ANTI-CORRUPTION GENERAL DIRECTORATE WITH THE PROSECUTOR GENERAL OF THE REPUBLIC OF AZERBAIJAN

ORGANIZATIONAL AND INFORMATION SUPPORT DEPARTMENT

METHODS FOR THE PRELIMINARY INVESTIGATION OF CRIMES OF MONEY LAUNDERING AND ACQUISITION, OWNERSHIP, USE, AND DISPOSAL OF PROPERTY KNOWINGLY OBTAINED BY CRIME

GUIDANCE MANUAL

BAKU – 2023

The Manual has been prepared based on the instruction and recommendations of the ***Prosecutor General of the Republic of Azerbaijan, I Degree State Counselor of Justice, Mr. Kamran Aliyev*** *by studying the international best practice in the field of investigating crimes of money laundering and acquisition, ownership, use, or disposal of property knowingly obtained by crime to implement this practice in the national context.*

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CONTENTS

Introduction 4

CHAPTER 1. History, Causes, and Concept of Money Laundering 6

I. The History and Causes of Money Laundering 6

II. The Concept of Money Laundering 8

CHAPTER 2. Specifics and Qualifying Factors 14

I. General Provisions 14

II. Corpus Delicti Elements and Their Specifics 17

III. Issues of the Qualifying Factors of the Crime of Laundering 31

IV. Special Confiscation Issues in the Crime of Laundering..... 38

V. Evidence 45

VI. The Burden of Proof 56

VII. Provisions Related to Sentencing for the Crime of Laundering and Other Matters 59

CHAPTER 3. Acquisition, Analysis, and Use of Information 61

I. Financial Intelligence Data 61

II. Cooperation Between the Criminal Prosecution Body and the Financial Monitoring Service (MFS) 63

III. Specifics of Investigative Actions to be Performed by the Investigator 91

IV. A Different Approach to the Assessment of Evidence 97

CHAPTER 4. International Cooperation 100

I. Legal Mutual Assistance 100

II. Circumstances to be Specified in the Request for Legal Mutual Assistance 104

III. Ground for Refusing a Request for Legal Mutual Assistance 105

Reference 109

INTRODUCTION

The complexity and transnational nature of money laundering (ML) require combating this type of offense at both the local level and international levels. An effective strategy for combating ML not only limits the illegal activities of criminal networks but also protects the country's economic potential and financial resources from such risks.

It is no coincidence that one of the Sustainable Development Goals adopted in 2015 by the United Nations General Assembly in the 2030 Agenda for Sustainable Development is to significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets, and combat all forms of organized crime by 2030.

In 2009, the Law of the Republic of Azerbaijan On Combating Money Laundering and Terrorist Financing was adopted, and the **Financial Monitoring Service** was established as an institution involved in building the policy in this field.

The reforms in the field of combating ML, performed in our country, including improving the legal framework, strengthening institutional capacity, creating an accountability system, and achievements in implementing advanced technologies, are highly appreciated by various international organizations, including the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism **(MONEYVAL)** of the Council of Europe.

As a continuation of all the achievements, the national law and practice in this field are constantly improving according to the requirements of the day. Thus, the new Law On Combating Money Laundering and Terrorist Financing that entered into force on December 30, 2022, and the Resolution of the Plenum of the Supreme Court of the Republic of Azerbaijan, forming a unified judicial practice in this field, adopted on February 20, 2023, considering the standards of **FATF** (Financial Action Task Force), which is an independent intergovernmental body ensuring the development and implementation of appropriate policy to protect the global financial system against money laundering and financing of terrorism and the proliferation of weapons of mass destruction, had further improved the activity in this area and moved it to a new level.

CHAPTER 1

History, Causes, and Concept of Money Laundering

I. The History and Causes of Money Laundering

The legalization of illegally obtained property, more commonly known in the international legal community as 'money laundering,' is currently one of the key problems caused by corruption and the main manifestation of organized economic crime. Money laundering is an illegal action, not widely known in full detail among the population compared to other crimes. Since it is one of the most difficult offenses to detect, like other corruption crimes. In other words, money laundering involves intermediaries with special knowledge and skills, which makes it difficult to detect and combat it.

In general, in the criminal law theory, the profit criminally obtained by a person is called proceeds of crime or dirty money. The term 'money laundering' was first used in mass media in 1972, when the Watergate scandal was published.

According to national legal literature, the public danger of the crime is determined by the fact that such action jeopardizes important social values. This action, undermining the normal economic system of the country, forms the material and financial base of organized crime and veils criminal business. Money laundering holds out a dangerous prospect of a criminal subject, gradually taking over all profitable areas of legal business. Recognizing this action as a crime is a positive point (earlier, only the laundering of property obtained from the illicit circulation of narcotic drugs or psychotropic substances was considered a crime).

II. The Concept of Money Laundering

The Vienna Convention is the first official document dealing with money laundering at the international level. Paragraph 1 of Article 3, 'Crimes and Punishments,' of the 1988 Vienna Convention, adopted to combat the circulation of narcotic and psychotropic substances among the world countries more effectively, talks about the money laundering elements. According to the agreement, money laundering is said to stem from crimes covered by the Convention. Also, the Convention recommended the member states include money laundering in their national criminal laws.

