



Law on Combating Money Laundering and Terrorism Financing

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PUBLISHED BY:
AL ALAWI & CO., ADVOCATES & LEGAL CONSULTANTS
CORPORATE ADVISORY GROUP

LAW ON COMBATING MONEY LAUNDERING AND TERRORISM FINANCING

In this note, we delve into Oman's recently issued Law on Combating Money Laundering and Terrorism Financing (Royal Decree 30/2016) ("**Law**")¹, which:

- Imposes reporting and document retention obligations on financial institutions, non-financial businesses and professions and non-profit associations and entities ("**Covered Organizations**");
- Creates a National Committee for Combating Money Laundering and Terrorism Financing ("**Committee**");
- Establishes a National Centre for Financial Information to act as a clearinghouse ("**Centre**");
- Mandates certain Customs Declarations;
- Sets forth a framework for International Co-operation;
- Confers Investigative Authority; and
- Imposes penalties for money laundering, terrorism finance and the related predicate offenses ("**Offenses**").

Money Laundering occurs when any person who knew or should have known or suspected that funds are the proceeds of a crime, intentionally commits any of the following acts, regardless whether he committed the predicate offence or not.²

- Converts or transfers such funds³ with the purpose of disguising or concealing the illegal

nature or source of such proceeds or of assisting any person who committed the predicate offense to evade punishment for their acts;

- Disguises or conceals the true nature, source, location, method of disposal, movement, or ownership of the funds; and
- Acquires, possesses or uses such funds upon receipt.

Terrorism Financing, on the other hand, occurs when any person willingly collects or provides funds, directly or indirectly and by any means, with the knowledge that such funds will be used in full or in part, to carry out a terrorist act, or by a terrorist individual or a terrorist organization.

OBLIGATIONS OF FINANCIAL INSTITUTIONS⁴, NON-FINANCIAL BUSINESSES AND PROFESSIONS⁵ AND NON-PROFIT ASSOCIATIONS AND ENTITIES⁶

All Covered Organizations must notify the Centre (discussed further below) immediately if they suspect or have reasonable grounds to suspect that funds are the proceeds of crime, or are related to money laundering or terrorism financing.

Under the Law, all such Covered Organizations are required to assess money laundering and terrorism financing risks in their businesses and to apply appropriate due diligence measures in high risk cases.

Such due diligence measures include the obligations to:

- Determine and verify the identity of customers⁷ based on reliable and independent documents issued by official authorities in the following cases:

- ✓ before establishing a business relationship;
- ✓ before carrying out a transaction for a customer with whom it does not have an established business relationship the value of which is equal to or greater than the threshold specified by the supervisory authority;
- ✓ before executing a wire transfer for a customer with whom it does not have an established business relationship the value of which is equal to or greater than the threshold specified by the supervisory authority;
- ✓ when there is suspicion of a crime of money laundering or terrorism financing; and
- ✓ when there are doubts concerning the accuracy or adequacy of obtained identification documents and information;
- Identify and verify the identity of any person acting on behalf of the customer and seek proof of the authenticity of their agency;
- Identify beneficial owners and take reasonable measures to verify their identity in a satisfactory manner;
- Know the purpose of the business relationship and obtain related information; and
- Continuously update the data and information stipulated above whenever necessary, or based on the timeframe specified by supervisory authorities.

All Covered Organizations must comply with the following practices:

- Monitor and scrutinize all relationships and transactions with customers on an ongoing basis to ensure that information regarding such relationships and transactions are consistent with the information available on the customer;
- Implement specific and adequate measures to address the risks of money laundering and terrorism financing related to non-face-to-face business relationships or transactions;
- Establish appropriate risk management systems to determine whether a customer or beneficial owner⁸ is a politically exposed person; and
- Report threshold transactions specified by the supervisory authority to the Centre.

All Covered Organizations must comply with the following retention standards:

- Retain all records, documents, information, and data, both domestic and international for a period of at least 10 years after a transaction is carried out;
- Retain records, documents, information, and data obtained through the customer due diligence process under this Chapter for at least 10 years; and
- Make such records, documents, information, and data available immediately, upon request, to judicial authorities, the Centre, and supervisory authorities.

THE NATIONAL COMMITTEE FOR COMBATING MONEY LAUNDERING AND TERRORISM FINANCING

The Law provides for the creation of the Committee which will be chaired by the Executive President of the Central Bank of Oman, and which will include members from other competent authorities.

