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COMBATTING MONEY LAUNDERING BY CRIMINAL LAW IN CHINA UNDER THE HOLISTIC APPROACH TO NATIONAL SECURITY

ABSTRACT: Non-traditional national security is an important part of the holistic approach to national security. As money laundering kept evolving, its harmfulness began to undergo expansion, and, separated from the single attribute attached to the predicate crimes at the beginning, gradually escalated to become the prominent issue of non-traditional security. In consequence, anti-money laundering has been upgraded to the overall strategic height of maintaining national security and international political stability. Anti-money laundering, as a connecting point, involves many non-traditional national security issues such as financial security, counter-terrorism and global cooperation, and becomes an important link and a starting point in practising an holistic approach to national security. Given the harmfulness and grim situation of money laundering, China has established a normative system for anti-money laundering. However, facing new complex situations and international cooperation, we need to examine anti-money laundering from an holistic approach to national security, fully understand the role of anti-money laundering in promoting the modernisation of the national governance system and governance capacity and maintaining economic and social security and stability, take the universal international anti-money laundering standards that China has explicitly promised to implement as the reference frame and implement it from several aspects such as further perfecting the criminal legislation of anti-money laundering, thus strengthening the judicial consciousness of combating money laundering crimes and enhancing the effectiveness of judicial practice.

KEYWORDS: holistic approach to national security, money laundering, terrorist financing, normative system, Financial Action Task Force

National security is fundamental for the existence and development of a country. On the basis of safeguarding the national sovereignty, unity,

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territorial integrity, political security and other traditional aspects of national security, China has brought new security issues such as economic security, financial security, social security and science and technology security into the non-traditional areas of national security, thus expanding the rich connotations of an holistic approach to national security.

With its increasing scale and depth, money laundering threatens social politics, economy, law, public order and many other fields. It has been recognised by the international community as one of the typical 'Non-traditional Security Issues' in the aftermath of the Cold War.[1] Given this, anti-money laundering has been raised to a strategic height of maintaining national economic security and international political stability. It is one of the key areas of international cooperation. Many international multilateral cooperation mechanisms consider preventing and combating money laundering and terrorist financing to be important topics. Especially after the 9/11 terrorist attacks, the international cooperation of anti-money laundering and counter-terrorist financing has been raised to an unprecedented level. The understanding of the importance of anti-money laundering in China is gradually being upgraded from its early focus on damage to the reputation of financial institutions and breeding ground of corruption in the traditional sense to the overall strategic height of promoting the modernisation of the national governance system and governance capacity and safeguarding economic and social security and stability. In addition, China is developing special system designs at the top level, to make it clear that anti-money laundering is an important part of the national governance system and to perfect the supervisory mechanisms of anti-money laundering, counter-terrorist financing and anti-tax evasion. Besides, China also actively participates in the international anti-money laundering cooperation framework, and participates fully in the research, formulation,implementation and supervision of anti-money laundering international standards, which is considered as one of the important starting points of China's participation in the global governance system. Anti-money laundering, just like an 'octopus' with its many limbs, links together many non-traditional national security issues such as economic security, financial security, social security, global cooperation, combating terrorism, etc. Many of them are just organic parts of the overall national security. So anti-money laundering runs through multiple levels and

[1] Allan Castle, 'Transnational Organized Crime and International Security' (Working Paper No. 19, Institute of International Relations, University of British Columbia 1997) 1, 9–10.

processes to realise overall national security and becomes an important link and starting point to practise and implement an holistic approach to national security.

I. INTERGENERATIONAL EVOLUTION OF MONEY LAUNDERING

A. Money laundering Version 1.0: Derivative of Drugs, Organised Crime and Corruption

Money laundering, as a crime of relatively recent vintage, was closely attached in the early stages of its development to predicate crimes including drug offences, organised crimes and offences of corruption. There is a natural close affinity between them, which informs version 1.0 of money laundering. This is reflected in the following:

1. Money laundering is a drug-trafficking derived freak. To use the illicit proceeds of drug trafficking and escape the tracking and intervention of the drug enforcement departments, drug traffickers must transfer or convert the illicit proceeds through financial institutions or other means, so that their illegal sources and assets can be covered up or concealed, which plays a key role in drug crimes. Accordingly, in efforts to curb and combat drug-related crimes, there is a general view in the international community that '[d]etermined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and eliminate their main incentive for so doing'.[2]

2. Money laundering is an integral part of organised crime. In the development process of organised crime, the problem of how to legalise the proceeds of crime and how to circulate and add value in the world economy inevitably arises. The criminals need to cut the organic link between the proceeds of crime ('the first bucket of black money') and their criminal activities and derive new criminal proceeds ('N bucket of black money'). Money laundering is therefore a necessary process for the development of organised crime and a very important type of any gainful criminal activity, and the implementation of legal provisions prohibiting money laundering and strengthening mechanisms for the confiscation of illicit proceeds are the main means of combating organised crime.[3] This has become generally recognised by the international community.

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[2] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted 20 December 1988, entered into force 11 November 1990) 1582 UNTS 95, 1.

[3] See 'XVIth International Congress of Penal Law (Budapest, 5–11 September 1999)' in José Luis DE LA CUESTA (ed), *Resolutions of the Congresses of the International Association of Penal Law (1926–2004)* (Érès 2009) Section II, para 9, Money laundering.

3. Money laundering is this a continuation and inevitable extension of corruption activities. The illicit proceeds, obtained by corrupt persons through the power-money trades will certainly be subject to transfer and bleaching. Accordingly, the United Nations Convention against Corruption considers that preventing and combating money laundering can increase the cost of corruption, curb corrupt motivations, recover the proceeds of corruption, uncover evidence of corruption and confiscate assets derived from corruption, emphasising that anti-money laundering is an integral part of anti-corruption efforts.[4] In China, anti-money laundering is an important embodiment of the anti-corruption struggle. Many anti-money laundering systems are powerful tools for anti-corruption. For example, customer due diligence systems can effectively recognise the identity of high-risk corruption figures, large-amount and suspicious transaction reporting systems can detect criminal transactions of corrupt persons in time, and customer identity information and transaction record keeping systems can provide the basis for criminal prosecution of corrupt persons, thus strengthening the fear of being viewed as corrupt.[5] At the same time, actively pursuing illicit money abroad is an important element of anti-corruption. The China Anti-money Laundering Strategy regards 'making every effort to recovery the proceeds from overseas crimes' as one of its specific objectives.

In view of the origin and early development of money laundering mentioned above, money laundering has been closely associated with predicate crimes and is a necessary way for predicate criminals to cover up or conceal the gains and proceeds of crime. In essence, money laundering is the game point between the criminals in the predicate crimes and the state regulatory authorities, which leads to a fierce tug-of-war. As far as predicate criminals are concerned, they are faced with an inevitable need to (cover up) disguise or conceal the gains and proceeds of crime, so as to dominate and enjoy the material benefits obtained from the predicate crimes and evade the attack. For their part, the state regulatory authorities are fully aware of the natural relationship between money laundering and predicate crimes, and know that to contain the predicate crimes they might be well advised to cut off the benefit-driven offensive plays, so that anti-money laundering is an essential tool.

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[4] See United Nations Convention Against Corruption (31 October 2003) UNGA Resolution 58/4, Chapter II, Art. 14.

[5] See Yiliang Wang, 'Research on the Construction of China's Anti-money Laundering Mechanism-Based on the Modernization of State Governance System and Governance Capacity' (2018) 9 Journal of Financial Development Research 49, 49–50 (王怡靚：《基於國家治理體系和治理能力現代化的反洗錢機制建設研究》，載《金融發展研究》2018 年第 9 期，第 49–50 頁).

