
Kuwaiti Law's Vision of the Bank Money Laundering Processes^(*)

**Dr. Judae F.J. Al Rashidi
Associate Professor of Private
Law in the Sa'd al Abdullah
Academy of Security Sciences
Kuwait**

Abstract:

This research deals with a very important submission, namely the Kuwaiti Law's Vision of the Bank Money Laundering Processes, and the conformity law to the Forty Recommendations of the Financial Action Task Force (FATF). The paper will not study the FATF 9 Special Recommendations.

This topic is divided into three chapters; the first one is dedicated to show the stages of bank money laundering and its definition in the Kuwaiti law. The second chapter shows the attitude of the Kuwaiti law towards the bank money laundering and its restriction by the forty recommendations, while the third chapter is assigned for indicating the role of the Kuwaiti national committee to fight the bank money laundering and finance of terrorism, noting that this research contains a conclusion and list of references.

Introduction

Since the Islamic Sharia prevented every saying, direct or indirect act inured to the damage of man, whether this damage is incurred to the

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psyche, mind, money, honor or religion. Since this is the case, and since the humans psyche, by nature, is commanding of evil except for what Allah was merciful with, and has the desire to acquire and collect money, a matter that instigates some persons with bad faith to commit crimes in the way of getting this money, known in Islamic jurisprudence as "illicit and illegitimate gain"⁽¹⁾.

Whereas the positive laws- with their different legal theories criminalized many- acts that harm the individuals and society. However, the modern age showed a new pattern of crimes, which are attempted by some criminals to impart the legitimate nature to the money collected from the illegal acts. This dirty money is primarily collected from the sale of drugs, traffic of the prohibited arms, exercise of debauchery and gambling, etc. As a result, some criminals try professionally- to launder this money derived from illegitimate sources, by conducting some legal actions and financial bank transactions.

According to the aforementioned, crimes known as "money laundering"⁽²⁾, which is truly one of the crimes that threaten the economic⁽³⁾ and financial⁽⁴⁾ system of the international community, since the money laundering processes are often done across more than one country, a matter that urged the United Nations to issue the Palermo

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- (1) See: Dr. Judae. F. Al Rashidi- Control of Bank Money Laundering in the Kuwaiti law- Cairo- Dar El Nahda El Arabia- First Edition- 2005 - p.11.
 - (2) See: Dr. Zyad Ali Arabia- money laundering and its socio-economic effects and its fighting in the Arab and international world- legal research- magazine of security and law issued by the Dubai Police Academy, the united Arab emirates- twelfth year- first issue- January2004 AD- p. 98, saying: "there are other nomenclatures given by the Arabs to money laundering, such as money bleaching and money purification. These all lead to the same meaning, although the accurate translation of the English term Money Laundering is Ghasil Al Amwal, the translation adopted by the United Nations in its documents".
 - (3) For further details on the socio-economic effects of money laundering and its damages: Judge\ Abdel Fattah Suleiman- fighting money laundering- Egypt- mahalla al kubra- dar el kotob el kanoniya- first edition- 2005 AD-P.17 upwards, Prof. Khaled Remih Al Matiry- Banks and Money Laundering Processes- master's degree submitted to the institute of legal researches and studies, affiliated to the arab league- 2004 AD- p. 16 upwards.
 - (4) See the social damages resulting from money laundering: Judge\ Abdel Fattah Suleiman- ibid- p.21 and the next pages, Prof. Khaled Ramih Al Matiry- ibid- p. 18 upwards.

Convention, the United Nations Convention against Transnational Organized Crime, 2000 AD⁽⁵⁾.

It is said that the Kuwaiti anti-money laundering law (35) for the year 2002 AD⁽⁶⁾- and the other laws relevant to money laundering- was not limited to the rules of criminalization and punishment of money laundering only, it also includes protective rules that aim at preventing money laundering across the financial and banking corporation⁽⁷⁾, in addition to the establishment of the Kuwaiti National Committee for combating money laundering and terrorism, so our research will be limited to the discussion of important matters only, and each of them will be assigned to an independent chapter as follows:

First Chapter: Stages of bank money laundering and its definition in the Kuwaiti law

Second Chapter: Combating bank money laundering by the Kuwaiti law

Third Chapter: role of the Kuwaiti national committee in fighting money laundering and financing of terrorism.

(5) The United Nations Convention against Transnational Organized Crime for the year 2000 AD, held in the Italian city of Palermo from 12-15 December 2000 AD.

(6) Kuwaiti law (35) for the year 2002 AD on money laundering, passed on 10 March 2002 AD, and issued in the state journal "al Kuwait al Youm", attachment of issue 557- forty eighth year- on 26 March 2002 AD.

(7) See: John Walker, How Big Global Money Laundering? Journal of Money laundering control, volume3, No. 1999.

First Chapter

Stages of bank money laundering and its definition in the Kuwaiti law

Preface and Division:

Dirty-source money laundering has several fields⁽⁸⁾. There are two practical theories for money laundering processes. The first one is known as the "Traditional Theory" as the experts of the "international intervention financial group"⁽⁹⁾ said that money laundering according to the traditional theory is carried out according to three stages:

- **First Stage:** employment
- **Second Stage:** camouflage
- **Third Stage:** merger

There is another theory for the money laundering processes ⁽¹⁰⁾, or the so-called "Modern Theory". It is divided into three types, namely:

- **First Type:** simple laundering
- **Second Type:** supported laundering
- **Third Type:** accurate laundering

(8) See: Dr. Mohsen Ahmed el Khudiry- money laundering "phenomenon- reasons and treatment"- Cairo- the publisher, al Nile Arab Group- first edition- 2003 AD- p. 81, dr. el hady abou hamra- reading in the reality of controlling crime on the international level- Bahrain- the law magazine- second issue- July 2005 AD- P. 274.

(9) the international intervention financial group, known as "GAFI" established in Paris under the umbrella of the European organizations' committee, 1989 AD.

(10) For further review on the theories of money laundering: Dr. Mahmoud Kebish- criminal policy in controlling money laundering- Cairo- Dar El Nahda al Arabia- second edition- 2001 AD upwards, dr. Mohasen Mohamed Ahmed El Khudiry- ibid- p.55 upwards, major general\ Essam Ibrahim El Tersawy- money laundering- Cairo- no mention of publisher- first edition- 2002 AD- p.15 upwards, Prof. Salah Hassan El Sissy- Contemporary Economic Issues- Sharija- Publisher: Dar El Adab Bookshop- first edition- 1998 AD- p. 59 upwards.