The Committee's mandate is to:

- Establish and implement a national strategy for prohibiting and combating crimes of money laundering and terrorism financing in coordination with the competent regulatory authorities;
- Identify and assess money laundering and terrorism financing risks;
- Request, collect and analyze statistics and other information from competent authorities to assess the effectiveness of the existing framework;
- Ensure the existence of effective methods of cooperation and coordination among competent authorities with respect to activities for combating money laundering and terrorism financing;
- Review international treaties and conventions on combating money laundering and terrorism financing and issue recommendations to the Council of Ministers;⁹
- Establish programs for the qualification and training of personnel working in the field of combating money laundering and terrorism financing;
- Promote awareness among Covered Organizations on the risks of money laundering and terrorism financing;
- Coordinate in the implementation of UN Security Council resolutions;
- Identify countries that it considers high-risk in the field of money laundering and terrorism financing

and measures to be taken regarding such countries;

- Determine controls, terms, conditions and amount of financial incentives to be paid to personnel working in the field of combating crimes of money laundering and terrorism financing;
- Approve of the organizational structure and working procedure of the Committee;
- Approve of the Committee's budget (obtained from the Ministry of Finance); and
- Submit an annual report to the Council of Ministers on the activities of the Committee.

THE CENTRE

The Centre is to be established as a legal person having administrative and financial autonomy under the Inspector General of the Police and Customs.

Among other things, the Centre is required to prepare an annual report on its activities in the area of combating money laundering and terrorism financing and submit it to the Chairman.

An Executive President appointed by a decision of the Inspector General of the Police and Customs will have the mandate for receiving, analyzing and requesting reports and information, suspected of being related or linked to money laundering or terrorism financing activities.

Governmental and non-governmental institutions in Oman must cooperate with the Centre in carrying out its functions, and such institutions are required to provide the Centre with back-up information related to reports and information it receives.

When there are sufficient grounds to suspect that funds are related to proceeds of a crime or suspected of being related or linked to money laundering or terrorism financing activities, the Centre will forward the information to the Public Prosecutor for appropriate action.

Additionally, the Centre may, where it suspects money laundering or terrorism financing activities, suspend the execution of any transaction (for a period not to exceed 72 hours) to finalize its analysis. However, the Public Prosecutor may, upon request of the Centre, order the extension of the transaction suspension period for up to 10 days for further analysis.

CUSTOMS DECLARATION

Any person entering or exiting Omani territory carrying currency or bearer-negotiable instruments, or arranging for their transfer inside or outside the country by mail or shipping services, must declare such instruments to the Customs Authority (if they amount to or exceed the threshold set by the Committee).

Under the Law, the Customs Authority is tasked with establishing an electronic system to retain declarations and information for a period of not less than 5 years.

In case of suspicion of money laundering or terrorism financing or in case of non-declaration or false declaration, the Customs Authority is required to seize the currency and bearer-negotiable instruments for a period not to exceed 45 days and immediately notify the Centre.

If requested by the Centre, the Office of the Public Prosecutor may extend the seizure for an additional 45 day period.

INTERNATIONAL CO-OPERATION

The Public Prosecutor has the jurisdiction to receive requests for legal and judicial assistance and extradition from competent foreign authorities in relation to Offenses.

In order to comply with the Law, supervisory authorities must cooperate with their counterparts in other countries for the purposes of legal and judicial assistance and extraditing criminals for their Offenses.¹⁰

Extradition is not possible **IF**:

- Investigations are currently underway against the person to be extradited in Oman, in connection with the crime for which the extradition is requested;
- The crime was committed outside the territory of both Oman and the requesting country;
- A final judicial order was issued against the person to be extradited for committing the crime for which the extradition is requested;
- Oman believes, that due to the nature of the crime and its circumstances, that extraditing the person in question would be incompatible with human considerations because of their age, health, or other personal circumstances;
- The request for extradition is based on a final ruling in absentia of the convicted person;
- The crime falls within the Sultanate's judicial jurisdiction;
- The person to be extradited is an Omani citizen; and/or
- There are serious reasons to believe that the request for extradition was submitted for the purposes of prosecuting or sanctioning a person on account of his gender, race, religion, nationality, origin, or political opinions.

INVESTIGATION

The Public Prosecutor may, in order to uncover facts concerning Offenses, review the records and documents, and obtain information in the possession of Covered Organizations or any other person, and may seize such records and documents and any other documents if deemed necessary for the investigation.

The Public Prosecutor may also issue an order to take provisional measures including freezing or seizing funds, instrumentalities, or proceeds derived from Offenses.