B. Money Laundering Version 2.0: Counter-terrorist Financing

Terrorist financing is the foundation and key source of funds for terrorist organisations to survive, develop and engage in terrorist activities. Since 9/11, against the background of a general situation in which the international community combats terrorism and terrorist financing, money laundering is not only regarded as the laundering of the proceeds of crimes mainly from illegal drug trades, but is generally recognised as the channel for terrorists to hide their income and obtain funds, thus changing the original nature of money laundering.[6] In particular, concerning access to funds by terrorist organisations, money laundering is an important channel and terrorist organisations generally deposit the funds after obtaining them through various means in financial institutions around the world, and transfer or convert them via money laundering. If they succeed in laundering money, they provide financial support for terrorist activities. In addition, over time, the channels for terrorist financing include the use of funds with legitimate origin, which departs from the traditional characteristics of money laundering. Therefore, counter-terrorist financing needs to include the new element of tracing the flow of legal funds, discovering the source and destination of the funds of terrorist organisations, and cutting off their sources of funds.[7] It is in the face of the complex changes in terrorist organisations and money laundering activities that the concept of anti-money laundering in the international community and many countries has changed dramatically. Based on the close interweaving of anti-money laundering, counter-terrorism and counter-terrorist financing, the most important task of anti-money laundering is to prevent terrorist organisations from entering the international financial system, to destroy terrorist financing ability and to isolate and expose the terrorist financial networks. So the international community and these countries began to adjust the traditional anti-money laundering strategy and to add counter-terrorist financing based original anti-money laundering.[8]

C. A New and Upgraded Version of Money Laundering: Non-Traditional Security Issues

With increasing development, the harmfulness of money laundering

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[6] See Alison S Bachus, 'From Drugs to Terrorism: The Focus Shift in the International Fight Against Money Laundering After September 11, 2001' (2004) 21 (3) Arizona Journal of International & Comparative Law 835.

[7] See Hongxian Mo, 'On Financial Anti-terrorism in China' (2005) 5 Law Review 36 (莫洪憲：《略論我國的金融反恐》，載《法學評論》2005 年第 5 期，第 36 頁以下).

[8] See US Department of the Treasury and US Department of Justice, *2002 National Money Laundering Strategy* (July 2002) Foreword and Introduction, 4.

begins to undergo nuclear fission, which gradually breaks away from the single attribute attached to the predicate crimes, and turns into a prominent issue in non-traditional security, with its own independent attributes. Just as some Chinese scholars have noted, money laundering is an amplifier of crime: from the angle of conviction, sentencing and punishment, money laundering is a legal issue. If the consequences of money laundering involve negative effects on financial stability and economic security, and threaten to undermine the foundations of political power and endanger the whole society, then it rises from a financial issue to an economic one, and even a political and social one.[9] Western countries have constantly adjusted their national anti-money laundering strategies and raised anti-money laundering and counter-terrorism financing to the strategic height of safeguarding national economic security and international political stability.[10] For example, the Council of Europe has explicitly listed money laundering as a type of crime that jeopardises its purposes, and considered its purposes of protecting human rights, democracy, and legal order and strengthening cooperation among European States as increasingly threatened, and has promulgated a series of conventions to combat money laundering.[11] The European Union has also become increasingly aware that money laundering poses a serious threat to member states and has adopted several directives to prevent money laundering to preserve the integrity, stability and overall public confidence in the financial system of the European Community.[12] Early on, the United States considered that money laundering fuelled drug trafficking, organised crime, international terrorism and other crimes, tarnished the reputation of financial institutions and reduced public confidence in the international financial system. However, after 9/11, the United States emphasised that anti-money laundering and terrorist financing are important components of safeguarding national security strategy and that among the short-term and long-term strategic tasks of the United States are to curb the misuse of the financial system by

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[9] See Zengan Gao, 'On Theory and Strategy of National Anti-Money Laundering' (2010) 2 Journal of Social Sciences 24, 24–26 (高增安：《國家反洗錢的理論與戰略探討》，載《社會科學》2010 年第 2 期，第 24–26 頁).

[10] See Jianwen Li, 'Anti-money Laundering Research Based on National Security' (2014) 20 China Finance 72, 72–73 (李建文：《基於國家安全的反洗錢研究》，載《中國金融》2014 年第 20 期，第 72–73 頁).

[11] Kathleen A. Lacey and Barbara Crutchfield George, 'Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms' (2003) 23 (2) Northwestern Journal of International Law & Business 263, 324–25.

[12] See Council Directive 91/308/EEC of 10 June 1991, on the Prevention of the Use of the Financial System for the Purpose of Money Laundering [1991] OJ L166/77–79.

terrorists and organised criminals.[13] At the same time, the United Nations summarised the harmful consequences of money laundering as damage to the financial industry, economic development and government and legal systems, and emphasised that money laundering not only seriously erodes the national economy, but also poses a real danger to the stability of the global market.[14]

In a general situation where international society strengthens the importance of anti-money laundering and deepens international cooperation, our country also holds that anti-money laundering is an important element in maintaining its whole national security under the guidance of an holistic approach to national security. Anti-money laundering has unique functions in maintaining financial security, fighting corruption and advocating for clean government, counter-terrorism, global cooperation and so on, becoming an important part of the modernisation of the national governance system and governance capacity.

II. ON THE RELATION BETWEEN THE HOLISTIC APPROACH TO NATIONAL SECURITYAND ANTI-MONEY LAUNDERING

A. Guideline: The Connotation of Holistic Approach to National Security

Considering that China sees more extensive connotations and denotations of national security, more complex internal and external factors are involved, and ensuring national security is the top priority. At the first session of the National Security Committee, General Secretary Xi Jinping clearly proposed and systematically expounded the concept of 'Comprehensive National Security', which must be adhered to. 'We carve out a road of national security with Chinese characteristics with people's security as the purpose, political security as the fundamentality, and economic security as the foundation, military, cultural and social security as the guarantee, and the promotion of international security as the reliance.'[15] When implementing the holistic approach to the national security, traditional security, as well as non-traditional security will be valued. A national

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[13] See US Department of the Treasury and US Department of Justice, *The National Money Laundering Strategy for 2000* (March 2000) Forward; US Department of the Treasury and US Department of Justice, *2003 National Money Laundering Strategy* (November 2003) Forward.

[14] See United Nations Office on Drugs and Crime, *Model Legislation on Laundering, Confiscation and International Cooperation in Relation to the Proceeds of Crime* (1999) Introduction to the Model Law.

[15] Xi Jinping, 'Pursuing a Holistic Approach to National Security, Follow the Path of National Security with Chinese Characteristics' *People's Daily* (China, 16 April 2014) 001 (习近平：《堅持總體國家安全觀 走中國特色國家安全道路》，載《人民日報》2014 年 4 月 16 日，第 001 版).

security system will be established, incorporating 11 items including building political security, homeland security, military security, economic security, cultural security, social security, technological security, information security, ecological security, resource security and nuclear security. On 1 July 2015, to implement the holistic approach to national security legally, China promulgated a new 'National Security Law', in which Art. 2 prescribes the definition of national security as 'National power, sovereignty, unity and territorial integrity, people's well-being, sustainable development of economy and society, and other national significant interests are relatively not in danger or under any internal and external threats, as well as able to ensure a lasting security.' Meanwhile, Chapter 2, 'The Task of Safeguarding National Security', further expands the connotations and denotations of national security, and subdivides the components of national security into the system of state and government, territorial sovereignty, military, economy, finance, resources and energy, food, culture, technology, information network, ethnicity, religion, counter-terrorism and extremism, society, ecological environment, nuclear technology, outer space, overseas interests and other categories. These subsystems include both domestic security and foreign security, as well as traditional security and non-traditional security. It forms an all-around and multi-layered national security framework.

'Finance is very important, because it is the core of the modern economy. Handling financial affairs well is the key to success in this sphere.'[16] Based on the solid support of financing, early warning of financial data, and proactive countermeasures, finance has become the implementation approach to and important support for national security in the new era. It is the core path for implementing the holistic approach to national security.[17] Precisely because financial security directly relates to China's overall national security, Art. 20 of the 'National Security Law' singles out financial security from the system of economic security, and lists it as a component of national security. Correspondingly, in terms of strengthening financial security, and preventing and reducing major financial risks, anti-money laundering plays a distinctive function and has become an integral part of implementing the holistic approach to national security. To be specific, anti-money laundering can detect abnormal and suspicious funds from capital flows by requiring subjects of duty to carry out effective client's due diligence and to detect and monitor large-

[16] *Selected Works of Deng Xiaoping Volume III (1982–1992)* (Foreign Languages Press 1994) 353.

[17] See Hongli Zhang, 'Finance and National Security' (2015) 10 China Finance 26 (張紅力：《金融與國家安全》，載《中國金融》2015 年第 10 期，第 26 頁以下).

value and suspicious transactions, so as to cause economic and financial transactions to be more standardised and transparent.[18] Also, anti-money laundering focuses on warning before risks, monitoring amid risks and tracking after risks, which helps in finding the clues in economic crimes rapidly, and plays an important role in preventing and controlling capital flow risks across borders.