Article 6 of the Strasbourg Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime is called ‘y Laundering Offences.’
Money laundering involves the following processes:

commission of the initial offense (initial offense)

obtaining criminal proceeds

money laundering (derivative crime)

CHAPTER 2

Specifics and Qualifying Factors

I. General Provisions

The money laundering issues are comprehensively regulated by the Criminal Code and the Criminal Procedure Code of the Republic of Azerbaijan, the Law of the Republic of Azerbaijan On Combating Money Laundering and Terrorist Financing, the Resolution of the Plenum of the Supreme Court of the Republic of Azerbaijan On Judicial Practice in Money Laundering Cases, as Well as Some Issues Concerning the Acquisition, Ownership, Use, or Disposal of Funds or Other Property Knowingly Obtained by Crime, and other legal acts.

Article 193-1 (Money Laundering) of the Criminal Code of the Republic of Azerbaijan (hereinafter - the CC), which directly specifies this crime, and, according to appropriate international instruments, Article 194 of the CC (Acquisition, Ownership, Use, or Disposal of Property Knowingly Obtained by Crime) act as criminal law mechanisms to control laundering. The aforementioned criminal acts are reflected in Chapter 24 (Crimes in Economic Activity) of Section 9 (Economic Crimes) of the Criminal Code of the Republic of Azerbaijan.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on December 20, 1988, to which the Republic of Azerbaijan has joined (hereafter - the Vienna Convention) should primarily be noted among international standards that form the basis for the aforementioned national rules of law and can be applied in practice. Introducing the crime of laundering in our current legislation and strengthening measures of liability for this action is a positive point. İn this regard, primarily, the Convention against Transnational Organized Crime signed in Palermo on December 12, 2000 (hereinafter - the Palermo Convention), The Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, signed in Strasbourg on November 8, 1990 (hereinafter - the Strasbourg Convention), the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and the Financing of Terrorism, signed in Warsaw on May 16, 2005 (hereinafter - the Warsaw Convention), Financial Action Task Force (FATF) Recommendations and Explanatory Notes to those Recommendations, reports of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) of the Council of Europe, and other analytical materials and decisions of the European Union and other

international organizations, including the European Court of Human Rights should be noted.

Note that in 1989, an intergovernmental organization being a leading international initiative in this field - the Financial Action Task Force (FATF) was founded. FATF was established in 1989 at the summit of the G-7 countries (United States, Japan, Germany, France, England, Italy, and Canada) in response to the growing international threats related to money laundering. FATF determines both national and international standards of anti-money laundering policy, assesses anti-money laundering procedures in force in the states, studies ways of money laundering and methods of terrorist organizations, and prepares annual typological reports.

II. Corpus Delicti Elements and Their Specifics

4. The public danger of the laundering crime is that, like other economic crimes, along with encroaching on the normal functioning of the economy, it hinders exposing and investigating 'predicate offenses,' accompanied by obtaining illegal income (as a result of committing crimes that involve obtaining funds or other property under Articles 193-1 and 194 of the CC) or actions constituting the so-called 'substantive crime,' finding out their perpetrators, holding them criminally liable, and award justice for those crimes, and creates conditions for the commission of other crimes using the criminally obtained property.

On the other hand, laundering affects negatively economic development as a result of the integration of the 'shadow economy' into the official one, which manifests itself in increasing prices, growing poverty, creating an unhealthy competitive environment, and social injustice.

6. In general, the predicate offense is committed before starting the laundering actions. However, when the predicate crime is committed continuously, upon the commission of a certain episode(s) with all the crime elements, the emergence of criminal liability for the laundering of the property obtained as a result of that episode(s) shall not be excluded (the case of the predicative crime and laundering, committed in-parallel).

Also, when both the predicate crime and laundering are committed in the same action(s), e.g., funds are embezzled through multi-stage transactions, and by the end of this crime, the criminally obtained funds acquire a veneer of legality, the perpetrator's actions shall be treated as an ideal corpus delicti according to Article 193-1 and the relevant article of the CC, covering the predicate crime.

5. According to the Palermo and Warsaw Conventions, FATF Recommendation 3, the Explanatory Note to that Recommendation, and the disposition of Article 193-1 of the CC, related to them, the predicate

offense is an intentional action, accompanied by the direct or indirect acquisition of illegal income, committed either in the Republic of Azerbaijan or abroad, which is considered a crime according to both the law of the state where it has been committed and the CC of the Republic of Azerbaijan (creating double criminality).

An offense other than a crime, including an action classified as an administrative offense, shall not be considered a predicate offense.

The scope of predicate crimes is not limited to only those covered by the articles of the Special Part of the CC, the disposition of which envisages the conversion in possession as a socially dangerous act or obtaining income by crime (e.g., Articles 177, 178, 179, 213, 311 or Articles 144-1, 234.2, 234.3 of the CC) but shall also cover cases of obtaining income related to criminal actions, including the commission of any crime for hire (in exchange for financial reward) (e.g., any other crimes accompanied by obtaining income or committed in exchange for certain material benefits, provided for in Articles 120.2.5, 126.2.5, 171, 242, 243, or 244 of the CC).

It does not matter whether a person is brought to or released from the criminal prosecution for a predicate offense, convicted, or had the conviction expunged, or, when the action is committed in a foreign state, it is not considered predicate in relation to laundering according to the law of that state, or criminal liability for laundering is not determined thereunder in general. d. If there is a foreign state's court sentence or any other final decision of a court or other competent body concerning a predicate crime, and this sentence or other final decision is recognized according to Article 522.1 of the Criminal Procedure Code of the Republic of Azerbaijan (hereinafter - the CPC) in the manner prescribed by Articles 522-525 of the CPC, it should be considered as prejudicial action.