Therefore, we will try to indicate the stages of money laundering in the commercial banks, noting that there are reasons that led to the spread of money laundering, summarized as follows⁽¹¹⁾.

- 1 - Illicit traffic, or the so-called black market⁽¹²⁾.
- 2 - Administrative corruption of some senior officials in some senior countries.
- 3 - Administrative complications resulting from the laws relevant to the economic activities.
- 4 - High tax rates.
- 5 - Globalization that resulted in the freedom of money and information circulation, and the decline of trade barriers among the countries.
- 6 - Technological progress in the development of the financial transfer systems among the different world countries, and the appearance of the so-called the internet banks or electronic Banks for transfer⁽¹³⁾.
- 7 - Increasing size of international trade among the businessmen, some of whom practice illegal acts.
- 8 - Increasing transactions among the national and international banks.
- 9 - Confidentiality of bank accounts, especially the so-called "digital accounts".

(11) See: Judge / Abdel Fattah Suleiman- controlling money laundering- Egypt, Mahalla Al Kubra- Dar El Kotob El Kanoniya- First Edition- 2005 AD- P. 12 upwards, Prof. Khaled Ramih El Matiry- banks and money laundering- master's thesis submitted to the Institute of Arab Researches and Studies, affiliated to the Arab League- 2004 AD- p. 13 upwards.

(12) See: Robert Crosse, Mexico: the back market in foreign exchange and its relationship with nacties money laundering- journal of money laundering control, volume3, No. 1, 1999.

(13) See: Dr. Ziyad Ali Arabia- ibid- p.103, and see also, Dr. Khaldoun Kaddah- Crimes Committed by Informatics-p.1- research submitted to the conference of "Law and Computer" held by the faculty of law, el yarmouk university, Jordan, from 12-13 July2004 AD, see also dr. ali hassan tawalia- rights of internet users and producers in fighting criminal procedures- p.4- research submitted to the conference of "Law and Computer". See in foreign jurisprudence: See also John Angel, legal risks of providing the internet services, journal of computer and communication law- volume 11- No. 6- 1995-p.150.

After this brief introduction, we will divide this chapter into three requirements; the one deals with the stages of bank money laundering. The second requirement is titled "role of banks and financial institutions in controlling the money laundering processes according to the "Strasburg Convention and modal law of the United Nations". The third requirement is concerned with the definition of money laundering in the Kuwaiti Law.

First Requirement Stages of bank money laundering

There are three stages through which money laundering is done in the financial banks and corporations:

- 1 - The stage of depositing illicit money in the bank accounts
- 2 - The stage of tricking and camouflage of the source of illicit money
- 3 - The stage of merger (or integration)

We will try briefly to explain the three stages in sequence God Willing.

First Stage: depositing illicit money in the bank accounts:

This stage is called the deposit or lease of money⁽¹⁴⁾. This means to enter this dirty money- or activity- to the banks, since this money is a result of illegitimate traffic, such as the drug traffic, the sale of prohibited arms or the exercise of debauchery and gambling, in addition to the other organized crimes which are closely related to the money laundering process⁽¹⁵⁾.

The financial deposit is often done by the organized guerillas by using legal and banking tools, as these organized guerillas deposit their money in the banks by one of their members, and is often in a status of criminal suspicions. The bank or its departments purchase current or

(14) See: Dr. Huda Hamed Kashkoush- Money Laundering within the International Cooperation- Cairo- published by Dar el Nahda el Arabia- first edition- 2002 AD-P. 52.

(15) See: Jackie Johnson and Y.C. Desmond Lim. Money laundering: journal of financial crime, volume 10, No. 1, July 2002, p. 7, they said "US president's commission on organized crime (1984) in its review of the relationship between money laundering and organized crime".

fixed assets, such as the purchase of stocks, bonds and jewelry, in preparation to be resold by the bank as well, as being an agent of member.

In this regard, some jurists say⁽¹⁶⁾- truly and I agree with them "In this stage, the guerilla of crime become able to deposit the collections and the yields of the criminal activity to the bank or cash system, and therefore to find banking corporations that pay for the legitimacy of and lawfulness of this money, because they are simply formed under the sight and witness of these banking corporation, through illicit activities".

Second Stage: stage of illusion and camouflage of the source of illicit money:

This stage briefly aims at camouflaging and concealing the reality of the illicit source of money, so that it would be difficult to uncover the first source of dirty money, by having a successive complicated⁽¹⁷⁾ series of money laundering, with the aim of misleading the people of justice from detecting the real sources of money. These are of course illicit and criminated sources.

Third Stage: Merger Stage

This final stage of money laundering aims at refunding this illicit money to economy, so it takes a legal and legitimate appearance, so that it can be invested in the commercial projects which yield satisfactory material returns⁽¹⁸⁾.

It is noted with some jurisprudence⁽¹⁹⁾ that the commercial banks contribute to the money laundering process, so it is difficult, if not

(16) See: Mohsen Ahmed Khudir- ibid- p. 119.

(17) Dr. Mohsen Ahmed Khudir- ibid- p.120, Dr. Huda Hamed Kashkoush- ibid- p.35.

(18) Dr. Ziad Ali Arabia- ibid- p. 99, saying: "the stage of integration and merger, and this is the final stage where the laundered money is refunded in the cycle of internal and international economy in the form of direct investments in the real estate and in the luxury or precious goods, and investment in the stock market or in the purchase from the companies, and in this stage the money will be legitimate and have the legal appearance".

(19) See: Dr. Huda Hamed Kashkoush- Ibid- P. 54.

impossible, to prove the knowledge of the bank or its collaboration with the illicit capital holder, noting that some banks exploit their external branches in the world countries, to merger this dirty money.

Second Requirement

Role of banks and financial institutions to control the money laundering processes according to the Strasburg Convention and modal law of the United Nations

On 8 November 1990 AD, the members states of the European council signed the Strasburg Convention on money laundering and tracing, controlling and confiscating the returns of the crime, and establishing an active system for controlling it on the international level⁽²⁰⁾, noting that this agreement was enforced as of March first, 1991 AD, according to the rules of article thirty-six of the agreement

Directive No. 308\ 91 was issued by the European council issued on 10 June 1991 AD, on the prevention of using the financial system for the purposes of dirty money laundering.