When there is sufficient evidence of the commission of an Offense covered under the Law, the Public Prosecutor may issue an order to monitor or intercept communications, record actions or conversations using audio-visual equipment, access to computer systems, account monitoring, controlled delivery, determination of funds, seizure of documents and correspondence, travel bans, and other measures to help uncover such facts.

The Public Prosecutor may authorize investigating an Offense through an undercover operation¹¹ or controlled delivery¹² for the purposes of obtaining evidence related to such crimes.

PENALTIES

- **Penalties for Money Laundering**

- ✓ **Knowledge or suspicion:** 5-10 years imprisonment and fine of RO 50,000 upwards.
- ✓ **Should have known:** 6 months upwards imprisonment and fine of RO 10,000 upwards.
- **Penalties for Terrorism Financing**
 - ✓ 10 years upwards imprisonment and fine of RO 50,000 upwards.
 - ✓ Legal Persons: Can also guilty of attempting to commit or participating in (by agreeing, inciting or aiding) a money laundering or terrorism financing offence.
- **Penalties for Legal Persons**

Fine of RO 100,000 upwards and/or temporary/permanent suspension of business activities and/or liquidation and/or place it under judicial supervision to manage its funds.

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¹ Issued, through publication in the Official Gazette (Issue No. 1149) pursuant to Oman's adherence to the United Nations Convention Against Corruption and the Arab Convention For Combating Money Laundering And Terrorism Financing.

² **"Predicate Offence"** is defined as any act constituting an offence under the laws of Oman and acts committed outside Oman if considered as an offence under the laws of the country where the crime was committed and Omani laws.

³ **"Funds"** are defined as any type of assets or property regardless of its value, nature, manner of acquisition, whether electronic or digital, whether inside or outside Oman. The scope therefore, is not limited to just money but extends to all kinds of assets or property, tangible and intangible, corporeal or incorporeal.

⁴ **"Financial Institutions"** are defined as those who carry out the following activities (i) receiving deposits and other funds payable from the public, lending, financial transactions including trading in securities, financing, lease financing, services for transferring funds or value, buying, selling and exchanging currencies, issuing and managing payment instruments, guarantees, or obligations; (ii) trading, investing, operating, or managing funds, financial options or futures, exchange rate and interest rate operations, other financial derivatives, or negotiable instruments; (iii) participating in the issuing of securities and providing financial services related to such issues; (iv) managing funds and portfolios of various types; (v) safeguarding funds; (vi) insurance activities, including insurance companies, brokers, and agents; and (vii) any other activity or transaction specified by a resolution of the Committee.

⁵ **"Non-financial businesses and professions"** include the following (i) real estate brokers and agents; (ii) traders in precious metals and stones, when carrying out cash transactions equal to or greater than the threshold determined by the supervisory authority; (iii) attorneys, notaries public, accountants / auditors / reviewers, when they partake in transactions for or on behalf of their customers in related activities; (iv) providers of services to trust companies and funds when they partake in transactions for or on behalf of their customers in related activities; and (v) any other activity specified by a decision of the Committee.

⁶“**Non-Profit Associations and Entities**” are defined as any organized group established in accordance with relevant laws for the purposes of raising or spending funds for charitable, religious, cultural, social, educational, cooperative, or any other purpose.

⁷“**Customer**” is defined as any person (i) for whom a transaction is carried out or arranged or an account is opened; (ii) who is a signing party to a transaction or account; (iii) to whom an account, rights, or obligations are entrusted or transferred by means of a transaction; or (iv) who is authorized to carry out a transaction or control an account.

⁸“**Beneficial Owner**” is defined as a natural person who ultimately owns or controls a customer, directly or indirectly.

⁹The Council of Ministers, also known as the Cabinet of Oman is the chief executive body of the Sultanate of Oman which comprises Ministers (executive heads) all ministries in the Sultanate of Oman. The Ministers and their portfolio are officially announced by Royal Decrees issued by His Majesty, Sultan Qaboos Bin Said, from time to time.

¹⁰In case of a request to extradite criminals or for legal or judicial assistance, the double incrimination principle applies according to which a person can be extradited from one country to stand trial for breaking another country's laws only when a similar law exists in the extraditing country.

¹¹“**Undercover Operation**” is defined as an investigation method whereby a law enforcement officer, by assuming a different identity, or plays a covert or fictitious role as a means of obtaining evidence or information related to criminal activity.

¹²“**Controlled Delivery**” is defined as a method that allows illegal or suspicious funds or proceeds of a crime to enter, exit, or pass through Omani territory with the competent authorities' knowledge and under their surveillance for the purpose of investigating any crime and determining the identity of the perpetrators.

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