# CRIMINAL LIABILITY FOR THE CRIME OF MONEY LAUNDERING AND THE REGULATORY FRAMEWORK FOR COMBATING IT IN QATARI LAW

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## ABSTRACT

*In view of the development of international standards, the issuance of modified recommendations by the Financial Action Task Force in 2012 and the issuance of the evaluation methodology in line with international standards in 2013, the State of Qatar has undertaken a comprehensive review of its national legislation. These efforts culminated in the issuance of Law No. 20 of 2019 on Combating Money Laundering and Terrorism Financing. The aim of this study is to deal with the provisions related to criminal liability for the money laundering crime as stipulated in the law, in addition to the regulatory framework for the prevention of money laundering crimes stated in the same law. The aforementioned law included a number of provisions and rules that would enable the State of Qatar to efficiently and effectively combat money laundering and terrorist financing. Among the most prominent of these rules are the tightening of criminal penalties associated with violating the provisions of the law, reforming and modernizing the regulatory framework for combating money laundering and terrorist financing in Qatar to bring it in line with the highest international standards, including the Financial Action Task Force standards in combating money laundering and terrorist financing. The provisions contained in the law also included strengthening the role of the National Anti-Money Laundering and Terrorism Financing Committee, allowing it to evaluate the national system for combating money laundering and supervising its proper functioning, and authorizing the Financial Information Unit, regulatory agencies and law enforcement authorities with the necessary powers to ensure the proper application of the law and achieve the required effectiveness.*

**Keywords:** Money-Laundering Crime, Criminal Liability, Regulatory Framework, Qatari Law.

## INTRODUCTION

The effectiveness of the anti-money laundering system is linked in large part to the existence of advanced legislation and rules that are in accordance with international standards, especially the recommendations of the Financial Action Task Force (Newland, 2008; Serio, 2004). In order to enhance the effective implementation of international standards for combating money laundering, the State of Qatar issued in September 2019, Law No. (20) of 2019 on Combating Money Laundering and Terrorism Financing, which replaced Law No. (4) of 2010. This law defines money laundering crimes, the duties and responsibilities of financial institutions and unspecified financial businesses and professions, and provides for the establishment of the National Anti-Money Laundering and Terrorism Financing Committee, and the determination of fines and penalties imposed for violating the law.



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The aim of this law is to reform and modernize the regulatory framework for combating money laundering and terrorist financing in Qatar to bring it in line with the highest international standards, including the Financial Action Task Force standards for combating money laundering and terrorist financing. The law also aims to tighten penalties for perpetrators and contributors to the crime of money laundering. The new law applies to financial institutions, companies and designated non-financial businesses and professions (DNFBPs) operating in the State of Qatar. The latter is determined by the type of work or profession and the activities they practice. Some authorities have issued rules to combat money laundering and terrorist financing in light of the new law, including the Qatar Financial Center Regulatory Authority. These rules already reflect majority of the changes included in the new law of 2019 in relation to specific financial institutions and financial managers. These rules apply to all authorized firms and designated non-financial businesses and professions, including financial services firms and other professional services firms such as law firms, auditing, accounting, and custodian services. These rules have been prepared in accordance with the 2019 Law, alongside the internationally approved recommendations and regulatory standards.

The issue of money laundering is a complex and multifaceted topic (Al-Qadi, 2011). Therefore, this study will be limited to specific aspects of it. It will be dealing with the provisions related to criminal liability for the money laundering crime as stated in Law No. (20) of 2019, in addition to the regulatory framework for the prevention of money laundering crimes stipulated in the same law.

The study concluded that Law No. 20 of 2019 on combating money laundering and terrorism financing contains a set of characteristics and features, alongside a set of rules aimed at confronting money laundering and terrorist financing acts efficiently and effectively in line with international standards, particularly the recommendations of the Financial Action Task Force. The rules and provisions contained in the law included tightening the penalties for money laundering crimes, whether committed by natural and legal persons, expanding the application of many subsidiary and supplementary penalties, developing the regulatory framework for combating money laundering and terrorist financing, and moving from the application of customs disclosure according to which the traveler is required to disclose for the cash in his possession, at the request of the customs authorities, to the customs declaration system, which obliges all travelers to disclose the foreign currency in their possession on their own. The law also included empowering the Financial Information Unit, regulatory agencies and law enforcement agencies with the necessary powers to ensure proper application of the law and achieve the required effectiveness, and to enhance the role of the National Anti-Money Laundering and Terrorism Financing Committee, allowing it to evaluate the national system for combating money laundering and supervising its proper functioning.

## Criminal Liability

The principle is that criminal liability is personal and can only be held by a natural person. A legal person is not criminally liable unless the law expressly provides therefor (Suleiman, 2017). Thus, talking about the criminal liability of the legal person and the natural person alike is required (Al-Shura, 2011):



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The criminal liability of a legal person: The Qatari criminal legislator has adopted in the Law of 2019 the principle of direct criminal liability of a legal person without prejudice to the criminal liability of a natural person or based on the actual management of it (Al-Siyabiya, 2017; Al-Senussi, 2019; Ghoneim, 2017). Article 77 of the new law stipulates that: A legal person, on whose behalf or for whose benefit any of the crimes stipulated in this Law has been committed by any natural person, acting either individually or as part of an entity of the legal person, or serves in a leading position therein, or represents the legal person, or is authorized to take decisions or exercise control on behalf of the legal person, and acts in such capacity, shall be sentenced to a fine not less than (QR 4.000.000) four million Qatari Riyals and not more than (QR 8.000.000) eight million Qatari Riyals, or threefold the maximum fine applied to such offence, whichever is greater. The above shall not prevent the punishment of the natural person, perpetrator of the crime, with the corresponding penalty prescribed by this Law. The Court may order that the legal person be prohibited, either permanently or temporarily, from directly or indirectly carrying on certain business activities, or be subjected to judicial supervision, or to close permanently or temporarily the premises used for perpetrating the offence, or to dissolve and liquidate his business. The Court may also order that the judgment issued against the legal person in relation thereto, be published in two daily newspapers at the legal person's own expense.