Article six of the Strasburg Convention required the legislative measures and necessary remedies to treat the deliberate acts of money laundering as crimes under the laws of the member states in the European Council. These necessary measures are⁽²¹⁾:

- 1 - That the banks and financial institutions confirm the identity and personality of the customers and beneficiaries (acknowledged by article three of the convention)
- 2 - To transfer or remit the money in a written or registered form and keeping this form (article four of the agreement)
- 3 - To inform the legal authorities of each transfer or remittance of the suspected money, hide the subscription or camouflage the reality of the money transferred by banks and financial institutions (article six of the agreement).

(20) See: Dr. Mustafa Taher- legislative confrontation of the laundering of money derived from drugs crimes- Cairo- no publisher- first edition - 2002 AD- P. 39.

(21) Marc Dasseuse, Stuart Isaacs Q.C. and Graham Penn, EC Banking Law, London, second edition, 1994- P. 219.

The modal law of the United Nations was passed in 1995 AD. This law contains a set of rules and measures that the countries can follow in its national legislations to control money laundering, noting that this law is a directive non obligatory law, for the countries

The procedures of the modal law are worth mentioning. These were called the (procedures of prevention and investigation of money laundering activity). These rules aim at enabling the countries to set internal legal systems that secure the control of the criminal activity of money laundering processes, noting that the stated measures of prevention in the modal law are represented in several duties⁽²²⁾, namely:

- 1 - Defining the amount of cash payments (article one)
- 2 - Submitting reports on the international financial transfers of the money and securities (article two)
- 3 - Controls of dealing in foreign exchange out of the stock exchange (article three)
- 4 - Determination of compulsory duties on the amusement houses (article four)

The measures of investigation in the modal law of the United Nations are a set of measures that shall be followed by the financial institutions and banks towards the security and judicial authorities defined by law, by conducting several measures stated in chapter two of the modal law of the United Nations in 1995 AD. These measures are:

First: evaluation of the suspected money laundering reports

Second: measures of submitting the reports, as the financial institutions submit these reports to the competent judicial authorities entitled to take the legal measures (article14)

Third: the special means of investigation about the suspected transactions, by supervising the bank accounts, computer systems and means of communication of the beneficiary from the suspected transactions, and this does not contrast the "confidentiality of bank accounts".

(22) Mufid Nayef El Delimy- money laundering in the criminal law- Jordan- Dar el Thakafa for Publishing & Distribution- first edition- 2006 AD- P. 191.

Third Requirement

Definition of Money Laundering in the Kuwaiti Law

At the beginning, it shall be said that the crimination of money laundering in the Kuwaiti law (35) for the year 2002 AD, is an application by Kuwait government of the rules included in the united nations conventions against Elicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention). The first of these is the adherence to control the laundering of money derived from drug traffic, noting that Kuwait ratified this international convention according to the Kuwaiti law 25 for the year 2000 issued on 12\06\2000⁽²³⁾. On the other hand, the Kuwaiti law 35 for the year 2002 on money laundering is considered to be an enforcement of the law of Kuwait.

for what the forty recommendations of the Financial Action Task Force⁽²⁴⁾ (F.A.T.F), especially the fourth recommendation, which states that: "every country shall take the required measures including the legislative measures that criminate money laundering as indicated in the Vienna Convention, and each country shall take into account the adaptation of the money laundering crime as being among the hazardous crimes, and each country can adapt the hazardous crimes like money laundering".

The definition and crimination of money laundering was included in article one and article two of the Kuwaiti law (35) for the year 2002 AD, on the money laundering control⁽²⁵⁾. Article one of the same law stated that "money laundering is a process or set of financial or non-financial processes that aim at concealing or camouflaging the illicit source of money or the returns of any crime or showing it in the money or returns

(23) See Kuwaiti law 25 for the year 2000 passed on 12\06\2000, published in the official journal (Kuwait Al Yom)- year 46, No. 467, on 18\06\2000.

(24) the forty recommendations of the Financial Action Task Force (FATF) on money laundering, February1990, as revised in June 1996, Jackie Johnson and Y.C. Desmond Lim, money laundering has the financial action task force made a difference?, journal of financial crime, volume 100, Number1, July2002, P.8.

(25) Kuwaiti law (35) for the year 2002 AD on money laundering, issued on 10 March2002 AD, published in the state newspaper "Al Kuwait Al Youm", attachment of issue 557- forty-eighth year- on 26 March2002 AD.

of any crime and showing it in money or returns collected from an illicit source. These are examples of the processes of each act that contributes to employ or transfer the money of returns that directly or indirectly result from crime or concealing and camouflaging its source".

Article two of the same law stated that "every one who committed the following acts shall be committing of a crime or intended to commit it":

- 1 - Carrying out money laundering while knowing that they are in origin collected from a crime or an act of involvement in it.
- 2 - The transfer of possession, having, using, maintaining or receiving money noting that they are collected by crime or acquired by an act of involvement in it.
- 3 - Hiding or concealing the reality of money, its source, place or method of disposing it, its movement or the rights relevant to it or its possession, noting that it is gained by crime or an act of involvement in it.

It is noted in the definition of money laundering crime in the Kuwaiti law that the Kuwaiti legislator has adopted the wide trend of money laundering⁽²⁶⁾ for it did not define a certain appearance, where the crime of money laundering takes place, and I do not think that this is a sound trend of those who pass the Kuwaiti law⁽²⁷⁾. In addition, this law

(26) Dr. Mohamed Abdel Rahman Bouzebr- criminal responsibility of the body corporate for money laundering crimes- legal research - Kuwaiti magazine of law- twenty-eighth year- third issue- September 2004 AD-P. 61, as it says the following: "thus the Kuwaiti legislator has criminated and punished the different forms of money collected from crime whatever its nature is. It represents a wide context of crimination and penalty. This includes every natural or moral person, in contrast to the French penal code disputed by two trends it took and involved in." Khaled Ramih El Matiry- ibid- p.7, saying-truly- on the definition of money laundering and we agree with what some jurisprudence stated (Dr. Galal Wafaa Mohammedin) that the definition of money laundering in article one of the Kuwaiti law is characterized by generality, since the legislator did not reckon the suspected processes.

(27) See the broad definition of the terrorism crime in the French law for the year 1996 AD, and see also: Al Hady Abou Hamza- reading in the reality of crime control on the international level- Bahrain-law magazine- second issue- July 2005 AD, p. 289- saying the following: "as for France and Belgium, they adopted the broad definition of money laundering stated in the agreement of the European council for the year 1990 AD".