Terrorist financing has been a part of terrorism since 9/11. Terrorist organisations worldwide spend more funds on maintaining their internal operations than on mounting specific terrorist attacks. These organisations need financial solid support when recruiting and training terrorists, operating terrorist training camps, purchasing devices for terrorist attacks, and courting or supporting government organs that will shelter them. For terrorists, money laundering then has become a way to conceal income and gain funds. The capital chain is the 'blood' of operating terrorist organisations, and their financing sources must be blocked. Anti-money laundering is an integral part of counter-terrorism combat. China has suffered greatly from terrorist activities. It is both a practical demand and an irresistible trend to incorporate counter-terrorism into the national security strategy and to recognise the guiding role of an holistic approach to national security. It must adhere to this holistic approach to national security, which is an integral part of the task of maintaining national security, in all aspects, such as counter-terrorism legislation and regulation, law enforcement and judicial administration.[19] Precisely given that we have realised that terrorist financing is the basis and key source of funds for terrorist organisations and terrorists to maintain their survival and development, as well as to mount terrorist activities, it must curb and eradicate terrorist financing if we want to combat terrorism successfully. China has always been an advocate of combatting all forms of money laundering and terrorist financing, and blocking all sources, technologies and channels of terrorist financing,[20] which are incorporated into the overall national security strategy of counter-terrorism.

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[18] See Guoqiang Liu, 'Maintain National Financial Security, Promote Anti-Money Laundering Comprehensively', *People's Daily* (China, 15 July 2019) 10 (劉國強：《維護國家金融安全全面推進反洗錢事業》，載《人民日報》2019 年 7 月 15 日，第 10 版).

[19] See Weiguo Feng, 'Reflection on Concept of Overall National Security and Anti-Terrorism Countermeasures' (2017) 5 Theoretical Exploration 109, 109–11 (馮衛國：《總體國家安全觀與反恐對策思考》，載《理論探索》2017 年第 5 期，第 109–111 頁).

[20] See 'Speech by President Xi Jinping at the 2016 G20 Hangzhou Summit' (Xinhuanet, 4 September 2016) <http://www.xinhuanet.com/world/2016-09/04/c_129268987.htm> accessed 29 December 2020 (《習近平主席在 2016 年二十國集團杭州峰會上的講話》，載新華網，http://www.xinhuanet.com/world/2016-09/04/c_129268987.htm，2020 年 12 月 29 日訪問).

Finally, on the way to achieving an holistic approach to national security, 'the promotion of international security as the reliance' is an important fulcrum. In today's international community, it is an important link for all countries to participate in formulating international rules and standards to safeguard their interests, and it is also an important means for the influential powers around the world to promote their security concepts.[21] Anti-money laundering has become one of the key fields of global cooperation nowadays. Having known the dangers of money laundering, the United Nations and important international financial organisations, such as the International Monetary Fund, the World Bank, the Basel Committee on Banking Supervision and the Wolfsburg Group have promulgated a series of anti-money laundering normative documents, such as conventions, directives, statements, guidelines and recommendations, of which international cooperation is the essential core. As the most authoritative document on anti-money laundering and counter-terrorist financing around the world, the '40 Recommendations' formulated by the Financial Action Task Force on Money Laundering (hereinafter referred to as FATF) singles out 'Enhancing International Cooperation' as a separate chapter, asking the administrative departments and law enforcement departments of anti-money laundering and counter-terrorist financing to carry out extensive international cooperation. To incorporate anti-money laundering into the framework of international cooperation, China has worked hard to join FATF. On 28 June 2007, China became a full member of FATF, which enables China to participate in formulating the international standards for anti-money laundering and counter-terrorist financing. It helps China carry out in-depth international cooperation in anti-money laundering and counter-terrorist financing.

B. Advance with the Times: China's 'Triple Jump' to Enhance the Importance of Anti-Money Laundering

In the early days, the regulatory authorities in China narrowly associated the harm of money laundering with financial institutions. They believed that money laundering would damage the stability of banks and the public's trust in banks, and that anti-money laundering has a direct relation to the security and liquidity of financial institutions, and further

[21] See Yanzhi Wang, 'China's International Cooperation of Anti-money Laundering Has Entered a New Historical Development Period' (2007)15 China Finance 48, 48–49 (王燕之：《中國反洗錢國際合作進入了一個新的歷史發展時期》，載《中國金融》2007 年第 15 期，第 48–49 頁).

to financial institutions' business goal of maximising profits.[22] Later, China expanded its understanding of the importance of anti-money laundering, holding that money laundering coexists with illegal activities and crimes involving economic interests. Money laundering not only undermines the justice and equity of market economic activities, obstructs orderly competition, damages the reputation and normal operation of financial institutions, and threatens the security and stability of financial institutions, but becomes a hotbed of corruption.[23]

China has begun to devlop a body of knowledge about anti-money laundering from the national strategy perspective since the establishment of the holistic approach to national security. Also, China conducted a top-level system design, followed by the transformation and upgrading of the anti-money laundering mechanism. In April 2017, after deliberation at the 34th session, the Central Leading Group for Deepening the Reform Comprehensively listed 'improving the regulation system and mechanism for anti-money laundering, counter-terrorist financing, and anti-tax evasion' as the critical task of deepening the reform. In August 2017, the General Office of the State Council issued the 'Opinions on Improving the Regulation System and Mechanism for Anti-Money Laundering, Anti-Terrorist Financing, and Anti-Tax Evasion' (hereinafter referred to as the 'Opinions on Three Antis') to advance and implement the tasks set out above. In the Opinions on Three Antis, it is clearly stated that the 'Three Antis' regulation system and mechanism 'is a staple of establishing a socialist legal system with Chinese characteristics and a modern financial regulation system, an important guarantee for advancing the modernisation of the national governance system and capacity and maintaining security and stability of economic society, and an important means for participating in global governance and expanding the two-way opening of the financial industry'. The Opinions also proposed 27 concrete measures for improving the working mechanism, the legal system and preventive measures, as well as punishing illegal activities and crimes severely, and furthering international cooperation. In recent years, top-level designs have mentioned the need comprehensively to strengthen financial supervision, with anti-money laundering as an important 'key'. Currently, the Anti-Money Laundering Law, which had been in force since 2007, was revised and adopted on 8 November 2024.

[22] See Weimin Ouyang, 'Fulfil Reporting Obligations, Combat Crime of Money Laundering', Financial News (China, 1 August 2004) (歐陽衛民: 《履行報告義務 打擊洗錢犯罪》, 載《金融時報》 2004 年 8 月 1 日).

[23] Xin Wang, *Anti-money Laundering: Interpretation of Concepts and Norms* (China Legal Publishing House 2012) 30 (王新: 《反洗錢: 概念與規範詮釋》, 中國法制出版社 2012 年版, 第 30 頁).

To conclude, we can observe that there has been a 'triple jump' in the process of China learning about the importance of anti-money laundering: it developed from the narrow understanding of the stability and reputation-maintenance of financial institutions in the early days, to realisation of money laundering's relation with predicate crimes, extended to the maintenance of financial security, and at last to the strategic level of maintaining overall national security and the incorporation of anti-money laundering into the system of national governance and governance capability modernisation. Absolutely, it will exert an influence over China's criminal laws and regulations on anti-money laundering, and in the links between criminal legislation and criminal justice, we need to see a positive reaction.

III. THEORY OF CRIMINAL LEGISLATION: THE FORMATION AND IMPROVEMENT OF THE NORMATIVE SYSTEM

A. Transitions and Development of China's Normative System of the Anti-Money Laundering

In terms of anti-money laundering, China and the international community have taken concrete actions in many aspects, one of which is to criminalise money laundering, a basic step. In China, the criminal legislation on anti-money laundering has undergone transitions and development and at last forms a normative system.

1. The Crime of Money Laundering in Art. 191 of the Criminal Law: Starting from Scratch and Three Amendments

From the perspective of the origin of criminal legislation, considering the severe drug crime and China's performance of the obligation to take necessary measures to define illegal drug trafficking as a criminal offence in domestic laws, which each State Party is requested to fulfil according to United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which China has subscribed, the Standing Committee of the National People's Congress passed the 'Decisions on Drug Control' in December 1990. In the Decisions, Art. 4 stipulates 'the crime of (covering up) disguising and concealing the nature and origin of proceeds from drug crimes', which is the first time China has legislated against money laundering as a criminal offence. However, it was limited to money laundering involving drugs.

When China amended the Criminal Law in 1997, considering the frequent occurrence of money laundering not limited to drug crimes, it specifically set the crime of money laundering in Art. 191 for the

first time to combat money laundering crimes. For the predicate crime of money laundering, this article establishes a 'three-crime' pattern consisting of drug-related crimes, organised crimes of a gang nature, and crimes of sumggling.