If a foreign state's court sentence or any other final decision of a court or other competent body concerning a predicate crime is not recognized according to the due procedure, since for the laundering crime investigation purposes, according to subparagraph 'a' of paragraph 2 of Article 9 of the Warsaw Convention, it does not matter whether the predicate offense has been committed under the jurisdiction of the state performing the investigation or any other state, and when joining the Warsaw Convention, the Republic of Azerbaijan has supported the possibility of considering the crime committed in a foreign state without any exceptions regarding that provision, such court sentence and other final decisions, as well as other decisions (e.g., initiation, postponement, or suspension of criminal proceedings, arraignment, etc.) of any competent body of the foreign state concerning the predicate crime, can be considered

as not prejudicial actions confirming the criminal way of obtaining the laundered property but 'other document' provided for in Article 124.2.5 of the CPC, along with other materials, in proving that action by investigating it according to the requirements of the CPC's rules of proof.

According to Article 1.1.1 of the Law of the Republic of Azerbaijan On Combating Money Laundering and Terrorist Financing, any funds, movable or immovable property, tangible or intangible assets, as well as virtual assets, and legal instruments and documents certifying ownership rights and interests in the property, directly or indirectly obtained as a result of the commission of crimes specified in the Criminal Code of the Republic of Azerbaijan shall be the subject matter of the crime of laundering of property obtained by crime.

Referring to Article 1.1.4 of that Law, the predicate crime is any offense resulting in the acquisition of property that can be the object of the crime provided for in Article 193-1 of the Criminal Code of the Republic of Azerbaijan.

According to Article 5 of the Warsaw Convention and related Articles 99-1.1.2, 99-1.1.3 of the Criminal Code, the property obtained indirectly by crime shall mean the income of criminal origin specified in paragraph 5 hereof (i.e., property obtained either directly by crime or in connection with the commission of a crime), or another property or it's respective part, into which funds or other property obtained by crime (including in connection with the commission of a crime) were converted (transferred), in full or in part, by the conclusion of civil-legal transactions or otherwise. When the property obtained by crime is the objects restricted for civil circulation (e.g., firearms, drugs, etc.), and the liability for their illegal circulation is determined separately in the appropriate article of the Special Part of the CC, concealing the true origin of those objects, actions committed to give a veneer of legality to their ownership and use, including the conclusion of deals, shall be covered by not Article 193-1 of the CC but the corresponding article of the CC, providing for criminal liability for those objects. When the property is obtained through the conclusion of deals for those objects (i.e., by crime), and the actions are committed with respect to that property, described in the dispositions of Articles 193-1.1.1 or 193-1.1.2 of the CC, just these actions shall be defined as laundering, and all actions in aggregate shall be defined as constituent elements of laundering and a crime involving the illegal circulation of an object restricted for civil circulation (when committed by the same person).

The objective aspect of the crime of laundering constitutes the commission of the following actions covered by Articles 193-1.1.1 and 193-

1.1.2 of the CC, aimed at concealing the true origin of the property obtained by crime or helping the predicate crime perpetrator to evade liability, i.e., giving a veneer of legality to the proceeds obtained by crime:

- conversion;
- transfer;
- performing financial or other transactions using the predicate crime object (Article 193-1.1.1 of the CC);
- harboring or concealing a true nature, source, location, disposal, movement, ownership, or owner of the predicate crime object (Article 193-1.1.2 of the CC).

Conversion means converting criminally obtained property into other assets (e.g., funds in one currency into those in another currency or securities).

Transfer means transferring property to someone else's name (including making it look like transferring to someone else's name) or taking it abroad in cash or non-cash in formal or informal ways.

Financial transactions cover any transaction with funds, i.e., cash and non-cash settlements, cash transactions, including crediting accounts, placing them in various accounts, converting into another currency, acquiring securities, transferring abroad with further returning to a bank account, etc.

8.4. Actions specified in the disposition of Article 193-1.1 of the CC means actions aimed at obtaining, implementing, changing, or terminating civil rights and duties, or making it look like obtaining or transferring civil rights and duties (e.g., real or fictitious contracts such as purchase, sale, loan, exchange, lease, etc.).

In the disposition of Article 193-1 of the CC, the use of the terms ‘deals’ or ‘financial transactions’ in the plural shall not mean that the emergence of corpus delicti is mandatorily conditioned by concluding several deals or performing several financial transactions. Therefore, liability for the crime of laundering may emerge if only a single financial transaction is performed, or a single deal is concluded.

Laundering is a crime with a formal corpus delicti and is considered completed when any of the alternative actions listed in the disposition of Articles 193-1.1.1 and 193-1.1.2 of the CC is committed.

The crime completion moment may differ depending on the way of its commission. When laundering is performed through financial transactions using cash, it shall be considered completed from the moment the offender orders the transfer of money to the bank or uses cash as means of settlement or converts them into another currency, when laundering is performed by concluding property deals - from the moment

the offender exercises any part of his/her duties or rights under the deal (from the moment of transferring the laundered property by the offender to the other party to the deal, regardless of whether that party fulfills his/her duties), and when a fictitious deal (not involving the factual execution of any actions thereunder) is concluded to give a veneer of legality to criminally obtained funds or other property - from the moment the deal is concluded between the offender and another party.

Unlike the crime of laundering, the crime provided for in Article 194 of the CC can be committed only by an individual who has not participated in committing the predicate crime and herewith, has not previously promised to commit the actions provided for in Article 194 of the CC.

According to Article 99-4.5 of the CC, legal entities shall also be criminally liable for the crimes provided for in Articles 193-1 and 194 of the CC, however, applying the criminal law measures, provided for in Article 99-5 of the CC, to a legal person shall not exclude the liability of individuals for these crimes.