Article (1-324) of the French Penal Code added to the law issued on 13/05/1996 and article (55) of the Belgian penal code criminated the money laundering crime resulting from any crime.

criminated every act that contribute to hide or camouflage the illicit source, for article two showed two important restrictions on the definition, since they required first that this money be collected from a crime or gained by an act of involvement in crime, and thus money laundering happens if the original crime is a felony or misdemeanor according to the rules of the Kuwaiti law⁽²⁸⁾.

The second restriction included in article two of the Kuwaiti law on the definition of money laundering is knowledge⁽²⁹⁾, that is, the doer or the contributor in money laundering shall know quite well that he does money laundering, which is collected from a crime or collected from the act of involvement in crime.

Accordingly, there shall be two conditions for establishing the money laundering crime included in the text of article one of the Kuwaiti law (35) for the year 2002 AD, namely⁽³⁰⁾:

- 1 - The laundering of money collected from the crime according to the rules of Kuwaiti law.
- 2 - The culprit of the crime shall have knowledge of it, that is, the person shall know that this money is collected from a crime according to the Kuwaiti law.

(28) Al Yamama Khudir el Harby- Money Laundering Control in the Kuwaiti Law- Kuwait- the Kuwaiti Magazine of Fatwa and Legislation.

(29) See the importance of explaining the scope of knowledge in money laundering, Dr. Suleiman Abdel Monem- Criminal Responsibility of the Bank for the Dirty Money- Alexandria- Publisher: Dar El Gamea el Gadida- first edition- 1999 AD- P. 144, upwards.

(30) Juda F.J. Al Rashidi- control of Bank Money Laundering in the Kuwaiti Law- Cairo- Dar El Nahda el Arabia- first edition- 2005 AD- P.27.

Second Chapter

Control of Bank Money Laundering by the Kuwaiti Law

In its session held on 18 June 2001 AD, the Kuwaiti cabinet acknowledge a draft law that treats the money laundering crimes in 14 articles, and referred it to the Kuwaiti Omma Council- actually- in preparation of considering and acknowledging it as a law, and the Kuwaiti Omma Council acknowledged in fact, for it has inserted amendments to its articles in the second deliberation, so that the law included twenty articles.

Article one of the Kuwaiti law (35) for the year 2002AD, as mentioned before, treated the definition of money laundering processes⁽³¹⁾ and its crimination. It stated that "money laundering is a processes or set of financial or non-financial processes that aim at concealing or camouflaging the illicit source of the money or the revenues of any crime and showing it in a form of money of returns collected from a legitimate source. These processes include each act that contributes to the process of money leasing, money transfer or returns directly or indirectly produced by a crime, camouflaging or concealing its source⁽³²⁾". Article two of the Kuwaiti law stated that "every one who committed the following acts shall be committing of a crime or intended to commit it":

(31) See: American Jurisprudence in the Definition of Money Laundering:- Peter Johnstone and mark Jones "money laundering" journal of money laundering control- volume3- No. 3- 2000- P.201.

(32) Kuwaiti law (35) on money laundering for the year 2002 AD, issued on 10\03\2002 AD, published in the state newspaper "al Kuwait al Youm", attachment of issue 557- forty-eighth year 2060- on 26 March 2002 AD, corresponding to paragraph (B) of the Egyptian law No. (80) for the year 2002 AD on the control of money laundering published in the state newspaper, issue 20 repeated on 22 May 2002 AD, corresponding to article (1) of the Bahraini law No. (1) for the year 2001 AD on the control of money laundering published in the state newspaper on 01\01\2001, corresponding to article (2) in the Emirates law, and article (2) in the Omani Law.

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- 1 - Carrying out money laundering while knowing that they are in origin collected from a crime or an act of involvement in it.
 - 2 - The transfer of possession, having, using, maintaining or receiving money noting that they are collected by crime or acquired by an act of involvement in it.
 - 3 - Hiding or concealing the reality of money, its source, place or method of disposing it, its movement or the rights relevant to it or its possession, noting that it is gained by crime or an act of involvement in it.

The Kuwaiti law adopted the banking rule "know your customer"⁽³³⁾ and this is clearly seen in article three of the Kuwaiti law, for it included the obligation of the banking and financial institutions and government authorities with this important rule⁽³⁴⁾. It said that banks, investment companies, exchange companies, insurance companies and the other financial institutions and persons whose determination is made by a decision of the minister of finance shall conform with the following:

- 1 - Not reserving any accounts of unknown identity or accounts in illusory or symbolic names or opening these accounts.
- 2 - Verifying the identity of its customers according to documents issued by the competent authorities of the state.
- 3 - Reserving all the documents for five years at least from the date of concluding the transaction.
- 4 - Informing any suspected financial transactions with which its work is related.
- 5 - Adopting the policy of training the officials and workers there in the way that guarantees their knowledge of the continuous recent developments in the field of money laundering control.

(33) Kimberly Anne Summe, the battle against money laundering and examination of the US law, journal of money laundering control, volume 3, No. 3, 2002, p.241.

(34) Corresponding to articles (7,8,9) of the Egyptian law (80) for the year 2002 AD, met by article (4) of the Omani Law of Money Laundering. See also: Dr. Mohsen Ahmed el Khudiry: money laundering: phenomenon-reasons- treatment, Cairo-publisher el Nile el Arabia Group, first edition, 2003 AD, P.151 upwards. See also the instructions of the central bank of Kuwait No. (2\DB\92\2002AD) relevant to the control of money laundering and finance of terrorism. See also Prof. Khaled Ramih El Mutiry- ibid- p. 49 upwards, and also, p.71 upwards.

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- 6 - Adopting the measures of work and internal control systems suitable to it in the way that enable the discovery of any of such operations at occurrence and preventing its exploitation to pass the suspected processes.
 - 7 - The financial institutions and persons shall conform with the ministerial instructions and decisions made by the government authorities that supervise them concerning the aforementioned banks, and any recent ministerial instructions and decisions relevant to the control of money laundering processes.