Only three months after 9/11, the Criminal Law Amendment (III) included the following amendments to the crime of money laundering to punish the crimes of terrorism: first, including crimes of terrorism in predicate crimes of money laundering; second, for crimes by entities, adding the statutory sentence of 'serious consequences'. The Criminal Law Amendment (VI) passed in June 2006 revised the crime of money laundering again. On this occasion, the categories of the predicate crime were once more expanded, and newly included the crimes of corruption or bribery, the crime of undermining the order of financial management, and the crime of financial fraud. Hence, the current framework of seven predicate crimes of money laundering was formed. From the roadmap of criminal legislation above, we can see that the crime of money laundering has undergone two development stages, namely, 'growing out of nothing' and 'two amendments'. In the process, the focus of two amendments to the crime of money laundering is on the 'expansion' of predicate crimes, thus forming and developing into the core crime which China combats as money laundering.

The Criminal Law Amendment (XI), passed in December 2020, made the third amendment to the crime of money laundering. It broke the limitation framework that only other crimes can constitute money laundering, mainly by deleting the three terms of objective behaviours, such as 'assisting' and 'knowingly' in Art. 191, and included self-money laundering in the range of combatting money laundering, which is an important change. Meanwhile, it further improved the description of money laundering-related behaviours.

2. Art. 312 of the Criminal Law: Dual Attributes

'The crime of hiding, transferring, purchasing, and selling criminal gains and the proceeds', stipulated in Art. 312 of the Criminal Law of 1997, originates from the crime of hiding and selling stolen property in the 1979 Criminal Law. It is subject to 'the crime of obstructing justice' from the perspective of the normative system, but intrinsically it falls into the traditional crime of receiving stolen property. However, based on China's urgent need to join the FATF, Art. 19 of the 2006 Criminal Law Amendment (VI) amended this article, giving this crime the secondary attribute of anti-money laundering. According to the relevant agenda and procedures, China is under the FATF's overall assessment of China's

endeavours in the fields of anti-money laundering and counter-terrorist financing. In mid-November 2006, the expert evaluation team of FATF was going to carry out an on-site assessment in China, so China had to meet the requirements of 'criminalisation of money laundering', the first core standard in FATF's '40+9 Recommendations' before the above date. In terms of the predicate crime of money laundering, the standard requires each country to try its best to cover the most extensive range of predicate crimes. At the same time, each country is allowed to choose its legislative method for identifying predicate crimes. However, it clearly sets a mandatory 'threshold' standard for the range of predicate crimes; that is, each country must have at least 20 of the designated categories when criminalising money laundering. According to the standard, the four types of predicate crimes listed in Art. 191 of China's Criminal Law at that time were far from reaching this benchmark. In this regard, after studying with the judiciary and relevant departments, the legislature believed that the crime of money laundering in Art. 191 of the Criminal Law is a special provision generally made for the circumstance that money laundering contributes to the gains in some severe crimes, even though Art. 312 does not term it the crime of money laundering and, in essence, it meets the requirements of some international conventions.[24] In this framework, the Criminal Law Amendment (VI) adopted the legislative method of 'walking on two legs'. On the one hand, it newly included three types of predicate crime in Art. 191 and, on the other hand, it 'operated' Art. 312, incorporating it into China's normative system of anti-money laundering to meet the basic conditions of joining the FATF.[25] In this regard, China was recognised by FATF in the final assessment report. According to FATF, the gap in predicate crimes applicable to specific severe crimes in Art. 191 can be compensated by Art. 312 holding that all crimes fall into predicate crimes.[26] Therefore, FATF raised no doubt on this issue. So far, Art. 312 of the Criminal Law has given dual attributes, not only 'subject to' the crime of obstructing justice, but also 'shouldering'

[24] See An Jian, Deputy Director of the Legal Affairs Committee of the Standing Committee of the National People's Congress, 'Explanation for the Amendment to the Criminal Law of the People's Republic of China (XI) (Draft)' (2006) 6 Gazette of the Standing Committee of the National People's Congress of the People's Republic of China 426 (全國人大常委會法制工作委員會副主任安建：《關於〈中華人民共和國刑法修正案 (六)(草案)〉的說明》，載《中華人民共和國全國人民代表大會常務委員會公報》2006 年第 6 期，第 426 頁以下).

[25] See Xin Wang, 'Co-competition or Disparate: Distinguishing and Analyzing the Relationship Between Crimes of Money Laundering and of Covering up and Concealing the Proceeds of Crime' (2009) 1 Political Science and Law 46 (王新：《競合抑或全異：辨析洗錢罪與掩飾、隱瞞犯罪所得、犯罪所得利益罪之關係》，載《政治與法律》2009 年第 1 期，第 46 頁).

[26] See FATF, *First Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism of People's Republic of China* (29 June 2007) para 87.

the responsibility of anti-money laundering.

3. Art. 349 and Art. 120.1 of the Criminal Law

Art. 349 of the Criminal Law originates from 'the crime of hiding narcotic drugs or money or other forms of property gained from crimes', set by the Standing Committee of the National People's Congress in Art. 4 of the 'Decisions on Drug Control'. To describe the behaviours of the crime comprehensively, the 'Supreme People's Court and Supreme People's Procuratorate' renamed it 'the crime of hiding, transferring, concealing narcotic drugs or money or other forms of property gained from crimes'. From the perspective of legal terms, the object of crime includes 'property gained from drug crimes,' and the criminal behaviour applies the terms such as 'transfer' and 'conceal'. Accordingly, in the assessment of China's anti-money laundering criminalisation, FATF also assessed this crime and indicated that it overlapped with the crime of money laundering in Art. 191.

Art. 120.1 of the Criminal Law is a crime newly added in the Criminal Law Amendment (III) (2001). To incorporate the 'International Convention for the Suppression of the Financing of Terrorism' that China signed into domestic law in the same year, and considering that United Nations Security Council requested each country to define the provision and collection of funds for terrorist activities as a crime, Resolution 1373, Art. 4 of the Criminal Law Amendment (III) stipulates that an article shall be supplemented after Art. 120 of the Criminal Law, as Art. 120a, to punish the crimes of funding terrorism such as providing funds or properties. The Supreme People's Court and Supreme People's Procuratorate termed the crime in this article 'the crime of financing terrorism'. Later, to combat terrorist activities, the Criminal Law Amendment (IX) (2015) revised the behaviours in this article, and the Supreme People's Court and Supreme People's Procuratorate changed the name to 'the crime of assisting terrorism'.

B. Coordinates: Normative System of Anti-money Laundering

Going through the development of criminal legislation, China has formed a normative system composed of the following four crimes, differentiating the crime of money laundering: (1) For money laundering involved in the seven types of statutory severe predicate crimes, namely drug-related crime, organised crime of a gang nature, crimes of terrorism, crimes of smuggling, crimes of corruption or bribery, crimes of undermining the order of financial management, and crimes of fraud, Art. 191 shall apply, and severe criminal penalties shall be imposed; (2) For money laundering involved in crimes other than the above seven types, the

crime of (covering up) disguising and concealing the criminal gains and proceeds in Art. 312 or the crime of hiding, transporting, concealing narcotic drugs or proceeds from drug crimes in Art. 349 shall respectively apply; (3) According to the international consensus closely related to anti-money laundering and counter-terrorist financing, the crime of assisting terrorism in Art. 120a is also subject to China's normative system of anti-money laundering.

In this regard, in the assessment report on China's anti-money laundering and terrorist financing by FATF in 2007, FATF noted that China had criminalised money laundering through Article 191, 312 and 349 of the Criminal Law, and had made great progress in the implementation and strengthening of anti-money laundering.[27] In 2019, FATF carried out the fourth assessment on China from the perspective of the normative system, reporting that Article 191, 312 and 349 of the Criminal Law, with different scopes of application, have clearly defined crimes of money laundering, and most convictions for money laundering are based on Art. 312.[28] In the 'Interpretation of Several Issues concerning the Specific Application of Law in the Trial of Money Laundering and Other Criminal Cases' (hereinafter referred to as the 'Interpretation 2009') promulgated by the Supreme People's Court on November 4, 2009, the application of the law is also interpreted based on the above three crimes, not limited to a particular crime. Therefore, when studying China's criminal laws and regulations on anti-money laundering, discussion must be oriented to the coordinates of the normative system, and not only constricted within Art. 191 of the Criminal Law. It is termed the crime of money laundering in this article, which may easily misguide the public, but it is an integral part of the normative system of anti-money laundering, subject to the crime of money laundering in a narrow sense regarding its nature and function.