According to the provisions of Articles 193-1.1.1 and 193-1.1.2 of the CC, laundering is a crime committed willfully and knowingly. Circumstances defined as mandatory elements of the subjective aspect of the crime, - committing the actions provided for in Articles 193-1.1.1, 193.1.1.2 of the CC to conceal the true origin of property knowingly obtained by crime, - are the necessary conditions for holding the offender criminally liable and should be proven in the course of criminal proceedings according to Article 139.0.2 and other provisions of the CPC. To hold the offender criminally liable for laundering, it is important to know not precisely the type of criminal action (described by a specific article of the CC) as a result of which the relevant property has been obtained but the fact that the values have been obtained by crime in general.

The element distinguishing the subjective aspect of crimes provided for in Articles 193-1.1.1 and 193-1.1.2 of the CC of the Republic of Azerbaijan is committing the action provided for in Article 193-1.1.1 of the CC with a special goal (the goal of the action specified in Article 193-1.1.2 of the CC is not considered as a necessary constituent element.

The crime provided for in Article 193-1.1.1 of the CC of the Republic of Azerbaijan is aimed at concealing the true origin of the criminally obtained property or helping the perpetrator to evade liability. Concealing the true origin of those values facilitates giving them legal status, introducing that property in normal civil circulation, placing it in a bank account, performing official state registration, etc., in other words, allows for the laundering of those values. The goal of helping the crime

perpetrator to evade liability means providing him/her with assistance in any form, resulting in the acquisition of criminal values.

Awareness of a person who has not participated in committing the predicate crime of the criminal way of obtaining the property shall not cover his/her awareness of the predicative crime details, including what kind of crime it is and who has committed it. It is enough to prove that the perpetrator of laundering is aware of obtaining the funds or other property in no other way but by crime. According to paragraph 3 of Article 3 of the Vienna Convention, subparagraph 'f' of paragraph 2 of Article 6 of the Palermo Convention, subparagraph 'c' of paragraph 2 of Article 9 of the Warsaw Convention, subparagraph 'a' of paragraph 7 of the Explanatory Note to FATF Recommendation 3, and the CPC's rules of proof, related to those provisions, the fact of awareness of the criminal way of obtaining the property, as well as seeking to conceal the true origin of that property, i.e., the existence of direct intention, can also be proven based on the objective circumstances determined in the case (cumulative indirect evidence). E.g., specifics such as presenting the property belonging to another person as the offender's funds (property) and concluding deals or performing financial transactions with them; significant inconsistency of that property with the offender's legal income; performing knowingly ineffective or fictitious financial transactions or deals with property, including fictitious sale transactions, etc., can be considered when defining the criminal intent and purpose of the offender.

According to paragraphs 5 and 6 of Article 9 of the Warsaw Convention and Explanatory Note to FATF Recommendation 3 (paragraph 4), the availability of an indictment against another person who has committed a predicate crime or another procedural document certifying the occurrence of a specific predicate criminal event, e.g., decisions on the initiation, suspension, or postponement of a criminal case, arraignment, termination of criminal proceedings against a person, or, in general, initiation of separate proceedings on the predicate crime shall not be laid as a condition to convict that person under Articles 193-1 or 194 of the CC. Criminal prosecution for the crime of laundering may even be initiated and completed before criminal prosecution for the predicate crime; just disclosing the crime of laundering may give rise to the investigation of the predicate crime.

Therefore, in the absence of a legally binding sentence or other procedural decision on the predicate crime, the court's reasonable conclusion that the laundered property could be obtained in no other way but by crime shall be sufficient to conclude the existence of this necessary element. Accordingly, in such cases, the predicate crime details, including

its qualification, the place, time, and circumstances of its commission, as well as information on its participants are not required to be specified.

If there is a legally binding sentence or other procedural decision on the predicate crime, in the course of the proceedings against a person accused of the laundering crime, those sentences and decisions should be obtained and placed in the criminal case file to be used along with other evidence in proving the person's guilt under Article 193-1 or 194 of the CC. According to Articles 65.1 and 142.1 of the CPC, a legally binding sentence on a predicate offense or a decision of the body implementing the criminal prosecution on the termination of proceedings in the criminal case or refusal to initiate criminal proceedings, including a sentence or decision of acquittal that does not deny the occurrence of a criminal event, shall have prejudicial significance.

The public danger of the offense of acquisition, ownership, use, or disposal of property knowingly obtained by crime is characterized by the fact that the criminally obtained property comes into civil circulation in various ways beyond the control of governmental bodies prescribed by law, jeopardizing the interests of other participants, primarily the subjects of economic activity.

This crime is one of the money laundering types covered by Article 23 of the UN Convention against Corruption.

The object of the crime under consideration is criminally obtained property. The object of this action is the same as that of the crime of laundering. Property acquired as a result of committing any action considered a crime may act as the object of that crime.

Actions related to civil circulation cannot be the object of the crime provided for in Article 194 of the CC, regardless of the way the items constituting the corpus delicti have been obtained.

Not promised in advance acquisition of property knowingly obtained by crime can be expressed in the acquisition of such values directly or the documents certifying the rights to them by the offender with or without compensation.

Not promised in advance ownership of property knowingly obtained by crime means that the offender factually owns those values.

Not promised in advance use of property knowingly obtained by crime means that the offender takes advantage of those values to satisfy his/her needs or the needs of his/her relatives.

Not promised in advance disposal of property knowingly obtained by crime means the alienation of the crime object through various civil agreements, as well as the unilateral decision of the fate of those objects.

To the point, the actions listed in the disposition of Article 194 of the CC are successive (the offender first acquires the property by crime, then owns and uses it, and then disposes of it). Committing only one of the alternative actions listed in that disposition is sufficient for the emergence of criminal liability under this article. Note that even if the offender commits several of the actions specified in the disposition with the same property, it cannot be considered a cumulative or repeated crime, and his/her action shall be regarded as a single crime.