The article referred to above established criminal liability for crimes committed by a legal person to include the liability of the person responsible for the actual management of the legal person, and the liability of the legal person for crimes committed in its name and for its benefit by a natural person working alone or as part of an organ belonging to it, or occupying a leadership position in it, or is based on its representation, or has the authority to make decisions on its behalf, or is authorized to exercise authority over it. If the legal conditions for determining the criminal liability of a legal person are fulfilled, the job title given to the official based on the actual management of the legal person does not matter. In order for the criminal liability of the person responsible for the actual management of the legal person to be established, the following conditions must be met:

1. The natural person must be responsible for the actual management of the legal person, regardless of his job title.
2. That the natural person is aware of the actions taken by the legal person that constitute the money laundering crime.
3. That these actions occur because the person in charge of the actual management has breached his job duties in a manner that led to the occurrence of the acts carried out by the criminal behavior in the money laundering crime, and that the crime was committed in his name and for his benefit.

It is worthy of note that the Qatari legislator adopted the principle of direct criminal liability of the legal person and imposed a fine of no less than (4,000,000) four million Qatari Riyals, and not more than (8,000,000) eight million Qatari Riyals, or three times the maximum fine prescribed for the crime, whichever is greater. The legislator also authorized the court to prevent the legal person, in addition to the penalty of a fine, from continuing to carry out certain commercial activities, directly or indirectly, permanently or temporarily, place it under judicial supervision, close its facilities that were used in committing the crime on a permanent or temporary basis, or dissolve and liquidate its business. The court may also order that the



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judgment issued against it be published at its own expense in two daily newspapers. Thus, the Qatari legislator did not adopt the idea of the indirect criminal liability of the legal person, which stipulates that the legal person shall be jointly and severally liable for the fulfillment of the financial penalties or compensation rulings, unlike the Egyptian legislator who adopted this type of criminal liability under the second paragraph of Article 16 of the Anti-Combating Law Money Laundering No. 80 of 2002, as amended.

The criminal liability of a natural person: the legislator has imposed a penalty depriving of liberty in the event of conviction of a money laundering crime, which amounts to imprisonment for a term not exceeding ten years, and a fine not less than (2,000,000) two million Qatari Riyals and not more than (5,000,000) five million Qatari Riyals or double the value of money laundered, whichever is greater, according to Article 78 of the law. The Qatari criminal legislature has tightened the penalty for the money laundering crime compared to the previous law (Article 72/2 of the Qatari Anti-Money Laundering and Terrorist Financing Law No. 4 of 2010).

The Qatari legislator has adopted a unique approach that is manifested in the following (Al-Baqmi, 2013):

Not to violate any more severe penalty stipulated in the Penal Code or any other law punishing the crime of money laundering. This principle raises the question of determining the applicable text. If there are multiple texts governing the criminal incident, this leads to a multiplicity of the legal adaptation for this incident. Then there is no difficulty in this case, because the matter can be dealt with in the light of Article 84 of the Qatari Penal Code No. 11 of 2004, which states that *"Should one act constitutes a plurality of offences, the offence with the most severe penalty shall be taken into consideration and its penalty shall prevail to the exclusion of any other"* (Qatari Penal Code, 2004). If the multiplicity is apparent, then in this case we are faced with one adaptation for this incident, and the penalty prescribed for it shall be judged by law. If there is a moral multiplicity between the crime of money laundering and another crime consisting of one criminal incident, in this case this incident is subject to one legal text that imposes a more severe penalty for this crime.

The inadmissibility of applying the rules of material multiplicity in crimes based on Article 76 of the law, which states the following: *"The crime of money laundering is not subject to the provisions of Article (85) of the aforementioned Penal Code*". Article (85) of the Penal Code stipulates that *"Should multiple offences are perpetrated for one purpose bound to each other in an inseparable way, they shall be considered as one offence and a sentence for the most severe penalty provided for any of the offences shall be passed*". The reason for this exception is that when multiple crimes combine a unity of purpose and an indivisible connection, they constitute a single criminal project. This does not mean that these crimes lose their independence and identity, but rather the legislator wanted to impose one original penalty for all of them. Less severe crimes retain their legal entity and preserve their identity and independence. But the application of the original punishment prescribed for them is excluded. Supplementary penalties for less severe crimes must be imposed in line with Article 86 of the Penal Code, which states that the judgment for the most severe penalty for the offence shall not prevent the court from applying secondary penalties provided for the other offences, on the basis that the complementary penalties of a fine, dismissal and confiscation are necessarily specific penalties for the nature of the crime. The objective of this text is that the multiplicity of the penalties



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prescribed for the money laundering crime with any other greater crime is indivisible connected. Part of the jurisprudence considers that if the crime of money laundering is the crime with the most severe punishment, then the original punishment is not judged for the crime with the lightest punishment in an indivisible connection. The exception of the money laundering crime from the provision of Article 85 is not applicable unless this crime carries a lighter penalty (Sorour, 2013). This jurisprudence was based on its opinion on the text of Article 324-4 of the French Penal Code, which states: If the felony or misdemeanor from which the money for which the laundering was received is punishable by a penalty depriving of liberty that exceeds the maximum limit prescribed for the crime of money laundering, the perpetrator shall be punished for this crime, i.e. money laundering crime-with the penalties prescribed for it when the offender was aware of this crime.