On 19 August 2024, the Supreme People's Court and the Supreme People's Procuratorate jointly issued the 'Interpretation of Several Issues Concerning the Application of Law to the Handling of Criminal Cases of Money Laundering' (hereinafter referred to as the 'Interpretation of 2024'), which clarifies that 'self laundering' and 'professional money laundering' are the most important issues in the anti-money laundering law.

C. The Crime of Money Laundering: A Noticeable Issue in the Improvement

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[27] ibid 2, 75.

[28] See FATF, *Anti-Money Laundering and Counter-terrorist Financing Measures—People's Republic of China*, Fourth Round Mutual Evaluation Report (April 2019) para 176, 180.

of Criminal Legislation

In 'the Improvement of Criminal Legislation', the tenth measure of the 'Opinions on Three Antis' clearly stipulates that 'in conformity with the requirements of international conventions to which China ratified or acceded and the international standards that China undertook to perform, China has studied and expanded the scope of predicate crimes of money laundering, and included criminals of predicate crimes in the scope of the subject of money laundering'. It defines the roadmap and reference standard for China's criminal legislation improvement from the perspective of top-level design.

1. Predicate Crime: A Study on the Relation between 'Expansion' and 'Stability Maintenance' in the Articles

From the perspective of the relation with the predicate crime, Art. 191 of the Criminal Law regulates the crime of money laundering involved in the seven types of statutory predicate crimes, Art. 349 only punishes drug crimes in upstream crimes, while the nature and scope of predicate crimes stipulated in Art. 312 refer to more generic crimes. These three articles form a co-opetition relationship in that the former two are crimes and Art. 312 is a general crime. The predicate crime in Art. 349 only refers to drug crime, and Art. 312 intrinsically covers a wide range, so it refers to the crime of money laundering in Art. 191 when we mention the expansion of predicate crimes.

As mentioned above, China has expanded the scope of predicate crimes of money laundering in Art. 191 twice through the Criminal Law Amendments. Since the Criminal Law of 1997 applied stipulation by 'enumeration' on predicate crimes in this article, it had to revise Art. 191 when there was a need to increase the number of situations of predicate crimes. To some extent, the stability of the article decreased. Therefore, when we are coordinating the relationship between the 'expansion' of the predicate crime and 'stability maintenance' in the articles, we may apply the legislative technique of 'generalisation', which means that we may apply terms such as 'specific crimes' instead of enumerating specific types of predicate crimes, and then subdivide the types in legislative interpretation or judicial interpretation. For instance, in the Canadian Criminal Code's stipulation on laundering the proceeds of crime, it consciously applies a new method to its legislative technology and uses the term 'designated offence' when defining the predicate crimes, so as to establish an organic relation between the object of money laundering and predicate crimes. It aims to cover the changing chains of money laundering, and meet the criminal legislation need to expand the scope of

predicate offences in the future.[29] China might usefully learn from it.

Even if China only 'expands' the articles in the current mode without 'significantly revising' the legislative technology of predicate crimes, it may consider including some severe crimes frequently occurring into Art. 191 of a future Criminal Law Amendment. It is noticeable that in Item 3 'criminalisation of money laundering' in the '40 Recommendations' passed by FATF in 2012, FATF adjusted its legislative attitude towards the predicate crime of money laundering, requesting 'each country to apply the crime of money laundering to all severe crimes to cover the widest range of predicate crimes'. This adjustment will absolutely have a significant impact on the assessment of each country which will be carried out every few years. China must make a plan for criminal legislation in advance. Based on FATF's statistics which were provided by China, currently, the major predicate crimes which generate criminal proceeds in China include unlawfully raising funds, fraud, drug trafficking, corruption and bribery, tax crimes, fake and substandard commodities and illegal gambling.[30] As anti-tax evasion, anti-money laundering, and counter-terrorist financing are staples of the mechanism of 'three antis', it is reasonable to incorporate the 'crimes of undermining the administration of tax collection' into predicate crimes of money laundering in Art. 191. Besides, the crimes of manufacturing and selling fake and substandard goods and the crime of gambling shall be included as well.

2. Criminalising Self-money Laundering: New Interpretations of Traditional Theories and Practical Needs

In terms of the practical regulations, the criminals of predicate crimes do not fall into the subject of the crime of money laundering, so self-money laundering does not establish the crime of money laundering. Mainly based on the traditional theory of the crime of stolen property, China's criminal law believes that the crime of money laundering is dependent on predicate crimes and, usually, it occurs in the illegal state following predicate crimes and keeps existing. Self-money laundering is the natural extension of predicate crimes and the after-crime offence is not subject to punishment, which cannot be repeatedly assessed. In this regard, in FATF's two assessment reports on China's anti-money laundering, FATF assessed the core recommendation article of 'criminalising money

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[29] See Xin Wang, 'Research on and Reference to Canadian Anti-Money Laundering Criminal Legislation' (2008) 6 Jiangsu Social Sciences 115, 115–16 (王新：《加拿大反洗錢刑事立法之研究和借鑒》，載《江蘇社會科學》2008 年第 6 期，第 115–116 頁).

[30] FATF, F*ourth Round MER of China* (n 28) 2.

laundering' as 'partial compliance', as it believed that China had ignored the particularity of the crime of money laundering. FATF pointed out that in China, most of the money laundering crimes were committed by predicate criminals, and self-money laundering was not included as a criminal offence. Regarding the crime of money laundering only as a circumstance of sentencing in the trial of predicate criminals is a key defect in technical compliance, which seriously impairs the practical effect of anti-money laundering in China.[31]

As discussed above, in new circumstances, money laundering no longer has a single attribute which is affiliated with upstream crime in the early stage. It has established a new relationship with counter-terrorist financing and national security, and is upgraded to a non-traditional security issue. Predicate crimes can no longer cover these new features of infringing on legal interests, nor can it accomplish the assessment. More than that, money laundering possesses completely different aspects requiring assessment from predicate crimes, so there is no issue such as 'prohibition of double assessment', 'ne bis in idem'. Also, the traditional crime of stolen property is a passive ex-post punishment for predicate property crimes, and stolen property is in 'physical change'; on the contrary, self-money laundering means that after committing the predicate crime, the perpetrator further actively 'bleaches' the 'black money', which incurs a 'chemical reaction' and cuts off the source and nature of 'black money'. It completely goes beyond the scope of application of the crime of receiving stolen property in traditional theories, so we shall no longer be subject to the dogmatic constraints of those theories.

Concerning the comparison of legislative examples, we may learn from Germany and Taiwan, which adhere to the theory of the crime of receiving stolen property. To fill legal loopholes and combat crimes of money laundering, Germany and Taiwan changed their traditional legislative thought, and stipulated that acting as a money launderer constitutes a crime.[32] It is a positive move that the Criminal Law Amendment (XI) abandoned the traditional restrictive thought that only perpetrators of other crimes can commit money laundering, after re-investigating the new interactive relation between crimes of money laundering and predicate crimes. Including the criminals of predicate

[31] ibid 105, Summary of Technical Compliance–Key Deficiencies; *FATF, First MER of China* (n 26) 93, 104.

[32] See Xin Wang, 'Research on China's Normative System of Anti-Money Laundering from an International Perspective' (2009) 3 Peking University Law Journal 375, 375–78 (王新: 《國際視野中的我國反洗錢罪名體系研究》, 載《中外法學》2009 年第 3 期, 第 375–378 頁).

crimes into the subject scope of money laundering not only meets China's legislative and judicial needs of anti-money laundering, helps implement the guiding requirements of including the criminals of predicate crimes into the subject scope of money laundering in the 'Opinions on Three Antis', but also highlights China's rectification measures following the FATF assessments, so as actively to meet the requirements of the next FATF anti-money laundering evaluation in 2025 .

3. Objective Behaviour: Innovation, Changes and Capture of the Essence of Money Laundering

In the early days, financial institutions mainly handled money laundering by a single means. As the methods of money laundering kept evolving, FATF also began to revise '40 Recommendations', in which many measures and obligations against money laundering were enhanced, so as to react directly to new threats of money laundering.

