

Content

Title :	Money Laundering Control Act <b>Ch</b>
Date :	2009.06.10
Legislative :	<ol style="list-style-type: none"><li>1.Promulgated on October 23, 1996,</li><li>2.Amended and promulgated on February 6, 2003.</li><li>3.Amended and promulgated on May 30, 2006.</li><li>4.Amended and promulgated on July 11, 2007.</li><li>5.Amended to Article 3 promulgated on June 11, 2008.</li><li>6.Amended to Article 3,7~11,13 promulgated on June 10, 2009</li></ol>
Content :	<p><b>Article 1</b> This Act is explicitly enacted to regulate unlawful money-laundering activities and to eradicate related serious crimes.</p> <p><b>Article 2</b> As used in this Act, the crime of “money-laundering” is defined as any person who—</p> <ol style="list-style-type: none"><li>1. Knowingly disguises or conceals the property or property interests obtained from a serious crime committed by themselves or;</li><li>2. Knowingly conceals, accepts, transports, stores, intentionally buys, or acts as a broker to manage the property or property interests obtained from a serious crime committed by others.</li></ol> <p><b>Article 3</b> As used in this Act, “serious crimes” include the following crimes:</p> <ol style="list-style-type: none"><li>1. The crimes of which the minimum punishment is 5 years or more imprisonment.</li><li>2. The crimes prescribed in Articles 201 and 201-1 of the Criminal Code.</li><li>3. The crimes prescribed in Paragraph 1 of Article 240, Paragraph 2 of Article 241, and Paragraph 1 of Article 243 of the Criminal Code.</li><li>4. The crimes prescribed in Paragraph 1 of Article 296, paragraph 2 of Article 297, Paragraph 2 of Article 298, and Paragraph 1 of Article 300 of the Criminal Code.</li><li>5. The crimes prescribed in Paragraphs 2 to 4 of Article 23, and Paragraph 2 of Article 27 of the Act for the Prevention of Child and Juvenile Prostitution.</li><li>6. The crimes prescribed in Paragraphs 1-3 of Article 12, Paragraphs 1 and 2 of Article 13 of the Statute for Fire Arms, Ammunition and Harmful Knives Control.</li><li>7. The crimes prescribed in Paragraphs 1 of Article 2, Paragraph 1 of Article 3 of the Statute for Punishment of Smuggling.</li><li>8. The crimes prescribed in Subparagraph 1, Paragraph 1 of Article 171 of the Securities and Exchange Act in violation of Paragraph 1 or 2 of Article 155, or Paragraph 1 of Article 157-1, Subparagraph 2 or 3, Paragraph 1 of Article 171, or Subparagraph 8, Paragraph 1 of Article 174 of the same Act.</li><li>9. The crimes prescribed in Paragraph 1 of Article 125-2 and Paragraph 1 of Article 125-3 of the Banking Act can apply to the provisions in Paragraph 1 of Article 125, Paragraph 1 of Article 125-2, Paragraph 4 of Article 125-2 of the Banking Act.</li><li>10. The crimes prescribed in Articles 154 and 155 of the Bankruptcy Law.</li><li>11. The crimes prescribed in Paragraph 1 and 2 of Articles 3, 4 and 6 of the Organized Crime Prevention Act.</li><li>12. The crimes prescribed in Paragraph 1 of Article 39 and paragraph 1 of Article 40 of Agricultural Finance Act.</li><li>13. The crimes prescribed in Paragraph 1 of Article 39 and Paragraph 1 of Article 58-1 of the Bills Finance Management Act.</li><li>14. The crimes prescribed in Paragraph 1 of Article 168-2 of the Insurance Law.</li></ol>