The legislator also imposed a fine of 2 to 5 million Qatari Riyals if the perpetrator was a natural person in line with Article 78 of the new Law. The Qatari legislator imposed a relative fine penalty under the previous article of the new law when it imposed a penalty of a fine equal to twice the value of the money laundered (Article 14 of the Egyptian Anti-Money Laundering Law, 2002). It is worthy of note that the Qatari legislator has equated the penalty between the complete crime and the attempted crime in line with Article 72 of the repealed Anti-Money Laundering and Terrorism Financing Law No. 4 of 2010. However, the Qatari legislator did not adopt the same policy in the new law as it did not equate the penalty between the complete crime and the attempted crime. Therefore, the punishment for the attempted crime of money laundering under the new law is governed by the general rules stipulated in Article 29 of the Penal Code (Article 29 of the Qatari Penal Code, 2004). Based on the foregoing, the penalty for attempting a money laundering crime under the previous law is imprisonment for a period not exceeding seven years and a fine not exceeding (2,000,000) two million Qatari Riyals, and the penalty for attempting the same crime under the current law is imprisonment for a period not exceeding five years. The fine remains as it is not less than (2,000,000) two million Qatari Riyals and not more than (5,000,000) five million Qatari Riyals or double the value of the money laundered, whichever is greater, in line with Article 31 of the Penal Code, given that the penalty for a fine in felonies is considered subsidiary penalties (Article 31 of the Qatari Penal Code, 2004).

Confiscation: It is the most important legal tool to deprive the offender of the illegal profit that he gained from committing the crime. The first article of the 2019 Law defines confiscation as permanent deprivation of funds by virtue of a judicial ruling. This definition is fully consistent with the definition of confiscation that was mentioned in a number of relevant international conventions and treaties such as the Vienna Conventions, the Palermo Convention and the European Convention. Confiscation can also be defined as the expropriation of something proven to be related to the crime and its addition to the property of the state for free. It is admissible, complementary penalties in the Qatari Penal Code as stipulated by the text of Articles 65 and 76 of the Qatari Penal Code (Article 76 of the Qatari Penal Code, 2004).

The international community has paid attention to addressing the issue of funds obtained from illegal sources (Khater, 2015; Al-Natsheh, 2018). The fourth recommendation of the International Financial Action Task Force states that countries should take measures similar to those provided for in the Vienna Convention and the Palermo Convention, including legislative measures, to enable their competent authorities - without prejudice to the rights of bona fide third parties - from freezing or seizing and confiscation of the following: the laundered property, the



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proceeds of money laundering operations or predicate crimes, or the means used or intended to be used in these operations or predicate offences. These measures should include the power to identify, track and evaluate the property subject to confiscation, implement temporary measures, such as freezing and seizure, to prevent any dealing, transfer or disposal of such property, and take steps that would prevent or invalidate actions that affect the state's ability to freeze the subject property to confiscate, seize or recover it, and take all appropriate investigative measures. States should consider adopting measures that permit the confiscation of such proceeds or instrumentalities without requiring a criminal conviction (non-conviction-based forfeiture), or that require the offender to show the lawful source of the property presumed to be subject to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law (Yeh, 2020).

Article 5 of the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 stipulates that each party shall take the necessary measures to enable the confiscation of proceeds derived from the offenses stipulated in the Convention or funds equivalent to the value of the said proceeds. Article 12 of the United Nations Convention against Transnational Organized Crime of 2000 also stipulates that States Parties shall adopt, to the maximum extent possible within the limits of their domestic legal systems, such measures as may be necessary to enable the confiscation of proceeds of crime arising from offenses covered by this Convention, or property that its value is equal to the value of those proceeds, property, equipment or other tools which were used or intended to be used in the commission of offenses covered by this Convention. Article 23 of the UN Convention and Article 31 of the 2003 United Nations Convention against Corruption provide that each State Party to the Convention shall, to the fullest extent possible within the scope of its domestic legal system, take such measures as may be necessary to enable the confiscation of proceeds of crime from offenses established in accordance with this Convention, or Property, the value of which is equal to that of the proceeds, property, equipment or other tools that were used or were intended for use in the commission of offenses established in accordance with this Convention (Savona, 1997; Broome, 2005).

Confiscation refers to the proceeds of crime as defined in Article 1 of the 2019 Law: "*any funds generated or obtained, directly or indirectly, through the commission of one of the predicate crimes. They include the profits, interests, proceeds or any other output, whether it remains unchanged or converted in whole or in part into property or other investment returns*". Confiscation also includes the tools that were used in the commission of the crime, the things obtained from the crime. It also applies to the value of the things obtained from the crime if it was not possible to seize them. Article 89 of the law stipulates confiscation as an obligatory and complementary penalty in the event of conviction of money laundering, predicate crime or terrorism financing. Without prejudice to the rights *of* bona fide third parties, the court shall order the confiscation of the following :1. Funds constituting the subject of the offence. 2. Funds constituting the proceeds of crime, including funds intermingled with such proceeds, or derived from or exchanged for such proceeds, or funds the value of which corresponds to the value of such proceeds (Laird and Hungerford-Welch, 2020; Gentle et al., 2002). 3. Funds constituting incomes and other benefits derived from such funds, or proceeds of the crime. 4. Instrumentalities used to commit the offence.