For the objective behaviour of the crime of money laundering, China's Criminal Law of 1997 has listed five forms in Art. 191.[33] These can be categorised as one 'provision', three 'assistances' and one 'bottom line'. More than that, the first four platforms and carriers handling money laundering are all financial institutions. This is to say that the above behaviours conform to China's historical background of anti-money laundering at that time. However, in the new circumstance that methods of money laundering keep changing rapidly and the international community keeps adjusting its countermeasures, China failed fully to amend the behaviours of the crime of money laundering in its Criminal Law, which is still the same as the law of more than 20 years ago. Obviously, it has failed to keep pace with China's practical needs to combat money laundering. Although Art. 2 of the 2009 Interpretation subdivided the 'bottom line' forms 'by other means', and enumerated six forms of money laundering not by financial institutions, it is simply a 'patch' which omits many new methods of money laundering that emerged in China later. For example, the perpetrator cross-uses banking, securities, insurance, non-bank payments, real estate, jewelry and precious metal transactions and other industries and businesses in combination, so as to cut off the traceable chain of capital transactions. This has become a new trend of laundering money in China. Additionally, as Internet financial activities develop, and the new payment products

[33] Regulations on these situations are: (1) providing bank accounts; (2) converting property into cash, negotiable instruments, or securities; (3) transferring funds by remittance or in any other manner of payment and settlement ; (4) transferring assets across the border ; or (5) Disguising (covering up) or concealing, by any other means, the source and nature of criminal gains and proceeds.

and virtual currencies such as Bitcoin emerge, all of which feature the instantaneous, remote and anonymous rapid flow of large funds, money laundering criminals may often abuse these tools. To visualise it, we can say that whenever a financial service or product emerges, it will be abused by naturally acute money launderers at the same time that it facilitates the lives of honest people. When regulators try to establish a rigorous system of anti-money laundering, money launderers will also seek for the system's weak links. Regarding this, we must target following up and adjusting criminal legislation, and not let our ambitions be limited by the lagging modernisation of the definitions of the behaviors of money laundering.

For criminal legislation, the objective behaviours of money laundering, Art. 191 of the Criminal Law adopts the legislative technique of 'examples + bottom line', which exhibits China's legislative convention for a long period. To be specific, 'examples' facilitate judicial administration, but may easily have omissions and cannot keep up with the very frequent innovations and changes in methods of laundering money. 'Bottom line' is very general, but is not judicially administrative. From the perspective of logic and context, 'bottom line' is a supplement to and induction of 'examples', and we cannot expand our understanding beyond the background of the example behaviours. Regarding this, we may change the current example-based model of criminal legislation and capture the essence of money laundering before defining objective behaviours. In fact, in the verb-object phrase of 'money laundering', 'laundering' is a colloquial expression, which stresses the dynamic process of 'washing' and 'bleaching', and has its legalised formal meaning of '(covering up) disguising, concealing'. As for the specific means, methods and platforms of laundering money, these are only details and not necessary to be specified in the charges. Otherwise, the judiciary will be shackled. No matter how the behaviour of money laundering evolves, its essence and focus are centred around the source and nature of criminal gains and proceeds. It is the process of (covering up) disguising and concealing the proceeds, making 'dirty (black) money' more legitimate or 'clean'. This essence has become an international consensus and should be reflected in China's criminal legislation on objective behaviours of money laundering. Besides, since the Criminal Law Amendment (VI) amended Art. 312 of the Criminal Law and incorporated it into the normative system of anti-money laundering, the Supreme People's Court and Supreme People's Procuratorate have revised the term of the crime immediately, so as to highlight that the essence of objective behaviour is '(covering up)

disguising, concealing'. This move also reflects how China's understanding of the essential characteristics of money laundering develops, as well as the value orientation that 'the nature of the behaviour [is] more important than the method'. We may learn from it when improving Art. 191 of the Criminal Law.

IV. THEORY OF CRIMINAL JUSTICE: STATUS QUO, CONTRAST AND IMPROVEMENT

A. Contrast and Questioning: The Judicial Status Quo of Anti-money Laundering

Targeting money laundering activities, China has made reactions in terms of criminal legislation. However, since the crime of money laundering was set in Art. 191 of the Criminal Law of 1997, in the past decade of judicial practice there have been only four defendants convicted of money laundering in three cases nationwide as of October 2006, according to the statistics from the Supreme People's Court submitting to the FATF assessment team.[34] This official figure of 'export sales in the domestic market', shows that China has a rather small number of convictions for the crime of money laundering. Art. 191 basically remains dormant, like a 'Sleeping Beauty', in sharp contrast to the increasingly difficult high-risk situation of money laundering in China. Precisely for this vital reason, FATF believed that there were big defects in China's judicial effect in combating money laundering, marked 'partial compliance' in the core item of 'criminalising money laundering', and strongly recommended that China improve its actual effect in combatting crimes of money laundering. According to some procedural requirements of the FATF, there are still arduous rectifications awaiting China after its participation in FATF in 2007. To address this, China should improve and perfect the judicial system, which is required by both the difficult situation of anti-money laundering in China and pressure from the international community. On the positive side, during the later rectification period from 2008 to 2010, based on the joint endeavors made by all authorities in China, FATF believed that convictions involving anti-money laundering in China had substantially increased. The following table shows the details: [35]

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[34] See FATF, *First MER of China* (n 26) 107.

[35] See FATF, *Mutual Evaluation of China: 8th Follow-up Report* (17 February 2012) 58.

Table 1.1 Persons Convicted for Crimes Related to Money Laundering from 2008 to 2010

Crimes Related to Money Laundering	Year	Number of Convictions	Number of the Convicted
Art. 191 The Crime of Money Laundering	2008	3	4
	2009	5	9
	2010	12	14
Art. 312 The Crime of Disguising and Concealing Criminal Gains and Proceeds (The Crime of Covering up or Concealing Criminal Gains and the Proceeds)	2008	10318	17650
	2009	10613	17617
	2010	11383	18031
Art. 349 The Crime of Hiding, Transferring, or Concealing Narcotic Drugs or Proceeds from Drug Crimes	2008	59	69
	2009	56	78
	2010	61	90
Total		32510	53562

For China's judicial practice of combating money laundering, the author made the following graph, based on the 'Report on Anti-Money Laundering in China', published by the People's Bank of China from 2011 to 2016, in 2018 and 2019, and the official statistics reported to FATF: [36]

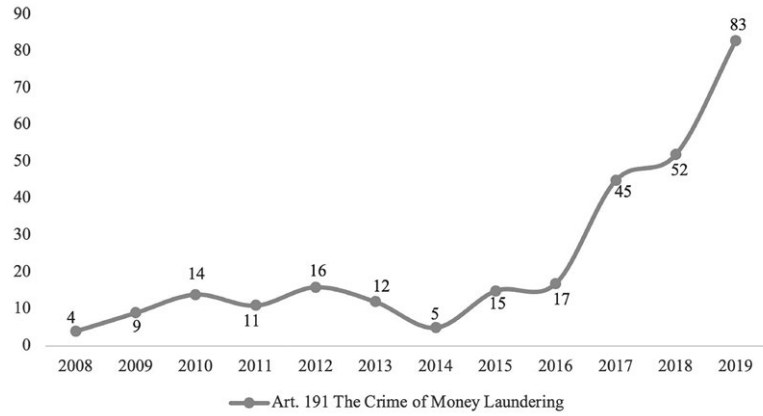

Figure 1.1 The Convicted for the Crime of Money Laundering under Art 191 from 2008 to 2019

[36] FATF, *Fourth Round MER of China* (n 28) 179. Here is an explanation: during the four-year period from 2013 to 2016, the number of convictions under Art 191 and 312 in the FATF assessment report varies from in the *Report on Anti-Money Laundering in China* issued by the People's Bank of China in the same year. The author adopts the number in *Report on Anti-Money Laundering in China*. However, the People's Bank of China didn't publish the above-mentioned figure in the *Report on Anti-Money Laundering in China* in 2017, so the author has to refer to the FATF assessment report.