To be held liable under Article 194 of the CC, a person should exactly know that appropriate values have been obtained by crime. Therefore, the existence of any doubts in the person about the property origin cannot create his/her liability under this article. If the person did not know that the property was obtained by crime, he cannot be held criminally liable under this article since in this case, he/she is a bona fide unlawful holder.

If the offender who regularly acquires, keeps, uses, or disposes of the property obtained by crime without promising it in advance realizes that the criminals who have obtained the property rely on his/her actions, the action shall be qualified as participation in the crime.

A person who has committed a crime that resulted in the acquisition of property knowingly obtained by crime cannot be the subject of the crime provided for in Article 194 of the CC regarding the same values. In other words, the subject of the crime under consideration can only be a third party. A third party can acquire the property obtained by crime either directly from the perpetrator or an intermediary.

Criminal law measures may also be applied to a legal entity related to the commission of the crime specified in that article if it meets appropriate conditions as the subject of the crime thereunder.

Committing crimes provided for in Articles 194.1-1 and 194.2.4 of the CC on a significant scale shall be considered an aggravating circumstance while, according to the Note to Article 190 of the CC, significant scale makes up, respectively, AZN fifty thousand to two hundred thousand and AZN two hundred thousand to five hundred thousand.

The key element distinguishing the crime provided for in Article 193-1.1.1 of the CC from that defined in Article 194 of the CC is the existence of a special goal as a necessary constituent element of the subjective aspect.

Thus, when committing the action specified in Article 193-1.1.1 of the CC, the offender shall pursue a goal to conceal the true origin of the property obtained by crime or help the perpetrator to evade liability. Therefore, if the offender commits the actions specified in Article 194 of

the CC with that goal, his/her action shall be qualified by not Article 194 but Article 193-1 of the CC. As a mandatory condition, it should be considered that such action committed by the offender can in no case constitute a cumulative crime specified in Articles 193-1 and 194 of the CC.

III. Issues of the Qualifying Factors of the Crime of Laundering

In the aforementioned Resolution of the Plenum of the Constitutional Court, when the crime participants (organizer, instigator, or helper) have not directly participated in the actions constituting the objective aspect of the crime of laundering according to the meaning given in Articles 33.3 and 34.2 of the CC, and their actions do not have the constituent elements of the objective aspect of the crime, laundering shall not be considered as a crime committed by a group of persons upon preliminary collusion, and the participants' actions shall be characterized by the corresponding provision of Article 193-1 of the CC with reference to respective Articles 32.3, 32.4, 32.5 of the CC (depending on the assessment of the perpetrator's action).

According to the Resolution of the Plenum of the Constitutional Court, dated January 25, 2021, continuous crime "is qualified as a unified crime when the actions constituting it are united by a common intention aimed at achieving a common goal. When homogeneous crimes are repeated, not individual crimes but their number matters. Here, each individual action is not factually related to the others; when repeated, the crimes constituting it are not united by a common intention and a common goal."

According to the Resolution of the Plenum of the Constitutional Court, dated March 15, 2022, "when the same or similar crimes are repeated, and the period of limitation for the institution of proceedings for the previous action has expired, the second action shall not constitute the repetition since in terms of the requirements of Articles 16 and 75 of the Criminal Code, the period of limitation for the institution of proceedings for each crime is estimated independently."

Therefore, actions provided for in the dispositions of Articles 193-1.1.1 and 191-1.1.2 of the CC, committed more than once with the common intention and the common goal to launder certain funds (in the same amount) or other property obtained as a result of one or more predicate crimes, regardless of the action manifestation form, cannot be qualified under Article 193-1.2.2 of the CC and shall be assessed as a continuous single crime.

Laundering of the funds obtained as a result of various predicate crimes or a single predicate crime, committed more than once, without a common intention and a common goal, i.e., each time with a new intention and goal, if each individual action has not lost its criminal significance, including if the period of limitation for the institution of proceedings for the previous crime has not expired by the commission of the next crime, as well as entering the sentence for each crime into legal force, the offender's actions (cumulative action) shall be qualified under Article 193-1.2.2 of the CC as the element of repeated crimes.

When interpreting the elements of the crime of laundering, committed by a person using his/her service position, provided for in Article 193-1.2.3 of the CC, it should be considered that only when there is a significant criminal link between the position held by the offender and the action committed, i.e., when laundering actions could be committed just due to the powers or functional capabilities granted to the offender by that position, the fact of holding a certain service position (using a service position) by that person can be considered as an element determining (constituting) the legal qualification of the action, and the offender's action can be qualified by that element. If a person is an 'official' but his/her position does not grant any authority to perform a certain action constituting laundering, it cannot be the ground for qualifying his/her action under Article 193-1.2.3 of the CC.

Since Article 193-1.2.3 of the CC specifically considers the commission of laundering actions by an official or other person using his/her service position (including in his/her service interests) as an element aggravating the crime and giving grounds for imposing a graver punishment, in this case, the competition between Article 193-1.2.3 of the CC (special rule), on the one hand, and Article 308 of the CC (general rule), on the other hand, shall be resolved according to Article 17.4 of the CC and qualified as a cumulative crime under not Article 308 but only Article 193-1.2.3 of the CC.

