

# **Criminal Legislation Improvement of Money Laundering Crime in the Era of Electronic Financialization**

## **— Comparison with International Anti-Money Laundering Legislation**

Wang Xiruo

*Southwestern University of Finance and Economics (SWUFE), Chengdu, China*

*\*Corresponding author. Email: 1401156518@qq.com*

### **ABSTRACT**

In today's electronic financial era, new ways of money laundering crime emerge in endlessly, and the criminal legislation of money laundering crime is facing challenges. There are many money laundering cases in China, but the crime rate of money laundering is low, which reduces the cost of money laundering crime. The Amendment to Criminal Law (XI) improves the crime of money laundering, but it does not involve the expansion of upstream crime of money laundering, nor does it include several representative new Internet money laundering modes into article 191. This article will trace money laundering into the cause of the low crime rate in our country through the analysis of other countries of the legislation of the crime of laundering system, compared with foreign legislation, and puts forward two criminal legislation perfect suggestion: we need to properly expand the scope of seven types of upstream crimes of money laundering crime, and at the same time appropriately add several new ways of money laundering connected with the Internet.

**Keywords:** *Electronic financial era, Money laundering crime, Upstream crimes, Several new ways.*

## **1. CURRENT SITUATION OF MONEY LAUNDERING CRIME IN CHINA**

### ***1.1. Data Statistics: Money Laundering Crime Rate Is Low***

According to the anti-money laundering report from 2015 to 2019 released by the People's Bank of China, it can be seen that there are significantly few cases sentenced to the crime of money laundering under Article 191 of the Criminal Law. This paper compares several similar kinds of crime, and conclude the case and the number of data in recent years, as shown in Table 1.

For example, according to the 2019 China Anti-Money Laundering Report, China Anti-Money Laundering Monitoring and Analysis Center received

867 million large-value transaction reports and 1.6376 million suspicious transaction reports. The national procuratorial organs approved the arrest of 10,380 people in 5,073 cases of suspected money laundering, and prosecuted 16,809 people in 5,766 cases.

However, in sharp contrast, only 77 cases were concluded for the crime of money laundering, with 83 effective judgments. On the other hand, the crime of covering up, concealing the proceeds of crime resulted in 5,623 cases concluded and 13,700 effective judgments, far higher than the former.

### ***1.2. Analysis of the Current Situation***

The low crime rate of money laundering shows that the anti-money laundering work in China still has shortcomings, and this phenomenon also hinders the

**Table 1.** Number of various crimes cases from 2015 to 2019

Charge	Year	2015	2016	2017	2018	2019
Money laundering	completed cases	9	28	32	47	77
	effective judgments	15	17	20	52	83
Covering up, concealing the proceeds of crime	completed cases	6731	5226	5358	4742	5623
	effective judgments	12445	9249	10293	11287	13700
Harboring, transferring or concealing drugs or stolen drugs	completed cases	54	55	26	36	34
	effective judgments	103	101	69	89	95
Aiding and abetting terrorism	completed cases	55	147			
	effective judgments	51	153			

judicial practice and anti-money laundering work in China. Professor Wang Xin said in his article, "The legislative perfection of anti-money laundering is an unfinished business [1]." In the information age, electronic finance develops rapidly, so we still need to examine the specific provisions of Criminal Law.

Looking around the world, although there are many differences between countries in legal systems, there are indeed some advanced aspects worth learning in foreign legislation from the perspective of anti-money laundering. Considering the current situation and focusing on criminal legislation, this paper will trace the causes of low crime rate of money laundering, compare it with foreign legislation, and analyze whether China's legislation on money laundering crime is insufficient, whether it should adjust the legal norms and other issues.

## 2. LITERATURE REVIEW

Wang Xin, Review and Enlightenment of Germany's Anti-Money Laundering Criminal Legislation, *Journal of Henan University of Economics and Law*. 2012,27(01). This paper analyzes the multiple amendments made by the German Criminal Code to the crime of money laundering, compares the criminal legislation and changes of anti-money laundering in China, and points out that the experience of the criminal legislation of Anti-money laundering in Germany is of reference significance in improving the legislation of anti-money laundering in China [2].

Shao Shaping, Li Yuelong, The New Development of International Anti-Money Laundering Law and China's Anti-Money Laundering Rule of Law, *Law Journal*. 2007,(02). By introducing the historical development of international anti-money laundering law, this paper explains the influence of international anti-money laundering law on Chinese legislation, and further demonstrates that China should promote the

benign interaction between domestic and foreign anti-money laundering fields [3].

Liu Xianquan, Wu Yunfeng, On the Improvement of Criminal Legislation of Money Laundering Crime in China, *Politics and Law*. 2005,(06). The paper holds that under the situation of internationalization of legislation, the legislation of money laundering crime in China gradually reveals many drawbacks, and concludes that the future revision of criminal legislation should expand the scope of upstream crimes of money laundering crime and reconstruct the objective behavior mode of money laundering crime [4].