A third party is in good faith if he obtains the aforementioned funds, or part of them, or acquires them and he is unaware of their illegal source, or in exchange for paying a price, or



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providing services suitable for their value, or based on other legitimate reasons. In the event of a crime punishable under the provisions of this law, the perpetrator shall not be convicted for lack of knowledge or for his death. The Public Prosecution may submit the papers to the competent court, to issue a ruling for confiscating the seized funds, if sufficient evidence is presented to prove that they are the proceeds of the crime. In all cases, the confiscation judgment shall specify the funds concerned, and include the necessary details for their identification and location.

Article 90 of the 2019 Law stipulates: The confiscated funds and the proceeds of their sale shall be transferred to the state treasury. These funds shall remain within the limits of their value, with any rights that are legitimately decided for the benefit of bona fide third parties. In line with the foregoing, funds that constitute the proceeds of crime shall not be confiscated unless they are seized. This is one of the conditions of confiscation, so there is no room for a judgment of confiscation if the thing is not seized because the judgment of confiscation in this case does not coincide with a subject matter. Moreover, seizing the thing makes it possible to inspect it and determine the extent to which the conditions of confiscation are met. It also helps to determine if possession in itself is a crime or not. It is not sufficient for the thing to be considered seized by its evidence in the seizure or investigation report. It is not judged on the sources even if that is due to the act of the accused, as if he executed, damaged or concealed it. The confiscation may not be transferred to something else owned by the offender and equivalent to the thing that should have been seized, unless the law stipulates otherwise. This is because confiscation is not compensation, but rather a penalty in kind that responds to a specific thing specified by law and don't respond to anyone else. The law may explicitly stipulate that the convict is obligated to pay the equivalent of what may be subject to confiscation when it is not seized. This is what the Qatari legislator expressly stipulated in Article 89/2 referred to above. Based on the foregoing, the funds shall not be confiscated in two cases: it is not possible to seize it or it has already been disposed of to a person of good faith. In these two cases, the court shall decide what is equivalent to the value of the funds that should have been confiscated. Jurisprudence refers to obligating the convict to pay a sum of money whose value is equivalent to the value of the proceeds of the crime that were not confiscated for the two reasons mentioned above, with a fine of confiscation. It is worth mentioning that the provision of the 2019 Law with regard to confiscation is fully consistent with the provision of the Qatari Penal Code in Article 76 of it. The only difference between them is that confiscation in the Penal Code is considered a supplementary and permissive penalty, while in the Anti-Money Laundering and Terrorism Financing Law of 2019; it expresses an obligatory complementary penalty. This discrepancy in the legislative position is justified by the necessity of compatibility of national legislation concerned with combating money laundering with the relevant international conventions, in addition to the importance of confiscation in money laundering crimes.

Other accessory penalties: The Qatari legislator stipulated complementary penalties, similar to some other legislation. These penalties apply to the natural and legal person. Article 72/3 of the repealed law stipulates the following: In addition to the penalties stipulated in the last two paragraphs, the perpetrator of the crime may be punished, permanently or temporarily, by preventing him from continuing to practice any work, profession or an activity that contributed to providing the opportunity to commit a crime to which this article applies. There is no provision for these penalties in the new law, but this does not preclude their application under Articles 68 of the Penal Code which provides that "*In any judgment whereby a criminal penalty*



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*is imposed against a person exercising a self-employed profession organized by law, and which requires the obtaining of a license, an offence perpetrated during the exercise of the activities of the said profession or caused by it and including any violations of the obligations set by the law or the conventional ethics of the profession, the judge may decide to bar the convicted person from exercising his profession for a period not exceeding ten years. If the judgment imposes imprisonment for a term exceeding seven years, the judge shall decide whether to bar the convicted person from exercising his profession for a period equal to the imposed term of imprisonment".*

As for the legal person, Article 77/2 of the new law stipulates the following: "*The Court may order that the legal person be prohibited, either permanently or temporarily, from directly or indirectly carrying on certain business activities, or be subjected to judicial supervision, or to close permanently or temporarily the premises used for perpetrating the offence, or to dissolve and liquidate his business. The Court may also order that the judgment issued against the legal person in relation thereto, be published in two daily newspapers at the legal person's own expense".*

There are other sub-penalties applied to the perpetrator of the money laundering crime mentioned in the Qatari Penal Code No. 11 of 2004. These subsidiary penalties are either accessory or supplementary (Article 64 of the Qatari Penal Code, 2004). These penalties are:

Deprivation of certain rights and privileges as stipulated in Article 66 of the Qatari Penal Code, which is a consequential penalty that is determined by law, even if it is not mentioned in the judgment. The above-mentioned article states: Every sentence of a felony inevitably entails, by force of law, depriving the convict of all the following rights and privileges: 1- Assuming public office or working as a contractor for the state. 2- Assuming the membership of legislative, advisory and municipal councils, boards of directors of public bodies and institutions, joint stock companies, associations, private institutions and cooperative societies, as well as taking over the management of any of them, and participating in the election of its members. 3. Assuming guardianship, trusteeship, or agency on behalf of minors and the like. 4. Carrying decorations, badges or medals, whether national or foreign. 5- Carrying weapons. The period of deprivation is three years from the date of completion of the execution of the penalty or its forfeiture. Article 67 also stipulates that if the person sentenced to a felony enjoys, at the time the judgment becomes enforceable, one of the rights stipulated in the previous article, he must be immediately deprived of them. If he does not enjoy such rights, he loses the capacity of enjoying them thereof.