15. The crimes prescribed in Paragraph 1 of Article 58 and Paragraph 1 of Article 57-1 of the Financial Holding Company Act.
  16. The crimes prescribed in Paragraph 1 of Article 48-1 and Paragraph 1 of Article 48-2 of the Trust Enterprise Act.
  17. The crimes prescribed in Paragraph 1 of Article 38-2 and Paragraph 1 of Article 38-3 of the Trust Cooperative Act.
  18. The crimes prescribed in Paragraph 3 of Article 11 of this Act.
- The following crimes also fall into the category of the “serious crimes” if the property or property interests obtained from the commission of the crime(s) exceeds NT 5 million dollars:
1. The crimes prescribed in Paragraph 2 of Article 336 and Article 344 of the Criminal Code.
  2. The crimes prescribed in Paragraph 1, the second-half of Paragraph 2 to Paragraph 6 of Articles 87, Article 88, Article 89, Paragraph 1, second-half of Paragraph 2, and Paragraph 3 of Article 90, Paragraph 1, second half of Paragraph 2 and Paragraph 3 of Article 91 of the Government Procurement Act.

#### **Article 4**

As used in this Act, the “property or property interests obtained from the commission of the crime” means:

1. The property or benefits on property obtained directly from the commission of the crime.
2. The remuneration obtained from the commission of the crime.
3. The property or property interests derived from the above two subsections. This provision, however, is not applicable to a third party who obtains in good faith the property or property interests prescribed in the preceding two subsections.

#### **Article 5**

As used in this Act, the “financial institutions” include the following institutions:

1. banks;
2. trust and investment corporations;
3. credit cooperative associations;
4. credit department of farmers’ associations;
5. credit department of fishermen’ s associations;
6. Agricultural Bank of Taiwan;
7. postal service institutions which also handle the money transactions of deposit, transfer and withdrawal;
8. negotiable instrument finance corporations;
9. credit card companies;
10. insurance companies;
11. securities brokers;
12. securities investment and trust enterprises;
13. securities finance enterprises;
14. securities investment consulting enterprises;
15. securities central depository enterprises;
16. futures brokers;
17. trust enterprises;
18. other financial institutions designated by the competent authorities of enterprises bearing financial purposes..

The provisions governing financial institutions of this Act apply to the following institutions:

1. Jewelry retail businesses
2. Other financial institutions likely to be used for money laundering and designated by the Ministry of Justice in consultation with central competent authorities governing target businesses.

If the competent authorities for the institutions set forth in the above two paragraphs are ambiguous, the Executive Yuan shall designate the competent authorities for the institutions.

The Ministry of Justice may, as it deems necessary, require the institutions set forth in the paragraphs 1 and 2 of this Article to accept monetary instruments other than cash as payment for financial transactions.

#### **Article 6**

Every financial institution referred to in this Act shall establish its own money laundering prevention guidelines and procedures, and submit those guidelines and procedures to the competent authority and the Ministry of Finance for review. The content of the money laundering prevention guidelines and procedures shall include the following items:

1. The operation and the internal control procedures for money laundering prevention;
2. The regulatory on-job training for money laundering prevention instituted or participated in by the financial institution referred to in this Act;
3. The designation of a responsible person to coordinate and supervise the implementation of the established money laundering prevention guidelines and procedures;
4. Other cautionary measures prescribed by the competent authority and the Ministry of Finance.

The directions for institutional money laundering prevention mentioned in the previous two paragraphs shall be prescribed by the central competent authorities governing target businesses.

#### **Article 7**

For any currency transaction exceeding a certain amount of money, the financial institutions referred to in this Act shall ascertain the identity of customer and keep the transaction records as evidence, and submit the financial transaction, the customer's identity and the transaction records to the institutions designated by the Executive Yuan.

The amount and the scope of the financial transaction, the procedures for ascertaining the identity of the customer, and the method and length of time for keeping the transaction records as evidence referred to in the preceding paragraph shall all be established by the central competent authorities governing target business in consultation with the Ministry of Justice and the Central Bank of the Republic of China.

Any financial institution which violates the provisions set forth in the first paragraph of this Article shall be punished by a fine between \$200,000 NT to \$1 million NT.

#### **Article 8**

For any financial transaction suspected to be a money laundering activity, the financial institutions referred to in this Act shall ascertain the identity of the customer and keep the transaction record as evidence, and report the suspect financial transaction to the designated authority.