It is noted that article (3) of the Kuwaiti law is- according to my view- is an application of the recommendations (10), (11), (12), (13), (15), (18), (19), (28) of the forty recommendations of the financial action task force (F.A.T.F)⁽³⁵⁾ to control money as recommendation (10) stated that "the financial institutions shall retain the accounts with no names or names that appear to be illusive, and shall be required to define the identity of its customers and register it. That is, it shall open the accounts and enter into transactions as being an agent or to lease the trustee funds and execute the financial transactions at high amounts of money..".

Recommendation (11) states that "the financial institutions shall take the required remedies to get information on the real identity of the persons in whose names the accounts are opened or for whom the trading process is run for them, if there is a complaint that those clients or customers do not work by judiciousness for themselves".

Recommendation (12) states that the financial institutions shall maintain all the required records of the national and international transactions for at least five years, to be able to benefit the competent authority with information required as soon as possible. These documents shall be available to the competent local authorities within the sue of the summons and criminal investigations".

Recommendation (13) states that: "the countries shall exert special care and take the necessary measures to control money laundering done by the means of modern technology."

(35) The forty recommendations of the Financial Action Task Force (F.A.T.F) referred to in Judge\ Abdel Fattah Hassan- ibid- p.291 upwards.

Recommendation (15) states that: "if the financial institutions suspected that the source of money is a criminal activity, it shall be allowed or requested to notify its suspicions immediately to the competent authorities".

Recommendation (18) states that: "the financial institutions shall notify its suspicions to conform with the instructions of the competent authorities".

Recommendation (19) states that the financial institutions shall set programs to control money laundering, and these programs shall at least include:-

- A - The development of internal policies, measures and controls including the appointment of regular officials on the level of management and the suitable remedies for evaluation to guarantee good levels on the selection of the employees.
- B - Continuous program to train the employees.
- C - Accurate system for auditing the banking agency.

Recommendation (28) states that setting a program to control money laundering in the financial institutions and other professions that deal in cash money requires support by such competent authorities, especially to familiarize these corporations and professions with the facts that usually lead to suspicion. Therefore, the authorities shall set guidelines that help the financial institutions detect the behavior that raises suspicion in their customers".

It is noteworthy that the Kuwaiti law (35) for the year 2002AD, on the control of money laundering processes required the banks, corporations and banking and financial companies to conform with the notification of the suspected transactions to the competent authority to investigate the money laundering processes. According to article five of the Kuwaiti law (35) for the year 2002 AD- public prosecution, which states that: "the prosecutor general shall define the competent authority in the public prosecution to receive the notifications on the money laundering processes stated in law", noting that we believe- in contrary to some researchers⁽³⁶⁾- that this Kuwaiti text does not conform with article

(36) Dr. Khaled Rumih El Mutiry- Ibid- p.45.

(8) of the Egyptian law (80) for the year 2002 AD, as amended by law (87) for the year 2003 AD, on money laundering. The evidence of this is that the Egyptian law made the competent authority to consider the receiving of information and notifications on the suspected processes, it is the unit of money laundering affiliated to the Central Bank of Egypt, and this unit notifies the public prosecution of the crimes stated in the Egyptian money laundering law, while this unit is not found in the Kuwaiti law as indicated before, noting that article five of the Kuwaiti law really conforms with the recommendation (15) of the recommendations of the international money laundering control commission⁽³⁷⁾.

Article six indicated the penalty of those who commit one of the crimes stated in article (2) of the law, it said⁽³⁸⁾: with no prejudice of any more intense penalty stated by another law, everyone who commits a crime of those stated in article (2) of the law shall be detained for no more than seven years and a fine of no less than half the value of the money of the crime and shall not exceed the total value of this money. By confiscating the money, property, revenues and media used in committing the crime, with no prejudice to the rights of the good faith third party. The judgment shall not transfer the penal summon for any reason without ruling to the confiscation of the money collected from money laundering".

Article stated a more intense penalty if the crime was conducted by an organized group, and if its culprit was the criminal exploiting the authority of his job and influence. It said: "the penalty of imprisonment stated in article (6) of this law shall be multiplied, and the penalty of fine shall be multiplied in no less than the money of the crime and shall not exceed the value of this money, property, returns and media used in

(37) Recommendation (15) of the international task force (forty recommendation) states that: "if the financial institutions suspected its money comes from a criminal source, it shall allow it or require it to immediately notify its complaint to the competent authorities".

(38) It is corresponding to article (41) of the Egyptian law, which stated that all those who committed or intended to commit a money laundering crime of those stated in article (2), corresponding to article (2) and article (13) of the emirates law, corresponding to article (15) of the Omani Law shall be sentenced to imprisonment of no less than seven years and a fine equal to the money of the crime. It is noted that the Omani law allowed that the imprisonment to reach ten years.

committing the crime, with no prejudice to the good faith rights of the others if the crime was committed by an organized group or was committed by the criminal using his authority or influence".

Article (10) was passed to exempt all those criminals who initiated the notification of the competent authorities of the crime and its culprit before knowing of it⁽³⁹⁾.

Article (11) was included to indicate the penalty of the workers in the banking and financial institutions and the governmental organizations⁽⁴⁰⁾ and the penalty of these authorities as well. It was indicated that they were involved in committing money laundering processes. It stated: "with no prejudice to any more intense penalty stated in another law, it shall be punished to imprisonment for no more than three years and fine of no less than five thousand Dinars and no more than twenty thousand Dinars or one of these two penalties with dismissal of the job, any person who shall notify as per the rules of clause (4) of article (3) of this law, and did not inform of a suspected financial transaction that came to his knowledge or disclosed information that he accessed to due to his job relevant to any of the crimes stated in article (2) of this law, or caused damage to documents or tools relevant to such crimes. With no prejudice to the rules stated in the above paragraph, any authority mentioned in article (3) of this law shall be punished if it was proved that it was in default in assuming any of the obligations stated in such an article, with fine of no more than one million Dinar⁽⁴¹⁾". Article (12) mentioned the

(39) Corresponding to article (17) of the Egyptian law on money laundering control and article (15) of the Omani law.

(40) Corresponding to article (15) of the Egyptian law " all those who violate any of the rules of articles (8,9,11) of this law shall be sentenced to imprisonment and fine of no less than five thousand Egyptian pounds and no more than twenty thousand Egyptian pounds", and article (16) of the Egyptian law, corresponding to article (16) of the Omani law, and article (15) of the Emirates law.

(41) it is noted here that the Kuwaiti law criminalized in article (11) the disclosure of the bank accounts confidentiality of the customers as saying "disclosed information he accessed to in virtue of his job..".

fine of "one million Dinar" for the partnerships, taking into account the non-violation of penal responsibility of the natural person.