Deprivation from practicing the profession: the first paragraph of Article 68 of the Penal Code stipulates that every sentence of a felony against a person who practices a free profession regulated by law and requires a license to practice it, for a crime committed during or because of the practice of the work of this profession and included a breach with the duties imposed by law or by the customary principles of the profession, the judge may rule depriving the convict from practicing this profession for a period not exceeding ten years. The penalty here is considered a supplementary permissive. The second paragraph of the same article states that if the sentence is imprisonment for a period exceeding seven years, the judge must rule depriving the convicted person from practicing the profession for a period similar to the period of imprisonment, in which case the penalty becomes complementary and obligatory.



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Deportation of a foreigner: This is what Article 77/1 of the Penal Code stipulates, whereby the court may, if it sentences a foreigner to a freedom-restricting penalty in a felony or misdemeanor, order his deportation from the state after completing the execution of the penalty. The penalty of deportation under this article is a complementary and admissible penalty.

Aggravating circumstances**:** Article 88 of the new law stipulates aggravating circumstances in the crime of money laundering by saying (Article 72 of the Qatari Anti-Money Laundering Law, 2010): The penalties stipulated in Articles (78) and (79) of this law shall be doubled as follows: In the case of recurrence, the accused shall be considered a recidivist if he committed a similar crime within five years from the date of the completion of the execution of the sentence imposed or its forfeiture by the lapse of the period. Recidivism means that a person has committed one or more offenses after a final judgment has been passed against him for a previous offense. Its availability entails aggravating the penalty to more than the maximum limit prescribed for the offense. The reason of toughening punishment in recidivism is that a criminal who returns to committing a crime after having been previously convicted of another crime is considered evidence that the first punishment was not sufficient to deter him. This indicates that he has a tendency to persist in criminality and underestimate punishment. The recidivism according to this text is a special recidivism because it stipulates the symmetry between the crime committed previously and the crime committed by the perpetrator later. Moreover, the recidivism in this text is a restricted recidivism because it requires the commission of a similar crime within five years from the date of the completion of the execution of the sentence imposed or its forfeiture by the passage of time.

1. In the event of a contribution or attempt to commit one or more money laundering or terrorist financing crimes by a group of persons working with a common goal.
2. If the crime is committed by a person who abuses his authority or influence in a financial institution or any of the specified non-financial businesses and professions, or exploits the powers conferred upon him by his job or professional or social activity (Al-Wahshi, 2012).

Exemption from Punishment and Suspension of Execution: The first paragraph of Article 92 of the Anti-Money Laundering Law of 2019 provides a reason for exemption from punishment in the event of multiple perpetrators of a money laundering crime. In order to be exempted from punishment, this article requires that the perpetrator or one of the contributors to the money laundering crime notify the competent authorities of information related to the money laundering crime and the persons involved in it before the authorities become aware of it or before starting its implementation. If the aforementioned conditions are met, the court shall mandatorily exempt the notified offender from the stipulated penalty of imprisonment and a fine stipulated in Article 78 of the law. This exemption does not include the penalty of confiscation of the proceeds of crime or its means, as was stipulated in the third paragraph of Article 92 of the law. The exemption includes imprisonment and a fine under Articles 14 and 17 of the Egyptian Anti-Money Laundering Law No. 80 of 2002, as amended, but it does not include a confiscation penalty and a fine equivalent to the value of the laundered funds in the event that they cannot be seized or if they are disposed of to a bona fide third party. Therefore, it can be seen that the exemption does not include the penalty of “confiscation fine in Qatari law in the event that the funds to be confiscated cannot be seized or if they are disposed of to a bona fide third party (Sproat, 2007).



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If the notification took place after the competent authorities became aware of the crime and the persons involved in it, and led to the arrest of the remaining perpetrators or the means and proceeds of the crime, the legislator allowed the court to order a stay of execution of the penalty. The stay of execution includes the penalty of imprisonment and a fine and does not include confiscation as stipulated in the third paragraph of Article 92. This provision is consistent with the text of Article 79 of the Qatari Penal Code, which includes the provisions and rules of the system of suspension of execution of the penalty, where this article stipulates that the court may order in Judgment to stay the execution of the penalty, and to make the stay of execution include any subsidiary penalty and all criminal effects, except for confiscation (Article 83 of the Qatari Anti-Money Laundering Law No. 4 of 2010).

The first paragraph of Article 22 of the law also stipulates another reason for the exemption, as this article stipulates that reporting in good faith does not entail any civil or criminal liability resulting from disclosing the secret established by virtue of a law, regulation, administrative decision or contract, even in the case of the lack of knowledge of financial institutions and DNFBPs and their directors, officers and employees of the predicate crime, regardless of its actual occurrence. The exemption in this article includes both criminal and civil liability, provided there is a report that resulted in the disclosure of a secret that must not be disclosed by virtue of a law, regulation, contract or administrative decision, and such reporting must have been made in good faith. This article is identical in its content to the text of Article 82 of the previous law of 2010, where the aforementioned article states that he is exempted from any criminal or civil liability, related to violation of professional confidentiality requirements, including banking secrecy rules, every person who reports in good faith any suspicious operations in line with the provisions of this law, or provide any information or data on those operations.