To qualify the offender's action under Article 193-1.3.2 of the CC by the element of 'large amount,' laundering actions should be committed in respect of the property for more than AZN 50,000 as specified in the Note of Article 193-1 of the CC. When the crime of money (other property) laundering in a large amount is intended to be performed through several financial transactions covered by a common intention and common goal, it shall be qualified under Article 193-1.3.2 of the CC as a crime of laundering of a large amount of money even after performing a financial transaction to launder not a large part of the total amount. 'Large amount' shall be estimated by the amount of laundered money or the actual value of other

property as of the moment of performing the financial transaction (in the case of several financial transactions, the first of them) or concluding a deal.

The funds in foreign currency shall be specified in manats according to the exchange rate set by the Central Bank of the Republic of Azerbaijan on that date, and to estimate the property with the unknown actual value, an appropriate forensic examination shall be appointed.

When funds obtained by crime or unidentifiable property are mixed with legal income with the further performance of a financial transaction for the total funds or the conclusion of a deal for the total property, the fact of the existence of the 'large amount' element shall be determined by not the total amount of money (the value of the total property) for which financial transactions have been performed (the deal has been concluded) but only it's criminally obtained part.

When determining the amount of the object of the crime of laundering, including whether it is large, and the related scope of the charge, it should be considered that when the property obtained by crime has been subjected to taxes and other mandatory payments in the Republic of Azerbaijan while being laundered through the conclusion of civil contracts or other conversions, those mandatory payments shall not be included in the scope of the charge for the crime of laundering since their confiscation is not allowed according to the meaning of Articles 1.4 and 66 of the Tax Code.

If the property obtained by crime has been subjected to taxes and other mandatory payments in foreign states while being laundered through the conclusion of transnational civil contracts or other conversions, those mandatory payments shall be included in the scope of both the predicate crime and the charge for the crime of laundering.

If the property obtained by crime has been subjected to voluntary payments (e.g., bank commission for the provision of banking services) as part of financial services while being laundered through the conclusion of civil contracts or other conversions, those payments shall be included in the scope of both the predicate crime and the charge for the crime of laundering since their confiscation is not excluded according to the requirements of Article 66 of the Tax Code.

IV. Special Confiscation Issues in the Crime of Laundering

Since the essence of combating money laundering is to prevent these funds and property from entering the sphere of economic activity and thereby ensure the normal functioning of the economy and financial

system and an environment of fair economic competition, the investigation of the crime of laundering or predicate crimes shall not be limited to gathering the information required for the conviction of the offender but shall ensure the detection of criminally obtained funds, their arrest and special confiscation by a final and binding court decision (indictment or decision to terminate the criminal prosecution on non-exculpatory grounds), and an effective investigation concerning the property involved.

In the course of pre-trial proceedings, when considering not only cases against persons accused under Article 193-1 of the CC but also those related to other (predicate) crimes creating the opportunity for obtaining income by crime (including those related to the commission of crimes) (e.g., accusations under Articles 144-1, 234.2, 234.3, 213 of the CC), Courts shall consider whether an effective investigation of laundering actions has been performed to determine the fact of obtaining criminal income, any property that may be confiscated under Articles 99-1.1.1, 99-1.1.3 of the CC, and whether its confiscation has been ensured, and express their attitude to the omissions of the criminal prosecution bodies in these issues by issuing a special decision, and if there are appropriate grounds, according to Article 207.6 of the CPC, they shall provide the information determined during the court review on the aforementioned issues to the prosecutor exercising the procedural guidance of the preliminary investigation.

The criminal (directly investigated) action, in the commission of which the person is accused (e.g., acquiring and keeping a large amount of drugs for sale, tax evasion, or human trafficking) reasonably creates such probability and the grounds for checking it. According to this Recommendation, countries shall entrust the investigation of money laundering and terrorist financing as part of the national strategy for combating money laundering and terrorist financing to competent law enforcement agencies. At least in cases related to crimes generating significant income, when investigating money laundering, predicate crimes, and terrorist financing cases, competent law enforcement agencies shall perform a parallel financial investigation on their initiative.

It should be considered that by the Decree (paragraph 6) of the President of the Republic of Azerbaijan On Approval of the Law of the Republic of Azerbaijan 'On Approval and Entry into Force of the Criminal Procedure Code of the Republic of Azerbaijan and Related Legal Regulation Issues' and the Criminal Procedure Code of the Republic of Azerbaijan Approved by That Law, dated of August 25, 2000, considering the possibility of obtaining criminal proceeds as a result of a number of crimes attributed to the Ministry of Internal Affairs and the Tax Service of the

Republic of Azerbaijan (e.g., respective actions provided for in Articles 177, 178, 179, 234.2, 234.3, 243, 244; 213 of the CC), when these bodies initiate proceedings and perform preliminary investigations on crimes within their powers, if the elements of the crime specified in Article 193-1 of the CC are detected, the procedure for attributing the preliminary investigation of that crime to those bodies by the appropriate decision of the prosecutor has also been determined.

Even if the property, detected during the preliminary investigation of any crime, is not determined as obtained by that (investigated) crime, and there is sufficient evidence that it could not be obtained in any way other than the crime (a reasonable doubt that the property was acquired from some other criminal event) and has been laundered, then along with the crime for which criminal proceedings have been initiated against the person (e.g., Article 234.2 of the CC), he/she can also be charged for laundering under Article 193-1 of the CC. In such cases, to ensure the further confiscation of those funds or other property by the final decision of the court, the criminal prosecution body shall take measures provided for in Chapter XXXII of the CPC to arrest them.

If the location of the property obtained by crime (including laundered property) cannot be determined, and its confiscation cannot be ensured, according to Article 99-2 of the CC, to ensure special confiscation for the value of that property by the final court decision, the criminal prosecution body shall take measures to determine and confiscate other (including legally obtained) property belonging to the offender for the amount of the value of the said property.