Some jurisprudence⁽⁴²⁾ criticized the Kuwaiti law (35) for the year 2002 AD on money laundering, for limiting the criminal responsibility to the workers of the banks and exchanges, without extending the criminal responsibility to the bank or the exchange company as being a corporate or moral person⁽⁴³⁾.

Article (14) indicated the exemption of civil, criminal or administrative responsibility for all those who give information on the crime in good faith⁽⁴⁴⁾. This article corresponds to recommendation (16) of the recommendations of the financial action task force (forty recommendations). Recommendation (16) states that: "there shall be legal texts to protect the financial institutions and its employees against the criminal or civil responsibility arising from the violation of any limitation relevant to the disclosure of information imposed by a contract or legal, legislative or organizational text if not notified in good faith..".

Article (16) stated that the public prosecution shall exclusively be competent in the investigation of the action of claim in the communiqués it receives on the money laundering crimes⁽⁴⁵⁾, noting that the Central Bank of Kuwait has established a unit- under decision No. 1\191\2003-

(42) Dr. Abdel Rahman Buzber- Criminal Responsibility of the Corporate Persons on the Crimes of Money Laundering: authenticated comparative study of law (35) for the year 2002 AD, on the control of money laundering- legal research published in the magazine of law issued by the Kuwait university- twenty-eighth year-third issue- September 2004 AD- p.41, saying: " it was better that the Kuwaiti legislator follow the custom of work in the French law which required the interrogation of the bank (meaning the criminal interrogation) on the crime of money laundering if committed by one of its officials or employees in the name of the bank or for his account".

(43) Dr. Mahmoud Hashem Mohamed Riyadh- Criminal Responsibility of the Body Corporate, Comparative Study, PhD Thesis, Faculty of Law, Cairo University- 2000 AD- P. 229 to 233.

(44) Al Yamama Khudir El Harby- ibid- p.276.

(45) Corresponding to the Arab legislations that controlled the money laundering process: article (5) of the Egyptian law, article (8) of the Emirates law, and articles (12, 13, 14) of Omani law and article (4) of the Bahraini law, noting that these laws included the existence of a unit concerned with the investigation of the seriousness of the money laundering processes, and this unit notifies the general prosecution.

called the "Kuwaiti financial investigations unit", under the presidency of the governor of the central bank, and shall be competent to receive the communiqués received from the prosecution general, on the processes suspected to involve money laundering processes, so that the unit inspects it and send the technical view on it⁽⁴⁶⁾. I think that this unit shall be competent to receive the communiqués on the money laundering processes. As a result, I believe that the amendment or article (16) of the Kuwaiti law (35) for the year 2002 AD, to add to it a paragraph stating the following: "the Kuwaiti financial investigations unit affiliated to the Central Bank of Kuwait shall be assigned to receive the notifications and information on the processes suspected to include money laundering, and shall assume the works of investigation and inspection of such processes, and notify the public prosecution on the results of its interrogations", and that to complete our suggestion on this important part, we shall adopt articles (3,4,5,6) of the Egyptian Money Laundering Law (80) for the year 2002 AD.

Noting that the Egyptian legislator- as mentioned before- limited the receiving of communiqués to a competent unit, the money laundering unit, affiliated to the Central Bank of Egypt, noting that this direction agrees with the direction⁽⁴⁷⁾ of the French legislator in this regard.

The Kuwaiti law (35) for the year 2002 AD, in section four, stated that possibility of international cooperation in money laundering control⁽⁴⁸⁾. The explanatory note of the Kuwaiti law states the following: "Article (17) allowed the public prosecution of Kuwait- based on a request submitted by the competent judicial authority of another country related with Kuwait in a bilateral agreement in this regard or according to the principle of reciprocity to order the tracking or confiscation of

(46) Prof. Khaled Rumih El Mutiry- *ibid*- p. 120.

(47) Dr. Mohamed Abdel Rahman Buzber- *Ibid*- P.87 upward.

(48) See the international cooperation in articles (4,18,19,20) of the Egyptian Money Laundering Law, and Judge\ Abdel Fattah Suleiman- *ibid*- P.129, saying: " the forms of international cooperation are represented in the Egyptian money laundering law in the exchange of information and judicial cooperation".

property, revenues or media relevant to a crime in such a country stated in this law".

Article (18) stated the way of executing the foreign rules issued by a competent court in another country to confiscate in the said crimes if there is a bilateral agreement ratified by such a country or according to the principle of reciprocity".

It is noted that these two articles, agree with the text of recommendation (34) and recommendation (35) of the recommendation of the Financial Action Task Force (F.A.T.F), as recommendation (34) of the forty recommendations stated that the international cooperation shall be supported by a network of bilateral and multilateral recommendations and by arrangements stated on the common legal concepts in general with the aim of providing practical measures that affects the mutual assistance on the widest range".

Recommendation (35) stated that: "A- the countries shall work to apply the international agreements on money laundering, such as the 1990 AD agreement of the European council on money laundering, confiscation and sequestration of the money coming from crime".

B - concentration on the exchange of assistance in the money laundering issues

It is noted in the text of the two articles (17, 18) of the Kuwaiti law that they required for the application of the international cooperation to meet several conditions, namely:

- 1 - Request submitted by the competent judicial authority in the other country.
- 2 - Existence of a bilateral agreement in this regard⁽⁴⁹⁾ or according to the principle of reciprocity

(49) Dr. Abdel Hady Abou Hamra- reading in the reality of crime control on the international level- ibid- p.276, saying- truly- " the prosperity of money laundering is reflected by the regional and international statistics, since the existence of several agreements to internationally control it did not end to finding an active criminal policy. The drug traffickers and smugglers annually launder about 200 milliard dollars, and a large part of this money is transferred among the countries and the financial centers that adopt a broad system of banking confidentiality. On the other hand, the confiscation money did not exceed- in the best years- 500 million dollars. This clearly reflects the inability of the national and international criminal policies to face money laundering".

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- 3 - The necessity that the crime committed in such a country is stated in the Kuwaiti law (35) for the year 2002 AD
 - 4 - Not to harm the rights of the good faith third party (article18).

Finally, the Kuwaiti law (35) for the year 2002 AD stated in article (19) that the minister of finance shall decide the measures and controls required for the implementation of the rules of this law, and this article will try to shed light on it in the third chapter of this study.