The reporting financial institution will be discharged from its confidentiality obligation to the customer if the institution can provide proof that it was acting in good faith when reporting the suspect financial transaction to the designated authority in compliance with the preceding paragraph of this Article.

The scope and procedures of the reporting referred to in the first paragraph of this Article shall all be established by the central competent authorities governing target businesses in consultation with the Ministry of Interior, the Ministry of Justice and the Central Bank of the Republic of China.

Any financial institution which violates the provisions set forth in the first paragraph of this Article shall be fined between 200,000 NT and 1 million NT. However, if the violating financial institution is able to prove that the cause of such violation is not attributable to the intentional act or negligent act of its employee(s), no fine shall be imposed.

#### **Article 9**

Whenever the prosecutor obtains sufficient evidence to prove that the offender has engaged in money laundering activity by transporting, transmitting, or transferring a monetary instrument or funds through bank deposit, wire transfer, currency exchange or other means of payment, the prosecutor may request the court to order the financial institution to freeze that specific money laundering transaction to prevent withdrawal, transfer, payment, delivery, assignment or other related property disposition of the involved funds. The prosecutor on their own authority

may freeze a specific money laundering transaction and request the court's approval within three days whenever the prosecutor has probable cause to believe that the property or property interests obtained by the offender from the commission of crime are likely to disappear under exigent circumstances. The prosecutor must immediately remove the hold on transaction if the prosecutor fails to obtain the court's approval within three days. If the court fails to approve within 3 days or if the prosecutor fails to petition to the court for approval within 3 days, the hold shall be removed.

During the trial proceeding, the presiding judge has discretion to order a financial institution to freeze the offender's money laundering transactions for purposes of withdrawal, transfer, payment, delivery, assignment or other related property disposition.

The order to freeze the offender's money laundering transactions for withdrawal, transfer, payment, delivery, assignment or other related property disposition in a financial institution must be in writing and meet the requirements set forth in Article 128 of the Criminal Procedure Code. The first paragraph of this Article also applies to foreign governments, foreign institutions or international organizations requesting our government to assist in a particular money laundering activity based on the reciprocal treaties or agreements entered with our government according to Article 16 relating to the prevention of money laundering activities, whenever the activity engaged by the offender constitutes a crime under Article 3 of this Act regardless of whether such activity is being investigated or tried in this jurisdiction.

The provisions set forth in the Chapter 4 of the Criminal Procedure Code are also applicable to financial institutions refusing to comply with an order set forth in the first two paragraphs.

#### **Article 10**

Passengers or service staff on public transportation shall make declarations to the customs and report to the institutions designated by the Executive Yuan thereafter when carrying the following items:

1. Cash of foreign currency with total amount exceeding a certain amount.
2. Negotiable securities with face value exceeding a certain amount.

The certain amount, negotiable securities, the scope, procedures and other items to be complied with of the declaration and reporting accepted for handling shall be established by the Ministry of Finance in consultation with the Ministry of Justice, the Central Bank, and the Financial Supervisory Commission of the Executive Yuan.

Carrying of foreign currency without declaring according to the provision in Paragraph 1, the foreign currency carried shall be confiscated; In the event of untruthful declaration with regard to the amount of foreign currency carried, the amount exceeding the number declared shall be confiscated; Failure to make declaration with regard to the amount of negotiable securities carried according to Paragraph 1 or in the event of untruthful declaration, a fine in the amount equivalent to the amount not declared or not truthfully declared shall be imposed.

#### **Article 11**

Any person engaging in money laundering activity referred to Subsection 1 Paragraph 1 of Article 2 of this Act shall be sentenced to imprisonment of not more than five years and, in addition thereto, be fined not more than 3 million NT.

Any person engaging in money laundering activity referred to Subsection 2 Paragraph 1 of Article 2 of this Act shall be sentenced to imprisonment of not more than seven years and, in addition thereto, be fined not more than 5 million NT.

Any person engage in financing terrorist organization or its activity tracked by an international anti-money laundering organization shall be imposed for not less than 1 year and not more than 7 years and be fined not more than 10 million New Taiwan Dollars.