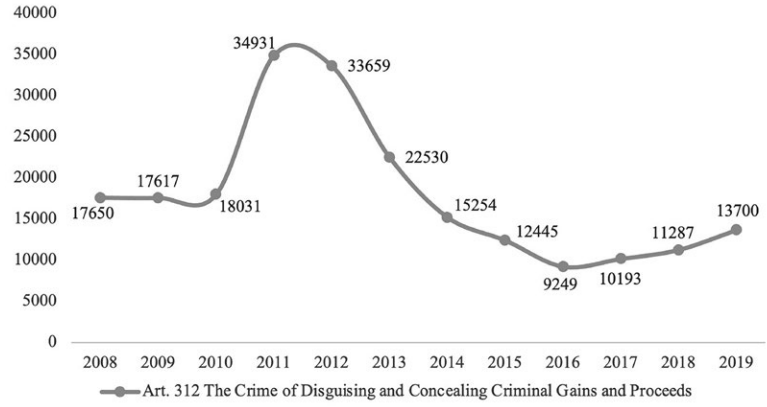

Figure 1.2 The Convicted for the Crime of (Covering up) Disguising and Concealing Criminal Gains and Proceeds under Art 312 from 2008 to 2019

From the above graph, we can see that before 2008, the number of convictions for money laundering in China under Art. 191 of the Criminal Law was maintained in single digits for a long period. However, after the 'Interpretation 2009' was promulgated by the Supreme People's Court in 2009, the number increased to double digits in 2010. The 'Interpretation 2009' had an immediate effect on guiding judicial practice effectively. After that, the judicial application of Art. 191 showed an upward trend in general, especially in 2018 when breaching the barrier of 50-persons, and kept increasing in 2019. These results are closely related to China's 'strict regulation' and increasing anti-money laundering law-enforcement inspections of financial institutions and endeavours to hold them accountable. In addition, after China incorporated Art. 312 into the normative system of anti-money laundering, there were more than 10,000 people convicted every year, which effectively improved China's judicial effect of anti-money laundering from a statistical perspective. We can sense its function of dual attributes. However, the FATF assessment team was prudent and wouldn't accept China's requirements of incorporating Art. 312 in the effectiveness assessment, but in general, it admitted the statistics and regarded them as a direct result of measuring effectiveness.[37] From this, we can see that in the judicial application of anti-money laundering, Art. 312 of the Criminal Law is in an 'embarrassing' position, and we shall place our focus on the core crime of money laundering

[37] FATF, *Fourth Round MER of China* (n 28) 180.

under Art. 191.

B. Imbalance: Static Legal Norms and Dynamic Judicial Application

Based on the above questioning and analysis of the status quo, it is observed that facing the abnormally numerous activities of money laundering in China, the results of judicial practice surprise people. The critical problem of current anti-money laundering in China lies in the judicial application's failure to meet the actual needs of China's anti-money laundering, and China has to face the rectification pressure from the FATF assessment team. Although China has established a relatively comprehensive criminal legal normative system of anti-money laundering, it cannot simply stay static. China needs to strengthen its understanding of the importance of combatting money laundering, put it into judicial practice in a dynamic way, and reverse the imbalance between the criminal legislation and the judiciary of anti-money laundering, so as to meet China's urgent needs to combat money laundering under domestic and international pressure.

C. Improvement: Path of Improving the Effect of Judicial Practice

1. Strengthen the Judicial Concept of Combating Money Laundering

The judicial concept is intangible, but it is the soul of judicial practice and guides judicial administration. In the long-term judicial practice in China, judicial officials generally believed that money laundering is a subsequent crime, completely dependent on predicate crimes, so the backward judicial concept of 'predicate crimes more important than subsequent crimes' came into being. When FATF assessed China in 2006, it strongly recommended China improve the awareness of the judiciary, so as to change the backward focus of combatting money laundering. Later, when FATF made the fourth assessment in July 2018, it noted that China's judicial authorities aimed to investigate predicate crimes when tracking the flow of funds, and usually failed to investigate the persons assisting with money laundering after predicate crimes had occurred. Consequently, there was a low frequency or relatively small number of prosecutions for money laundering crimes. In this regard, China also admitted that the conservatism of judicial officials had caused the slow growth in the number of crimes of money laundering applicable to Art. 191 of the Criminal Law. China stated that it would improve judicial officials' understanding of applying Art. 191.[38] We can say that the backward judicial practice of combating money laundering is closely related to judicial officials' law enforcement concepts in the early stage,

[38] ibid 177, 181.

and changes must be undertaken in many aspects.

On the positive side, the document issued by the Supreme People's Procuratorate in July 2020 proposes to increase the punishment for crimes of money laundering, reverse the assumption of 'predicate crimes more important than subsequent crimes', and investigate whether money laundering has been involved when handling predicate crimes.[39] To enhance judicial officials' awareness of the importance of combatting money laundering, it firstly requires them to understand the relation between money laundering and predicate crimes dialectically. While recognising the close relation between the two, judicial officials should dynamically notice money laundering's independent attribute in the later development, whose harm has escalated to a level of endangering national security. Besides, from the perspective of practical effects, enhancing the investigation and punishment for crimes of money laundering helps cut off the driving force of the interests in predicate crimes, which is a good strategy to combat predicate crimes fundamentally and plays a role in pulling the rug from under predicate crimes. More importantly, it should establish a long-term effective mechanism, requesting officials simultaneously to investigate whether suspected money laundering exists when handling predicate crimes, and include it as a staple in the closing report.

From judicial practice, according to the authoritative official statistics, the judicial organs have chiefly contributed to anti-money laundering work as a service to protect the financial security, and continue to increase the prosecution of money laundering crimes. Over the past few years, China's judicial effort to punish money laundering offences has been significantly improved. This is specifically manifested in the following powerful data. On the one hand, according to the data on the prosecution of money laundering crimes, in 2020 the national procuratorial organs prosecuted a total of 707 people for money laundering crimes, a rise of 368.2% compared with 2019; in 2021, the national procuratorial organs prosecuted a total of 1,262 people for money laundering crimes, making an increase of 78.5%; in 2022, the national procuratorial organs prosecuted more than 2,500 people for money laundering crimes, which is an increase of over 100%; in addition, the ratio of prosecuted money laundering crimes to predicate crimes was 2.9%, a increase of 1.9 percentage points. During the period from 2018 to 2022, the nation's

[39] See Ridan Xu, '11 Opinions of the Supreme People's Procuratorate on Service Guarantees of "Six Stability" and "Six Guarantees"' Procuratorate Daily (China, 24 July 2020) 02 (徐日丹：《最高檢出台服務保障"六穩""六保"11 條意見》，載《檢察日報》2020 年 7 月 24 日，第 02 版).

procuratorial organs prosecuted 4,713 people for money laundering offenses, 32.3 times more than in the previous five years.[40] According to the latest statistics, in 2023 the nation's procuratorates prosecuted 2,971 people for money laundering offences, achieving an increase of 14.9%.[41]

On the other hand, there is the data on money laundering offence trials. Over the past three years, domestic courts have concluded a total of 2,406 criminal cases of money laundering offences (Art. 191 of the Criminal Law) in the first instance, involving 2,978 people, of which 499 cases involving 552 people were concluded in 2021, 697 cases involving 834 people in 2022, 861 cases involving 1,019 people in 2023, and 349 cases involving 573 people from January-June 2024. The number of people who were convicted of money laundering offences in the first instance is also increasing. After the amendment of the criminal law provisions on money laundering crimes by the Criminal Law Amendment (XI), the number of cases increased significantly by 153.3% in 2021, and rose by 39.7% and 23.5% in 2022 and 2023, respectively. According to the latest statistics, the first half of 2024 was on a par with the same period of the previous year. In summary, the number of cases of money laundering crimes has increased year by year, and the fight against money laundering criminal activities has achieved important stage-by-stage results.[42]

2. Procedurally Independent: 'Theory of Factual Existence' in Predicate Crimes

From the perspective of the behaviour object, gains and proceeds from predicate crimes (commonly known as 'black money') are one of the conditions for constituting the crime of money laundering. Due to the determiner of 'crime' before 'gains and proceeds', there is, universally, a static and narrow concept in judicial practice, assuming that the

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[40] See Zhang Jun, 'Report on the Work of the Supreme People's Procuratorate' *People's Daily* (China, 18 March 2023) 004 (張軍：《最高人民檢察院工作報告》，載《人民日報》2023 年 3 月 18 日，第 004 版); Zhang Jun, 'Report on the Work of the Supreme People's Procuratorate' *People's Daily* (China, 16 March 2022) 002 (張軍：《最高人民檢察院工作報告》，載《人民日報》2022 年 3 月 16 日，第 002 版); Zhang Jun, 'Report on the Work of the Supreme People's Procuratorate' *People's Daily* (China, 16 March 2021) 003 (張軍：《最高人民檢察院工作報告》，載《人民日報》2021 年 3 月 16 日，第 003 版).

[41] See Ying Yong, 'Report on the Work of the Supreme People's Procuratorate' *People's Daily* (China, 16 March 2024) 004 (應勇：《最高人民檢察院工作報告》，載《人民日報》2024 年 3 月 16 日，第 004 版).