## The Regulatory Framework for the Prevention of Money Laundering in Qatari Law

The Forty Recommendations of the International Financial Action Task Force, amended 2012, establish a comprehensive and consistent framework of measures that countries should implement in order to combat money laundering and terrorist financing (Al-Assaf, 2012). Since the legal, administrative and operational frameworks and financial systems differ in different countries, it is not possible for all of them to take identical measures to confront these threats. Therefore, the FATF recommendations set an international standard that countries should implement by taking measures adapted to their specific circumstances (Al-Rashdan, 2012).The recommendations of the Financial Action Task Force lay down the basic measures that countries should establish in order to: identify risks, develop policies and local coordination, prosecute money laundering, terrorism financing and proliferation financing, apply preventive measures to the financial sector and other specific sectors, give the necessary powers and responsibilities to the competent authorities, for example, investigative powers, law enforcement authorities, supervisory authorities, and other institutional measures, enhance transparency and availability of beneficial information on legal persons and legal arrangements (Srivastava, 2020).

Based on the foregoing, the recommendations of the International Financial Action Task Force developed a risk-based approach. This approach aims to reduce the risks arising from money laundering and terrorism financing (Asi, 2019). Therefore, countries must assess the risks



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they face due to money laundering, and implement effective measures to confront and address these risks. These measures include:

First-Criminalization of money laundering and terrorism financing, provided that the crime of money laundering is applied to all serious crimes to include the largest number of predicate crimes, and the imposition of appropriate penalties, including seizure, freezing and confiscation of the proceeds of crime.

Second-Imposing preventive measures on the financial sector, and other specific sectors, and establishing supervisory bodies to verify compliance with the anti-money laundering standards and measures stipulated in the relevant legislation emanating from the forty recommendations of the International Financial Action Task Force (Al-Silawi, 2008).

The preventive or precautionary system in the Combating Money Laundering and Terrorism Financing Law is based on the following (Al-Qatari, 2015): the obligation of banking institutions to adopt the "*know your client*" principle, and to report suspicious operations; Increasing the capabilities of the supervisory authorities, which requires enabling them to investigate, monitor and prosecute by various means, including through training; organizing cash fulfillment operations, lifting the secrecy of bank accounts when suspicious for reasonable reasons (Al-**Kasbi**, 2011), and having a sophisticated information system that allows checking the origins and sources of funds (Asi, 2019).

The developments in the 2019 Law came as a response from the Qatari government to the joint assessment report on the Anti-Money Laundering and Terrorism Financing System in the State of Qatar, which was prepared by the Middle East and North Africa Financial Action Task Force (MENAFATF), issued on April 9, 2008. This report included the degree of Qatar's commitment to the recommendations of the International Financial Action Task Force, and the proposed action plan to improve the system for combating money laundering and terrorism financing (Wingard and Pascual, 2019). This plan was responded to by the Qatari government by issuing Anti-Money Laundering and Terrorism Financing Law No. 4 of 2010, and then the current Law No. 20 of 2019**.**

Below we review the features of the precautionary system to combat money laundering in Qatari law**:**

## First-Disclosure or Customs Declaration

The law requires any person who enters or leaves the territory of the State, who is in possession of currencies or bearer of negotiable financial instruments, or precious metals or precious stones, or who arranges for their transportation inside or outside the State by person, shipping, mail or any other means, to declare the correct value thereof before the competent customs authorities' employees, if it is equal to or greater than the value specified in the regulation (Article 23 of the Combating Money Laundering and Terrorism Financing Law, 2019). Disclosure shall be before the customs authorities if these currencies, financial instruments, precious metals or gemstones are worth or more than fifty thousand riyals (Articles 41-45 of the Executive Regulations, 2019). The provisions of the Executive Regulations apply to natural and legal persons, and all non-profit organizations.

Failure to submit a customs declaration or submitting a false declaration entails that the competent customs officer has the right to take a set of measures, namely: Seizure of currencies



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or bearer negotiable currencies or financial instruments, precious metals or gemstones, drafting a seizure report on the incident, requesting additional information from the violator about the source of the bearer negotiable currencies or financial instruments, or precious metals or gemstones, and the purpose of their transportation. The customs officer may seize the persons involved in the incident of transferring the bearer currencies, negotiable financial instruments, precious metals or gemstones, and hand them over to the competent security department at the Ministry of Interior. Immediately, the seizure report and the seized items shall be referred to the Public Prosecution to take action (Articles 44-45 and Articles 23, 24 of the Executive Regulations, 2019). In addition to all that, this act constitutes a crime punishable by imprisonment or a fine. *"Any person who intentionally fails to make a declaration of currency, bearer negotiable instruments, precious metals or stones, when entering or exiting the State; or submits a false declaration thereof; or refuses to make a disclosure or provide additional information when requested to do so by the customs authorities on the purpose of carrying or using currency, bearer negotiable instruments, precious metals or stones, as provided for in Articles (23) and (24) of this Law, shall be sentenced to imprisonment for a term not exceeding three (3) years or a fine not less than (QR 100.000) one hundred thousand Qatari Riyals and not more than (QR 500.000) five hundred thousand Qatari Riyals, or twice the value of the carried funds, bearer negotiable instruments, precious metals or stones, whichever is greater*" (Article 80 of the Anti-Money Laundering and Terrorist Financing Law, 2019).