When solving issues related to special confiscation, along with the provisions hereof, the provisions of Resolution No. 15 of the Plenum of the Supreme Court of the Republic of Azerbaijan On the Court Sentence, dated December 24, 2021, dedicated to special confiscation issues shall be considered. Thus, the elements specified in the 'The Sentence Elements Concerning Special Confiscation Issues' part of that Resolution are of great importance for the investigation. Special confiscation is a criminal law measure, expressed in the forcible withdrawal of property by the final court decision without any compensation, which serves to implement criminal liability along with the criminal punishment.

Therefore, the special confiscation of property can be assigned in not only the sentence but also the final court decision to terminate the criminal prosecution (including criminal proceedings) on non-exculpatory grounds. In this case, the final part of the decision on terminating the criminal prosecution (including criminal proceedings) shall include a list of confiscated property.

When solving issues of special confiscation, the provisions of Articles 99-1.1.1 and 99-1.1.2 of the CC should not be ignored, which exclude the property, respectively, used as the crime commission tool and instrument and obtained by crime (even when income has been obtained from that property) but returnable to the legal owner.

According to the requirements of Article 99-1.3 of the CC, the property provided for in Article 99-1.1 of the CC, transferred to the ownership of another person(s) by alienation or on another ground, cannot be confiscated if that person is a bona fide acquirer (including those who have acquired the property as a gift or at a price significantly lower than the market value), i.e., has known or should have known that the alienator has not been the owner of the property while acquiring it.

When interpreting the aforementioned provisions, it should be considered that Article 99-1.3 of the CC refers to Article 99-1.1 of that Code, according to which funds and other property to be returned to their legal owners shall be excluded from the property due to special confiscation, including the confiscated funds and property obtained by crime and income obtained from those funds or other property. Article 182.2 of the Civil Code of the Republic of Azerbaijan also states that if the movable item owner has lost that item or it has been stolen or taken from his/her possession against his/her will in another way, or the acquirer has taken it without compensation, he/she cannot be the bona fide acquirer of that item. These restrictions shall not apply to money, documentary securities, and items alienated at auction. This means that Article 99-1.3 of the CC, which covers holding the alienated property on to a bona fide acquirer, does not provide for movable property to be returned to its legal owners. Therefore, the movable property lost by the victim as a result of the crime (e.g., stolen) shall be returned to the legal owner, regardless of the person it has been found at, including the acquirer (except for items alienated at auction).

Special confiscation shall not be applied to property recognized as material evidence in a criminal case provided for in Article 132.1.4 of the CPC, the civil circulation of which is restricted (except for legal acquisition cases) or excluded, irrespective of whether or not it is related to the property types specified in Article 99-1.1 of the CC, and the sentence or other final decision shall provide for the handover of those items to appropriate organizations, and if they have no value, destroying them.

V. Evidence

a) The Role and Significance of the Information Obtained by Criminal Intelligence in the Preliminary Investigation

The function of using information gathered by criminal intelligence (hereinafter - intelligence information) is important for the detection and prevention of money laundering, and prosecution of the offenders at both the national and international levels. During the preliminary investigation, intelligence information shall first be assessed through the lens of legal requirements. Thus, intelligence information may not be related to the criminal case or accepted as evidence by the court, or the way of obtaining it may not allow for accepting it as evidence.

Although the structure, activity, relations, and other general intelligence information of a criminal association or organization may not be relevant to the case as direct evidence, it plays an important role as indirect evidence in the discovery of direct evidence. Thus, such information giving the investigator a clear idea of the criminal network may help him properly direct the criminal prosecution, define the route of funds, and detect third parties (consultants, specialists, etc.) ensuring the flow of funds or other property.

According to the best international practice, subjects responsible for obtaining intelligence information shall strictly follow the below rules:

- ✓ ***These data shall be collected according to the legal rules and in compliance with human rights and freedoms;***
- ✓ ***The confidentiality of sources and methodology shall be protected without harming human rights and freedoms;***
- ✓ ***The process progress and results shall be documented;***
- ✓ ***The legal purpose and need for the process shall be justified before controlling subjects.***

b) Intelligence information sources. Although the variety of sources of intelligence information on money laundering in the scientific literature, as a rule, such information is obtained from the following sources:

- ❖ **monitoring of communication means;**
- ❖ **covert surveillance;**
- ❖ **information from and interrogation of persons cooperating with criminal intelligence subjects;**
- ❖ **financial data;**
- ❖ **information from other institutions (national and foreign);**
- ❖ **information from open sources;**
- ❖ **alerting information from representatives of the**

public/organizations on abnormal situations and changes in behavior (essentially intuition-based information on the violation).

Note that the aforementioned sources and the procedures described below do not exactly coincide with those specified in the Law on Criminal Intelligence of the Republic of Azerbaijan. This document is aimed at giving a broad idea of international experience to investigators and providing the opportunity to benefit from this experience to the extent allowed by national law.

Monitoring of communication means. Monitoring of communication means (sometimes called intrusive electronic surveillance) covers both tracking transmission media (postal and telephone communication, Internet systems, e-mail, etc.) and acquiring information through the usual data transmission (traffic) monitoring and analysis.

Physical surveillance and tracking. Covert physical surveillance and tracking have long been recognized as intelligence-gathering techniques and are increasingly being used as evidence-gathering tools. It is usually less intrusive than technical surveillance and involves physically tracking, photographing, or even videotaping the target.