[42] See Supreme People's Court, 'The two high courts jointly held a press conference on the Interpretation of "Several Issues Concerning the Application of Law in Handling Criminal Cases of Money Laundering"' (China SCIO, 19 August 2024) <http://www.scio.gov.cn/xwfb/gfgjxwfb/gfgjfbh/zgf/202408/t20240821_859349.html> accessed 24 October 2024 (最高人民法院：《兩高聯合舉行〈關於辦理洗錢刑事案件適用法律若干問題的解釋〉新聞發佈會》，載中華人民共和國國務院新聞辦公室網，http://www.scio.gov.cn/xwfb/gfgjxwfb/gfgjfbh/zgf/202408/t20240821_859349.html，2024 年 10 月 24 日訪問).

investigation and punishment for the crime of money laundering can only be initiated upon the valid judgment of predicate crime. From a substantive perspective, this concept considers money laundering as completely dependent on predicate crimes, and the establishment of predicate crimes serves as the weather vane of something else. As we have discussed before, after undergoing evolution and development, money laundering has been given a rather eclectic and mutually independent legal attributes. From the perspective of its harmfulness, money laundering has completely 'grown up', and its 'umbilical cord' binding it to predicate crimes has been cut to such a large extent that money laundering can no longer be regarded as wholly and mechanically dependent on predicate crimes. Meanwhile, major problems in criminal procedures are involved as well, which may cause the investigation and punishment of money laundering to 'stand by and wait for' the trial of predicate crimes, and lead to a sort of 'price scissors' asymmetry in the investigation and punishment of predicate crimes and the crime of money laundering, making judicial administration lag considerably. Consequently, it will damage the combat against crimes of money laundering and demand correction.

Regarding the above understanding bias, considering that the predicate crime perpetrator may not be under criminal procedures due to some objective reasons, such as removal abroad or death, the court may investigate whether predicate crimes exist while trying the crime of money laundering. In some international legal documents, there is no regulation on the procedural constituents of predicate crimes. In this circumstance, according to the Supreme People's Court, it neither conforms to the legislation's spirit nor facilitates legal attempts to try the crime of money laundering upon the conviction of predicate crimes.[43] On this basis, Art. 4 of the 'Interpretation 2009' stipulated that '[t]he factual existence of the predicate offence shall be a prerequisite for' the crime of money laundering, and proposed provisions of 'three no-effects'[44] in detail.

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[43] See Weibo Liu, 'Interpretation and Application of "Several Issues Concerning the Specific Application of Law in the Trial of Money Laundering and Other Criminal Cases"' (2009) 23 People's Judicature 24, 24–26 (劉為波：《〈關於審理洗錢等刑事案件具體應用法律若干問題的解釋〉的理解與適用》，載《人民司法》2009 年第 23 期，第 24–26 頁).

[44] Art 4 of the Interpretation stipulates that (1) If a sentence has not been rendered for a predicate crime under law but the predicate crime has been verdict, it shall not affect the trial of the crimes as prescribed in Article 191, 312, and 349 of the Criminal Law; (2) Where the facts of an upstream crime may be confirmed but the actor has not prosecuted for criminal liability any more under law for his death or any other reason, it shall not affect the determination of the crimes as prescribed in Article 191, 312, and 349 of the Criminal Law; (3) If the facts of an predicate crime may be confirmed but the defendant is convicted and punished under any other crime under law, it shall not affect the determination of the crimes as prescribed in Article 191, 312, and 349 of the Criminal Law.

The 'Interpretation 2009' applied 'factual existence', rather than 'criminal conviction' as the standard applicable to the predicate crimes closely related to the investigation and punishment for money laundering. This move gives the trial of money laundering cases relative independence and reflects that the investigation and punishment for money laundering is no longer dependent on whether predicate crimes have been adjudicated. The two can be investigated at the same time.

3. 'Knowingly': Improvement of High-standard Subjective Identification

When describing the crimes in Art. 191 of the Criminal Law, actual regulations apply terms like 'knowingly' and 'to disguise (cover up) and conceal its source and nature', which raise identification difficulties for judicial practice, as well as the knottiest problems that can restrict the judiciary's investigation into crimes of money laundering. The most important part of the 'Interpretation 2009' issued by the Supreme People's Court is the attempt to tackle the identification difficulties of 'knowingly' in crimes of money laundering. From the perspective of general principles of identification, Art. 1.1 of the 'Interpretation 2009' follows the stance of the objective presumption that China's judiciary practice always adheres to, consistent with international legal documents such as 'the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988', 'the United Nations Convention against Transnational Organized Crime' and '40 Recommendations' by FATF. To facilitate judicial administration, Art. 1.2 of the 'Interpretation 2009' also specifically enumerates seven types of objective facts which are universal and developed in judicial practice as the standard of proof to presume the establishment of acting 'knowingly'. The judiciary has borne the burden of proof as long as it proves one of these. Meanwhile, this article adds the clause' 'except that not knowing can be proven by evidence', which allows the defendant to raise objections. In this way, it can effectively prevent the objective presumption from being absolute, and the judicial interpretation pattern of 'refutable objective presumption' thus develops.

However, from the perspective of the effects of judicial practice, the above provisions on presuming defendants to be acting 'knowingly' in the 'Interpretation 2009' do little to help in the application of money laundering articles, and the competent departments believe that the element of acting 'knowingly' in relation to the crime of money laundering still poses challenges to them.[45] According to the People's Bank of China, when combating crimes of money laundering, the high standard

[45] FATF, *Fourth Round MER of China* (n 28) 184.

of identifying subjective states leads to a small number of convictions for crimes of money laundering.[46] Hence, to break though the key problem severely influencing the outcome of judicial trials, we need to tackle the current high standard issue in various aspects. For example, the Items (2) to (5), Art. 1b of the 'Interpretation 2009' stipulate four situations in which the establishment of being 'fully aware' can be presumed.[47] Mainly based on scientific, rigorous and prudent considerations, we can summarise these situations as four types of 'non-justification', so as to avoid being criticised for harming the innocent, and relying on objective incrimination or presumption of guilt due to absolute expressions.[48] However, the above provisions labelled 'non-justification' are actually 'secondary restrictions' on the establishment standard of presuming to be acting 'knowingly' of those four types of abnormal behaviours, which will inevitably increase the judiciary's burden of proof. Also, speaking of acting 'knowingly', it can be divided into 'necessarily aware' and 'probably aware', which means that decription of the perpetrator's understanding of 'black money' may include the terms 'necessarily' and 'probably'. So judicial officials should not restrict the identification of being 'fully aware' to cases falling within the absolute standard of being 'necessarily aware', as the high-probability standard of being 'probably aware' may also apply. Regarding the working mechanism, because criminal legislation and judicial interpretation both require a long period of time and involve complicated procedures, the Supreme People's Court and Supreme People's Procuratorate might first publish some guiding cases, functioning as a 'light cavalry' to guide the judiciary in terms of the specific identification of acting 'knowingly'.

Considering that the Amendment (XI) to the Criminal Law amended the description of the crime of money laundering by deleting the term 'knowingly', in order to be consistent with the revised criminal law provisions, the Interpretation 2024 no longer uses 'knowingly' to express the subjective element of the money laundering crime, but adopts 'know or should know' as the subjective element of the 'professional money

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[46] See Honghua Liu, 'Fully Promote the Vertically Deep Development of Anti-Money Laundering Cause' (2020) 11 China Finance 20, 20–21 (劉宏華: 《全力推动反洗钱工作向纵深发展》, 載《中國金融》2011 年第 11 期, 第 20–21 頁).

[47] These situations are: '… (2) Assisting in the conversion or transfer of the property by illegal means without any justifiable reason; (3) Acquiring the property at a price obviously lower than the market price without any justifiable reason; (4) Assisting in the conversion or transfer of the property by charging a "handling fee" which is obviously higher than the market price without any justifiable reason; (5) Assisting another person in scattering a large amount of cash in several bank accounts or transferring the same frequently among different bank accounts without any justifiable reason.'

[48] Liu (n 43).

laundering' crime. In comparison, the 2024 Interpretation retains part of the rules on the determination of 'knowingly' in the 2009 Interpretation, absorbs the accusation ideas applied in some typical cases handled by the judicial organs, and follows the 'rebuttable presumption of fact' model in general. In general, the model of 'rebuttable presumption of fact' was followed.

V. CONCLUSION

Anti-money laundering has become an integral part of the implementation of the holistic approach to national security. China has attached great importance to combatting crimes of money laundering, made efforts in many aspects, and achieved apparent results. However, there is still room for development for China, for example, in terms of criminal legislation, the extension provisions on predicate crimes under Art. 191 of the Criminal Law need improvement, and the effects of judicial verdicts are far from meeting practical needs. It is necessary for China to refer to the international standards of anti-money laundering that China clearly undertakes to perform and keep improving criminal legislation and justice.

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