Non-disclosure constitutes a negative crime if the activity in it takes the form of not submitting the customs declaration or refusing to provide additional information to the customs authorities. The offense may also be positive in the case of a false declaration. In all cases, the crime is intentional, it must have a general criminal intent, and it does not require a specific criminal intent (Sorour, 2013).

**Second- Preventive Measures**

The legislator has taken a set of preventive measures to combat money laundering and terrorism financing. Under these measures, the legislator has imposed a set of obligations on financial institutions and designated non-financial businesses and professions, and imposed other obligations on supervisory bodies. We will present the most important of these preventive measures as stipulated in the law and the executive regulations issued pursuant thereto:

Obligations of Financial Institutions and DNFBPs **:**The Qatari legislator has dealt with these obligations in detail in Articles (6-22) of the law. It was also stipulated in more detail from Article 3 to Article 40 of Executive Regulation No. 41 of 2019 issued by law. Financial institutions and DNFBPs identify money laundering and terrorist financing risks to them, and they have to study, understand, evaluate, document, monitor and update them on an ongoing basis, and provide Reports on this to the supervisory authorities upon request. Qatar Central Bank has issued executive instructions directed to financial institutions so that these instructions are an integral part of the procedures of these institutions aimed at controlling, detecting and preventing money laundering and terrorist financing activities, and reporting those (Executive Instructions for Combating Money Laundering and Terrorist Financing for Financial Institutions).



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Financial institutions and DNFBPs adopt a risk-based approach, by developing risk-based policies, procedures and internal controls, and they must implement them effectively in order to manage the risks they have identified, including those identified in the national risk assessment, and reduce them in proportion to the nature and size of their business, reviewing and updating them and reinforce them if the need arises. It shall apply those policies, procedures and internal controls to all its branches and subsidiaries in which it holds a majority stake (Agarwal and Agarwal, 2004).

Financial institutions and designated non-financial businesses and professions shall set appropriate regulations and apply preventive measures to verify their compliance with the application of the provisions of this law. Financial institutions and DNFBPs are prohibited from maintaining anonymous accounts, or accounts with clearly fictitious names. They must take due diligence measures when establishing a business relationship, and carry out occasional financial transactions whose value is equal to or greater than an amount specified by the regulation, whether done once or multiple times in a way that appears related to each other, to carry out occasional transactions through wire transfers in the cases specified in Article (18) of this law, suspicion of a money laundering or terrorism financing operation, regardless of the amount of the operation, and doubts about the correctness or adequacy of the identification data previously obtained (Atwan, 2018).

Financial institutions and DNFBPs shall take due diligence measures, including taking measures to identify and verify the identity of permanent or occasional customers based on original documents, data or information from an independent and reliable source. Financial institutions and DNFBPs shall apply strict and proportionate diligence measures with the degree of risks to business relationships and operations with natural persons or legal persons, including financial institutions from countries that the National Anti-Money Laundering and Terrorism Financing Committee determines as high risks (Madinger, 2006).

Financial institutions and DNFBPs shall immediately inform the Unit of any transaction, operation, or attempt to implement it, regardless of its value, upon suspicion or when there are reasonable grounds to suspect that it is related to the proceeds of a predicate crime or includes or is linked to the financing of terrorism (Hopton, 2006).

Reporting in good faith shall not entail any civil or criminal liability resulting from disclosing the secret established by virtue of a law, regulation, administrative decision or contract, even if the financial institutions and DNFBPs and their directors, officers and employees were not aware of the original crime, regardless of its actual occurrence (Mwenda, 2006).

Financial institutions and DNFBPs, and their directors, officers and employees are prohibited from disclosing to any unauthorized person the incident of submitting or not submitting a suspicious report to the Unit, or any other relevant information.The provisions stipulated in this Article do not prevent the sharing of information with foreign branches and subsidiaries abroad in which it owns a majority. In cases where there is suspicion of money laundering or terrorist financing and it is believed on reasonable grounds that the implementation of due diligence measures would alert the customer, the financial institutions and DNFBPs may stop taking these measures and submit a suspicious report to the Unit.

Obligations of the supervisory authorities: The first article of the 2019 law defines the supervisory authorities by saying: The authorities competent to license financial institutions,



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designated non-financial businesses and professions, and non-profit organizations, or to supervise them, or to ensure their compliance with the requirements of combating money laundering and terrorist financing, as specified by the regulation. According to Articles 39-44 of the new law, the Qatari legislator imposed a set of obligations on the supervisory authorities, and defined their terms of reference. The supervisory authorities are responsible for monitoring, following up and supervising the compliance of financial institutions, DNFBPs, and non-profit organizations with the requirements of combating money laundering and terrorist financing, and ensuring their compliance with them (Al-Qudah and Rababa'a, 2019).

The supervisory authorities issue the necessary licenses for financial institutions, designated non-financial businesses and professions, and non-profit organizations that are legally prohibited from practicing their activities without obtaining a license or prior registration from the competent supervisory authorities. The supervisory authorities must not approve the establishment of shell banks, cancel any valid licenses of financial institutions that represent shell banks, and immediately inform the competent authorities of their discovery of the existence of a shell bank operating in the country. The supervisory authority, when considering the application for a license or registration or a request to renew them, shall verify the identity of the shareholders of the requesting entity, the main management, and the beneficial owners, and take the necessary measures and procedures to prevent criminals or those associated with them from acquiring a large or controlling stake in the entity or assuming management functions.