Third Chapter

Role of the Kuwaiti national committee

On money laundering and terrorism finance⁽⁵⁰⁾

Whereas the Kuwaiti law (35) for the year 2002 AD on the control of money laundering stated the obligation of the banking and financial institutions and government authorities in its third article, which was included under the title of section two, that:

The banks, investment companies, corporations, exchange companies, financial institutions and persons whose determination is done by a decision of the minister of finance shall:

Not reserve any unknown accounts or accounts in illusory or symbolic names, or opening such accounts. 2-....., 3-....., 4-....., 5-....., 6-.....

Such financial institutions or persons shall completely adhere to the ministerial processes and decisions issued to them by the governmental organizations supervising it concerning the aforementioned clauses, and any other relevant ministerial instructions and decisions to the control of money laundering processes".

Whereas article (19) of the Kuwaiti law (35) for the year 2002 AD on the control of money laundering stated that the minister of finance makes a decision of the measures and controls required for the enforcement of the rules of this law.

Therefore, a set of ministerial decisions was issued by the minister of finance to control the money laundering processes, including the ministerial decree before issuing law (35) for the year 2002 AD on the control of money laundering. These decisions are:

- 1 - Decision of the ministry of finance (34) for the year 1998 AD on the establishment of the national organization on money laundering.
- 2 - Decision of the ministry of finance (17) for the year 2002 AD, on the control of money laundering and finance of terrorism.

(50) Dr. Juda F.J. Al Rashidi- ibid- P.125.

3 - Decision of the ministry of finance (11) for the year 2004 AD⁽⁵¹⁾ on the control of money laundering and finance of terrorism

It is noteworthy that the Kuwaiti legislation did not include any legal organization that combat crimes and finance of terrorism, and the first Kuwaiti legislation to refer to the finance of terrorism was in decision (17) for the year 2002 AD of the Kuwaiti minister of finance, noting that this ministerial decision was based in its preamble on the UN Security Council decision No. 1373 on the control of terrorism. We noted that this Kuwaiti decision did never deal with the definition and form of terrorism, which caused the ambiguity of terrorism from the legal perspective⁽⁵²⁾.

By reviewing decision (11) for the year 2004 AD of the minister of finance, on money laundering and finance of terrorism issued on 28 March 2004 AD, we found that article eight- the last article- of the same decision states that this decision shall apply as of the date of publication in the state newspaper, and the ministerial decision (17) for the year 2002 AD, and any other decisions to the contrary of this decision.

Therefore, whereas the ministerial decision (11) for the year 2004 AD was published in the state newspaper "Kuwait Al Youm" on the fourth of April for the year 2004 AD, the said decision began to be actually enforced as of 04\04\2004 AD.

Whereas there is a close relation between the money laundering processes and the finance of terrorism, it is noted that the Kuwaiti national committee was assigned and committed itself to combat money laundering and finance of terrorism. Article one of the ministerial decision (11) for the year 2004 AD on the combat of money laundering and finance of terrorism was as follows:

"a national committee on money laundering and finance of terrorism shall be established and be presided by the governor of the

(51) Decision (11) for the year 2004 AD of the minister finance on the control of money laundering and finance of terrorism was published in the state newspaper "Kuwait al Youm", on 4 April 2004 AD- issue 660- fiftieth year- P. 24.

(52) Dr. Abdel Hady Abou Hamra- ibid- P.289.

central bank of Kuwait, and the deputy governor shall replace the governor in case of absence, and the membership of the following authorities".

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|---|--------|
| 1 - Central Bank Of Kuwait | Member |
| 2 - Ministry Of Interior | Member |
| 3 - Foreign Ministry | Member |
| 4 - Prosecution General | Member |
| 5 - Ministry of Trade and Industry | Member |
| 6 - Ministry of Finance | Member |
| 7 - Ministry of Social Affairs and Work | Member |
| 8 - Kuwait Stock Market | Member |
| 9 - General Customs Administration | Member |
| 10 - Kuwaiti Banks Association | Member |

By reviewing the text of article three of the ministerial decision (11) for the year 2004 AD on the combat of money laundering and terrorism finance processes, we find that they have duties and responsibilities, that we can summarize as follows⁽⁵³⁾:

First: to draw the general strategy and policy of the state in the field of money laundering control, finance of terrorism, and this duty is undoubtedly not easy, and requires intense effort to reach this noble target

Second: preparing the required draft laws on the control of money laundering and finance of terrorism, preparation of the draft laws, and referring them to the competent authorities in the state to issue them. In fact, this task is very important, since it tries to bridge the deficits that appear during the application of the rules of law (35) for the year 2002 AD, on the control of money laundering, so there is an important note included in the context, which at the meantime includes a suggestion on the formation of the Kuwaiti national committee on money laundering and terrorism finance. This was free from the membership of the Kuwait university- especially the faculty of law- or the official equivalent

(53) Dr. Juda F.J. Al Rashidi- *ibid*- P.125.

authorities. According to my point of view, this is lack of the cadres of this committee, because the number of the draft laws shall be characterized by a research theory and a technical authority to prepare it, with a reliable efficiency in this regard. Therefore, I suggest here to add one of the academic authorities members in the state within the membership of the national committee, taking into account that he is one of those who work by law and are specialized in it.

Third: coordination between the state ministries and establishments concerned with all matters of money laundering and terrorism finance processes. This shall include the setting of a mechanism to show the draft decision and measures to be taken by such ministries and establishments, and the decisions to be issued to by such authorities, and their conforming with national and international requirements

Fourth: Follow up of the national and international developments in the field of money laundering control and suggesting the recommendations required on the same.

Fifth: Enhancing the cooperation and arranging the relevant channels of communication with the regional and international organizations on the combat of money laundering and terrorism finance. This agrees with articles (17 and 18) of the Kuwaiti law (35) for the year 2002 AD, which treat the international cooperation in money laundering combat.

Sixth: Kuwait is represented in the local⁽⁵⁴⁾ and regional meetings and conferences on money laundering and terrorism finance

Seventh: Suggesting the required training programs and increasing the awareness of the state on the combat of money laundering and finance of terrorism, and coordination among the authorities represented in the membership of the committee and other relevant authorities to be

(54) See the recommendation of a symposium on money laundering processes held by the ministry of industry and trade in Kuwait on 26 May 2007 AD, which concluded the intensification of control on the financial banking operations and bank transfers, for its positive effect on the reduction of the banking laundering processes and the finance of the terrorist groups and international criminal organizations.

set in enforcement, in addition to any suggesting any matters that can enhance the control of money laundering and finance of terrorism in country.