The representative of a legal entity, the agent, employee or other worker of a legal entity or a natural person engaging within the scope of his or her employment in money laundering activities as set forth in the preceding three paragraphs shall be punished in accordance with the provisions set

forth in the preceding three paragraphs of this Article. In addition, the legal entity or the natural person that the offender represents or works for, shall also be fined in accordance with the provisions set forth in the preceding three paragraphs, unless the representative of a legal entity or a natural person has done his or her best to prevent or stop the money laundering activities.

Any person who surrenders himself or herself to the authorities within six months after he or she has engaged in money laundering activities as set forth in the preceding three paragraphs, his or her sentence shall be exempted. Any person who surrenders himself or herself in later than six months after he or she has engaged in any of the money laundering activities set forth in the preceding four paragraphs, his or her sentence shall be reduced or exempted. Any person who confesses during the custodial interrogation or the trial that he or she has engaged in the money laundering activities set forth in the preceding four paragraphs, his or her sentence shall be reduced.

#### **Article 12**

Any person who engaged in the money laundering activity set forth in Subsection 2 of Paragraph 1 of Article 2 of this Act to conceal, accept, transport, store, intentionally buy, or act as a broker to manage the property or property interests obtained from a serious crime or crimes committed by his or her lineal relatives, spouse or any other relatives living together or jointly owning the property, his or her sentences or fine may be reduced.

#### **Article 13**

Any government official who reveals, discloses or turns over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others, he or she shall be sentenced to imprisonment of not more than three years.

Any employee of a financial institution without a government official position reveals, discloses or hands over documents, pictures, information or things relating to the reported suspect financial transaction or reported suspect money laundering activity to others, he or she shall be sentenced to imprisonment of not more than two years, detention, or fined not more than 500,000 NT.

#### **Article 14**

The property or property interests obtained from the commission of a crime by an offender violating the provisions set forth in Article 11 of this Act, other than that which should be returned to the injured party or a third party, shall be confiscated, regardless of whether the property or property interests belong to the offender or not. Whenever the above property or property interests can not be confiscated in whole or in part, the value thereof shall be indemnified either by demanding a payment from the offender or by offsetting such value with the property of the offender. The offender's property may be seized, if necessary, to protect the property or property interests obtained from the commission of a crime by an offender violating of the provisions set forth in Article 9 of this Act. The first two paragraphs of this Article also applies to foreign governments, foreign institutions or international organizations requesting our government to assist in a particular money laundering activity based on the reciprocal treaties or agreements entered with our government according to Article 16 relating to the prevention of money laundering activities, whenever the activity engaged by the offender constitutes a crime under Article 3 of this Act regardless such activity is being investigated or tried in this jurisdiction.

#### **Article 15**

The property or property interests confiscated, other than cash, investment securities or negotiable instruments, may be distributed by the Ministry of Justice to the prosecutor offices, the police departments, or other government agencies assisting the investigation of the money laundering activities for official use, in accordance with the provisions set forth in paragraph I of the previous Article

The Ministry of Justice may distribute the confiscated property or property interests in whole or in part to a foreign government, foreign institution or international organization which enters a treaty or agreement in accordance with Article 16 of this Act to assist our government in confiscating the property or property interests obtained by an offender from his or her commission of a crime or crimes.

The Executive Yuan shall promulgate regulations for management, distribution and use of the property or property interests mentioned in the preceding two paragraphs.

**Article 16**

The government of Chinese Taipei may, based on the principle of reciprocity, enter into cooperative treaties or other international written agreements relating to the prevention of money laundering activities with foreign governments, institutions or international organizations to effectively prevent and eradicate international money laundering activities.

With regard to the request for assistance by foreign governments, institutions or international organizations, unless otherwise stipulated in the applicable treaties or agreements, information of declarations or reporting and investigation result can be provided according to Article 7, 8 and 10 based on the principle of reciprocity.

**Article 17**

This Act shall go into effect upon promulgation.