Wang Gongzheng, Case Study and Governance Path of Money Laundering Crime, *Chongqing Social Sciences*. 2018,(06). Through the investigation of cases, the paper explains the current situation of the judgment, judicial recognition and penalty application of money laundering crime, points out the practical problems faced by money laundering behavior, which has caused infringement on the financial management order, and demonstrates the legislative improvement path of money laundering crime [5].

Cai Ningwei, Li Jiao, A Study on the Identification of Money Laundering Crime and the Expansion of Upstream Crime Field, *Financial Regulation Research*. 2021,(02). In combination with the situation of money laundering crime, judgment and upstream crime in China in recent years, this paper focuses on discussing whether the determination of upstream crime of current money laundering crime is narrow. On this basis, it puts forward some policy suggestions, such as expanding the upstream crime of money laundering crime, enriching the conviction type of money laundering crime and strengthening the supervision power [6].

### **3. LEGISLATIVE PERFECTION 1: APPROPRIATELY EXPAND THE SCOPE OF UPSTREAM CRIMES**

#### ***3.1. The Limitation of Scope of Upstream Crimes in Criminal Law of Our Country***

According to Article 191 of China's Criminal Law, seven types of upstream crimes include "drug crime, organized crime of mafia-like nature, terrorist crime, smuggling crime, embezzlement and bribery crime, crime of destroying financial management order, and financial fraud crime" [7]. As a type of downstream crime, the crime of money laundering refers to the act of laundering illegal proceeds in order to cover up and conceal the income of seven upstream crimes.

China's Criminal Law limits the scope of the crime of money laundering and classifies it as the crime of destroying financial management order. It is clear that the legal interest protected by the crime of money laundering is the financial management order. Since 2006, China's Criminal Law has not changed the scope of the seven types of upstream crimes, nor did it explain and clearly regulate them, resulting in many major crimes not included. Especially with the development of economy, the ways and behaviors of money laundering are constantly updated. Under the development background of network payment and third-party payment, various new financial service modes emerge in endlessly.

Electronic finance has many characteristics, such as high efficiency, low cost, strong concealment and being able to cross the world, which makes money laundering crimes more frequent. If the scope of upstream crimes is only limited to seven upstream crimes, it is not conducive to the effective attack on criminal acts. This paper argues that the narrow scope of upstream crime is one of the important reasons for the low crime rate of money laundering in China.

#### ***3.2. Comparison of International Legislation— —Germany, Japan***

Germany expands the scope of the upstream crime of money laundering through legislation. In Germany's 1994 Law on Combating Serious Crimes, the upstream behavior of money laundering is not required to constitute a crime, but is defined as "illegal behavior" [8]. Quote Professor Wang Xin's elaboration: "Upstream behavior must conform to the constitution of crime and have illegality, but need not have accountability. 'In other words, as long as the upstream behavior conforms to the criminal constitution and has criminal illegality, accountability is not a necessary condition for the establishment of money laundering crime. [2]"

At the same time, Germany also clearly stipulates that the upstream behaviors of money laundering also include several misdemeanors, which further increases the scope of money laundering crime. Germany's Law on Improving the Fight against Organized Crime stipulates that upstream criminal behaviors should not only include major crimes, but also routine crimes [8].

In the Organized Crime Punishment Law passed by Japan in 2000, the upstream crimes of money laundering extend to general major crimes, including drug trafficking, illegal arms trading, smuggling, corruption and human trafficking. With the development of society, Japan promulgated the Law on Punishment of Providing Funds to Terrorist Crimes in 2002, which listed terrorist financing crime as the upstream crime of money laundering crime [8]. These laws have obviously and effectively expanded the scope of upstream crimes of money laundering crime.

#### ***3.3. Suggestions on Legislative Improvement***

Considering China's national conditions and referring to the legislation of Germany and Japan, we should properly reflect on the determination of the scope of upstream crimes of money laundering crime. There are many money-laundering crimes in China, but the conviction rate is very low, and the relevant anti-money-laundering laws have not been effectively implemented. A large number of money laundering facts are convicted by article 312 of Criminal Law and article 349 of Criminal Law with relatively light punishment, but thus raise the threshold of money laundering crime and reduce the cost of crime.

The "Three Counter-Opinions" put forward guiding suggestions for improving the legal system of money laundering crime. Article 10 points out: "In accordance with the international conventions that China has participated in and the international standards that China has clearly committed to implement, we should study and expand the scope of upstream crimes of money laundering crime. [9] At present, the main upstream crimes that generate criminal proceeds in China are fraud, drug trafficking, corruption and bribery, tax crimes, counterfeit and shoddy products, etc., while the Internet environment encourages illegal fund-raising, illegal gambling and other upstream crimes. It is too narrow to limit the scope of upstream crimes to only seven categories.