In this regard, due to the importance, we recommend to set a clear cut definition of terrorism and terrorist activities in an independent law, and agree on some jurisprudence⁽⁵⁵⁾ for there is a legal ambiguity on the concept and definition of terrorism on the international level, a matter with which we see the agreement of some Islamic jurisprudence⁽⁵⁶⁾, from the necessity to enhance the indication of the image of terrorism in from the legal and legitimate positive aspects, taking into account the differentiation between the crime of terrorism and the right of people to resist the occupation and expel the occupant from the occupied territories of the state. This was acknowledged by the international agreements and treaties in this regard, and this is what was stated in the rules of Islamic Sharia.

Conclusion

This study tried to show the definition of money laundering processes and the means of controlling it in the Kuwaiti law (35) for the year 2002 AD, and the relevant ministerial decrees.

Therefore, we end with some results and suggestions that our study concluded:

- 1 - That the money laundering processes are truly among the most dangerous crimes that threaten the economic and financial system of the world countries. As a result, the Financial Action Task Force recommended the fourth recommendation that each country shall make the necessary measures including the legislative measures so as to be able to criminalize the money laundering processes.
- 2 - That the Kuwaiti positive legislator did best when he passed law (35) for the year 2002 AD, on the control of money laundering, so

(55) Dr. Abdel Hady Abou Hamra- ibid- P. 289.

(56) Dr. Sa'd El Din Mosaad Helaly- Terrorism and Money- Kuwait- publisher: Kuwait institute of judicial and legal studies- first edition- 2005 AD- P.112.

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- that for Kuwait to cope with the legislative revolution on the money laundering processes, in addition to the obligation of Kuwait with the international agreements it joined in this regard, especially the 1988 Vienna Convention which aims at controlling illegitimate trafficking of drugs and mental effects, and control of the laundering of money produced by the drug trafficking. We saw that Kuwait ratified this international agreement in law 25 for the year 2000 enacted on 12\06\2000.
- 3 - The Kuwaiti legislator is estimated for taking the broad definition of the money laundering processes, and this can include the definition of the money laundering processes and means that may happen in the future
 - 4 - The Kuwaiti lawmakers are appreciated concerning the control of money laundering, and adopting the banking rule "know your customer". This is what we see clear in article (3) of the Kuwaiti law (35) for the year 2002 AD, as this banking rule aims at identifying the character of the customer, and the safety of his financial activity and its legitimacy in addition to the agreement of article (3) of the Kuwaiti law with some of the texts of the forty recommendations of the Financial Action Task Force (F.A.T.F), especially the texts of articles (10, 11, 12, 13, 15, 18, 19, 28).
 - 5 - The Kuwaiti Law (35) for the year 2002 AD had the precedence of taking the necessary measures that the banks and financial institutions shall do to define the identity of the customer and the beneficiary. This agrees with the necessary measures required by the Strasburg convention for the year 1990 AD. It also agrees with the directive passed by the European Council No. 308\91 passed on 10 June 1991 AD.
 - 6 - The Kuwaiti law (35) for the year 2002 AD had the precedence to decide the legal protection of the banking confidentiality in article (11) which does not contradict the control of money laundering processes.
 - 7 - The Central Bank of Kuwait had the precedence in its decision No. 1\191\2003- to establish the "Kuwaiti Financial Investigations Unit", concerned with the receiving of the communication coming from the general prosecution, on the processes suspected to involve

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- money laundering, to present the technical view to the general prosecution in this regard, noting that the receiving of notifications on the suspected transactions agrees with what was stated by chapter two of the modal law of the United Nations in 1995 on the investigation measures to be done by the financial institutions and banks towards the security and judicial authorities.
- 8 - The ministerial decree (11) for the year 2004 AD has the precedence in controlling the money laundering and finance of terrorism for assigning the leadership of the national committee on money laundering and finance of terrorism to the governor of the Central Bank of Kuwait, so the control of banking money laundering processes will be within the competences of the Central Bank of Kuwait, noting that the leadership of this committee was assigned to the senior undersecretary of finance according to the cancelled ministerial decision (17) for the year 2002 AD was assigned to the minister of finance.
 - 9 - We suggest to enter an amendment to article (16) of the Kuwaiti law (35) for the year 2002 AD, to be guaranteed, and made the task of receiving the communiqués on the money laundering processes limited to a competent unit affiliated to the Central Bank of Kuwait. This is for the estimation of the seriousness of the suspected banking or financial processes, and therefore refer them to the public prosecution to investigate it. We suggest that this task be assigned to the "Kuwait Financial Investigation Unit" affiliated to the Central Bank of Kuwait, and that it completes our suggestion to resort to the texts of articles (3,4,5,6) of the Egyptian law (80) for the year 2002 AD on the combat of money laundering, which- as referred to before- established a competent unit to receive the information and communications on the suspected processes, which in itself notify the public prosecution in this regard, to take the necessary legal measures against it.
 - 10 - We suggest to enter one of the academic elements in Kuwait- whether from the faculty of law, Kuwait university, or the equivalent authorities- to the membership of the Kuwaiti national committee on money laundering and the finance of terrorism, for the preparation of the required draft laws on the control of the

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- money laundering processes, and thus they are competent in this regard, and shall, according to a legal research study, enter an academic legal element in the membership of the committee to produce its desired outcomes.
- 11 - We suggest that the maker of the Kuwaiti law (35) for the year 2002 AD, to obligate the financial and banking corporations to appoint a responsible for controlling money laundering whose task will be the coordination with the Kuwaiti Financial Interrogation Unit affiliated to the Central Bank of Kuwait and that to complete our suggestions, we shall invite to be guided by articles (35, 36, 37, 38,39) of the decision (951) for the year 2003 AD⁽⁵⁷⁾ of the Egyptian Prime Minister on the issuance of the executive regulation of the Egyptian law (80) for the year 2002 AD, on money laundering.
- 12 - We suggest to pass an independent law that treats and prohibits terrorism, so that take into account the legal true definition of terrorist crimes and the differentiation of terrorist crimes and the legitimate resistance of the people enshrined by the international agreements and conventions and stated by the rules of Islamic Sharia.

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