The Regulatory Authority for Charitable Activities also sets policies and measures that enhance liability and integrity in the sector of non-profit organizations to protect them from exploitation in financing terrorism. In order to achieve this, it may use the powers granted to the regulatory authorities under this law. Non-profit organizations must keep information and records for a period of no more than of less than ten years, making it available to the competent authorities, enabling the Authority to view and obtain all the information it requests in the form and within the deadlines it specifies.

The entities concerned with the activities of non-profit organizations must provide the information requested by the Authority.

The Authority identifies, understands and assesses sector risks, and applies a risk-based approach to reduce them, in order to support public confidence in non-profit organizations. The provisions related to confidentiality stipulated in the laws do not prevent the supervisory authorities from accessing any information held by the entities subject to their control whenever it is necessary for them to carry out their tasks, and access to this information is not conditional on obtaining prior permission from a judicial authority.

The supervisory authorities may, in the event that it is proven that any financial institution, designated non-financial businesses and professions, or a non-profit organization, or any of its directors, members of its board of directors, executive or administrative officials, has violated the provisions of this law and the regulations or any decisions or directives regarding combating money laundering and financing Terrorism, inflicting multiple penalties represented by issuing written warnings, imposing financial fines on natural and legal persons, preventing the perpetrator from working in the relevant sectors permanently or temporarily, and suspending, withdrawing or canceling the license or canceling the registration.

Expanding the powers of the National Committee for Combating Money Laundering and Terrorist Financing and enhancing the role of the Financial Information Unit: The new law



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introduced changes to the work of some government coordination bodies, such as the National Anti-Money Laundering and Terrorism Financing Committee. Among the tasks of this committee is to collect, classify and analyze data and statistics related to combating money laundering and terrorist financing, request the relevant data from the competent authorities, whether represented by the committee or not, for use in preparing the national assessment of risks and the national strategy for combating money laundering and terrorism financing, and other related purposes with its competences. The committee is also responsible for preparing the national assessment of the risks of money laundering, financing terrorism and the proliferation of weapons of mass destruction, supervising its completion, documenting its results, circulating and updating it. The competent authorities are obliged to provide the committee with the data and information it requests, and participate with it in the completion of the evaluation and the implementation of its outputs. The committee is also concerned with developing a national strategy to combat money laundering, terrorism financing and financing the proliferation of weapons of mass destruction in the country. It is based on the outputs of the national risk assessment, in line with international standards, and follow-up on their implementation. It also supervises coordination between the competent authorities, cooperation and information exchange among them at the level of policy-making and implementation and at the operational level, development and implementation of activities for combating money laundering, terrorism financing and financing the proliferation of weapons of mass destruction, taking into consideration compliance with data protection measures and personal data, and other similar tasks.

Finally, it is necessary to mention the important role played by the Financial Information Unit, whose provisions, tasks and competencies are regulated by Articles 31 to 38 of the new law, and Articles 52 to 58 of the Executive Regulations. The Financial Information Unit constitutes the national center specialized in receiving reports of suspicious transactions from financial institutions and designated non-financial businesses and professions, and other information related to money laundering, predicate crimes and terrorist financing, analyzing them and referring the results of the analysis to the competent authorities automatically or upon request. The Unit also specializes in analyzing and studying the notifications, reports and information it receives to detect cases of suspected money laundering, terrorist financing and predicate crimes and identify their trends and patterns. The Unit considers the requests of the competent authorities to obtain the information it has collected or analyzed and decide what is necessary in this regard. It shall also inform the Public Prosecution of the results of examinations and analysis when it is suspected of committing money laundering, predicate crimes or terrorist financing. Information and communications are transmitted to the Public Prosecution or the competent authorities, using secure and protected dedicated channels (Ewdaoud, 2019).

## CONCLUSION

The State of Qatar issued the first anti-money laundering legislation in 2002, pursuant to Law No. (28) of 2002 promulgating the Anti-Money Laundering Law. In 2010, the State issued Law No. (4) of 2010 regarding combating money laundering and terrorism financing. This law allowed the country to meet the requirements of international standards, provide the necessary institutional and practical foundations to effectively address the phenomena of money laundering



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and terrorist financing in the country. In view of the development of international standards, the issuance of a set of recent recommendations by the Financial Action Task Force in 2012 and the issuance of the evaluation methodology in accordance with international standards in 2013, the country has undertaken a comprehensive review of its national legislation by issuing the 2019 Law.

The new law contains a number of features that will enable the State of Qatar to ensure that it effectively and efficiently addresses money laundering and terrorism financing. These features included in the law are: Expanding the definition of predicate offenses, the source of illegal funds, to include all felonies and misdemeanors; Transition from the application of customs disclosure, whereby the traveler is obliged to disclose what he has in his possession of foreign cash at the request of the customs authorities, to the customs declaration system, which obliges all travelers to disclose what he has of foreign currency on his own if it reaches or exceeds the limit determined by the executive regulations; Strengthening the role of the National Anti-Money Laundering and Terrorism Financing Committee, allowing it to assess the national system for combating money laundering and supervising its proper functioning; Authorizing the Financial Information Unit, regulators, and law enforcement authorities with the necessary powers to ensure proper application of the law and achieve the required effectiveness; Strengthening international cooperation mechanisms for all national authorities in the field of combating money laundering and financing terrorism and predicate crimes, and tightening criminal penalties associated with violating the provisions of the law. In addition, the Anti-Money Laundering Law stipulates that it has an executive regulation that allows defining the executive aspects of the law more easily and allowing it to be amended according to new local conditions or international applications.

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