It is necessary to expand the scope of upstream crimes of money laundering crime. For example, citing professor Wang Xin's point of view, since anti-tax evasion, anti-money laundering and anti-terrorist financing are important contents in the mechanism of "three counter-actions", "crime of endangering tax collection and administration" should be included in the scope of upstream crimes in Article 191 of Criminal

Law [1]. Combining with the development of our society, expanding the scope of upstream crimes from the Angle of criminal legislation is beneficial to strengthen the effect of combating money laundering.

#### **4. LEGISLATIVE PERFECTION 2: ADD APPROPRIATE PROVISIONS FOR MONEY LAUNDERING WAYS**

##### ***4.1. New Money Laundering Methods in the Information Age***

The Internet provides more opportunities for money laundering criminals, but also brings challenges to the criminal legislation and justice in the field of anti-money laundering. With the help of Internet, the new age has spawned many new ways of money laundering. The following paragraphs will analyze several new money laundering methods through the introduction of relevant concepts.

##### ***4.1.1. Using Bitcoin and Other Virtual Currencies to Launder Money***

Virtual currency is a kind of non-real currency, including Bitcoin, game currency and other Internet virtual currencies. Such products have certain financing risks of money laundering. Virtual currency can be purchased with cash and can be exchanged at any time. It is easy to become a new way of money laundering. Relevant data point out that China ranks fourth in the list of bitcoin trading volume of major countries in the world in 2020, with an annual trading volume of \$210 million, posing a large potential risk of money laundering [10].

##### ***4.1.2. Using Alipay and Other Third-Party Payment Systems to Launder Money***

In recent years, the transaction scale of the third-party payment market in China has been increasing rapidly, and the third-party payment system is frequently used in People's Daily transaction activities, such as Alipay, Tenpay and Baidu Wallet in China. With third-party payment as the background, criminals can set up virtual online stores and realize successful money laundering by using the way of false transactions. At the same time, criminals can also use third-party payment for gambling money laundering. By registering an account on a gambling website, they can take the money into the account as a bargaining chip to gamble online, turn the illegal income into gambling funds, and then cancel the account to complete the money laundering operation.

##### ***4.2. Comparison of International Legislation—United States, Canada***

In the aspect of anti-money laundering, the United States has gradually realized that compared with the mature supervision system of financial institutions, third-party payment institutions have great problems in customer real-name authentication, transaction concealment, legal risks and other aspects. In 2004, the United States enacted the Model Law of Uniform Monetary Services, which improved the compulsory management of payment and clearing services of non-financial institutions from the perspective of monetary payment in the transaction process [12].

Considering third-party payment, American laws strictly regulate the performance of anti-money laundering obligations of third-party payment institutions, requiring strict implementation of customer information verification and identity identification. As stipulated in USA PATRIOT Act, third-party payment platforms need to register on the Financial Crimes Enforcement Network of the United States Department of Treasury, timely report suspicious transactions and keep all transaction records [11].

In terms of virtual currency, the United States has stipulated since 2011 that any natural person or legal person engaged in virtual currency exchange or transaction should be subject to anti-money laundering and anti-terrorist financing supervision. In June 2014, Canada issued anti-money laundering and anti-terrorist financing legislation for individuals and legal persons providing virtual currency services, and established a set of risk-based anti-money laundering and anti-terrorist financing control measures [13].

##### ***4.3. Suggestions on Legislative Improvement***

China has not yet included virtual currency and specific third-party payment money-laundering methods into the provisions of the Criminal Law, which provides the possibility for the laundering of funds obtained from crimes, and also encourages the occurrence of upstream crimes to a certain extent. It is worth noting that third-party payment has revolutionized the way of money laundering, speeding up the circulation of illegal gains through online banking, virtual online stores, fake transactions, online casinos, live streaming platforms, and the use of specific non-financial institutions and industries.

The crime of money laundering stipulated in China's Criminal Law is mainly aimed at maintaining the order of financial management, but there is no clear legal definition of the standardization and legality of Internet transactions. This paper holds that the provisions of money laundering crimes should be appropriately added

in the Criminal Law to effectively prevent money laundering risks.

In criminal legislation, various acts of money laundering through Internet should be covered in Article 191. The crackdown on money laundering crime can no longer only focus on financial institutions. Only by stipulating the behavior mode of money laundering more specifically, can the criminal behavior of money launderers be convicted and punished more accurately in judicial application, and can money laundering be more comprehensively attacked.

## 5. CONCLUSION

The crime rate of money laundering crime is low, which reduces the cost and threshold of money laundering crime. The development of electronic finance forces to change the traditional financial legislation model including criminal legislation. In combination with China's national conditions and the era of Internet development, it is necessary to attack money laundering from all aspects to convict and measure the punishment of money laundering criminals, so as to ensure that the crime and punishment are statutory and the punishment is appropriate for the crime. Compared with the legislation of Germany, Japan, the United States and other countries, we can get some useful experience in the crime of money laundering. China's criminal legislation should appropriately expand the scope of the upstream crimes of money laundering crime, and properly increase several new ways of money laundering connected with the Internet.

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