, and after a bylaw being approved by the Council of Minister it must be published in the official Gazette as the final stage.

On the other hand, and by virtue of the CBJ Law, banks Law and the Money Exchange Business Law, instructions may be issued by CBJ itself whether by the CBJ Board or by Governor as the case may provide. Issuance of such instructions is not required to go through the process of issuance of bylaw as stated above. Therefore, the CBJ Law requires some major issues to be regulated by virtue of bylaws issued by the Council of Minister leaving other aspects and issues to be regulated by Instructions as instruction can be amended, repealed or restated easier than bylaws which require going through the same process again.

8. The Civil Law System.

Unlike the Common Law system, the Civil Law system is not based on judicial precedence. Rather it is based on codified provisions: whether such provisions are in the Constitution, Laws, regulations (issued pursuant to the constitution or the laws) and instructions (issued pursuant to the laws or regulations). Nonetheless judicial precedence plays a significant role in guiding the Jordanian courts on the best interpretation of any written provisions.

Appendix I: Legislative Process Presentation





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Description of Legislative Process

A. Preparation of a Bill

1. Ministry or concerned entity present proposal to Prime Minister
2. PM refers the draft to Legislative Bureau or instructs LB to prepare law
3. LB present its recommendations to the Ministerial Legal Committee
4. MLC submits final proposal to Cabinet, after approval by Cabinet it becomes a Draft law, then
 1. Issue as Temporary Law
 2. Refers it to the Parliament/Chamber of Deputies



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Description of Legislative Process

B. Enactment Process in Parliament

1. Chamber of Deputies refers the draft to the Competent Committee.
2. The CC sends it back to CD
3. CD refers the draft law to the Senate
4. The Senate refers to the CC
5. CC sends back to the Senate
6. The Senate to PM



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Description of Legislative Process

C. Royal Assent and Publication

1. PM to His Majesty for ratification
2. PM publishes it in the Official Gazette
 - Laws are in effect in 30 days unless other wise stated.



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Description of Legislative Process

D. Urgent Status

1. **It may be requested by:**
 1. PM indicates urgency status
 2. Speaker of CD
 3. Any member of the CD
2. The CD decides the status
 - If urgent status granted:
 - Commence deliberation, or
 - Forward to competent committee



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Jordanian Money Laundry Legislation

- Banking Law
- Criminal Law
- Central Bank Instructions No 10/2001 on Combating Money Laundering Operations
- United Nation Convention Against transnational Organized Crimes