Information from and interrogation of persons cooperating with criminal intelligence subjects. This source covers the involvement in cooperation, training, and use of individuals for the provision of information and (or) evidence of criminals or criminal network(s). Different states apply different methods of managing, engaging in operations, and controlling collaborators.

Persons cooperating with criminal intelligence subjects may cover those who obtain and convey information in critical situations (e.g., officials operating in this field, criminals, accomplices, or reformed ex-offenders) or those secretly introduced into the target environment to gather information. Interaction between these persons and law enforcement bodies shall be guided by a qualified and specially trained managerial employee whose activity, in turn, shall be monitored by a senior official. The senior official shall be responsible for the regulation of communication between managers and sources, control over the quality, and coordination of work.

Financial data. In the context of money laundering, financial data is critical in assisting both investigative actions and crime prevention, as well as the seizure or confiscation of assets.

Financial data may come from various sources, and financial institution reports constitute an important part of it. FATF and other

international organizations require entities protecting financial data (such as banks and other financial institutions) to report suspicious transactions. When implementing a suspicious transaction reporting system, one of the following two models can be used:

- objective reporting systems that report each transaction exceeding a certain minimum limit (e.g., in the USA and Canada). To ensure the proper functioning of this model, the Financial Intelligence Unit (FIU) should be adequately resourced to receive, process, and analyze all data. The key advantage of this system is that such disclosure slightly affects the relations between the sector and its clients since the law requires the former to comply with at least the requirements of universal open accountability mechanisms.

Note: According to the national law and institutional structure, the **Financial Monitoring Service (MFS)** of the Republic of Azerbaijan exercises the functions of the Financial Intelligence Unit (FIU) in Azerbaijan.

- Other states believe that financial data protection agencies determine better the circumstances under which a transaction or activity shall be considered suspicious; therefore those states have adopted subjective systems. In these systems, decisions are made by institutions protecting financial data, and governmental authorities monitor compliance with established criteria. Under this model, regulated institutions have special incentives to protect their reputation and keep themselves apart from the funds of the illicit origin or intended for illicit use. Although there is a general trend toward relying on subjective systems, many states have combined these two alternatives.

Suspicious Transaction Reports (STRs) are a key tool for all governments in combating money laundering and many other financial crimes. Information in those reports provides financial data for investigative actions to combat criminal financing and profits, which in turn allows for the return of assets. Thus, those reports are an important tool by which financial institutions disclose data related to money laundering to the FIU (in Azerbaijan, FMS).

The legal framework of Azerbaijan in this field is reflected in the Law of the Republic of Azerbaijan On Combating Money Laundering and Terrorist Financing, dated December 30, 2022.

According to Article 3 of the Law, the requirements of the Law shall be applied to non-financial institutions and professionals in the following cases:

- transactions on the purchase and sale of real estate, performed by realtors;
- the following transactions, performed by notaries, lawyers, or independent persons providing legal, accounting, and tax advisory services, or with their participation:
- purchase and sale of real estate;
- managing the client's funds, securities, or other property;
- managing the client's bank, deposit, postal, payment, and money accounts;
- founding legal entities, ensuring and managing their activities, arranging fundraising for these purposes, as well as purchase and sale of shares in legal entities.

According to the requirements of Article 12 of the Law, to prevent money laundering, auditor service providers specified by the Law of the Republic of Azerbaijan On Auditor Service shall provide the financial monitoring body with appropriate information and documents when they determine any circumstances giving sufficient grounds to suspect that the property has been obtained by crime when performing audits. Auditor service providers should keep all information and documents obtained in the course of audits for at least 5 years. This term can be extended up to 5 years by the decision of the financial monitoring or supervisory body.

According to the requirements of Article 16 of the Law, supervisory bodies comprise the following authorities (institutions) that monitor the compliance of obligators and other persons specified in Article 12 thereof with the requirements of this Law:

- ***in relation to financial institutions - the Central Bank of the Republic of Azerbaijan;***
- ***in relation to realtors, persons providing legal, accounting, and tax advisory services - the State Tax Service on behalf of the Ministry of Economy of the Republic of Azerbaijan;***
- ***in relation to notaries and non-governmental organizations, including branches or representative offices of foreign NGOs in the Republic of Azerbaijan - the Ministry of Justice of the Republic of Azerbaijan;***
- ***in relation to religious organizations - the State Committee on Religious Associations of the Republic of Azerbaijan;***

- ***in relation to lawyers - the Bar Association of the Republic of Azerbaijan;***
- ***in relation to auditor service providers - the Chamber of Auditors of the Republic of Azerbaijan.***

Note that in international practice (international standards for combating money laundering, the financing of terrorism, and the proliferation of weapons of mass destruction - FATF RECOMMENDATIONS), financial institutions, as well as non-financial institutions and professionals, who have undertaken to implement the appropriate measures to prevent money laundering and the financing of terrorism are called gatekeepers. In the explanatory note to FATF Recommendation 40 and other international instruments, the same term is used in respect of a financial monitoring body.

E.g., there are gatekeepers in the UK (lawyers, accountants, notaries). Those persons participated in creating trusts of money laundering for criminals. Thus, a lawyer deposited the proceeds from the drug-related crime in an offshore trust account for money laundering and later used those funds. Buying property and taking loans from the trust (one of the trust's powers is the ability to secure it) demonstrates this way of abusing its confidence by the lower.

In money laundering crimes, as a rule, the crime subject cannot launder the illegal property on his/her own and addresses the said gatekeepers for their help and advice against a certain payment or under another deal. Therefore, defining the relations between offenders and the aforementioned intermediaries during both the investigation and criminal intelligence is of particular importance.

VI. The Burden of Proof

Note that according to the case law expressed in the John Murray v. the United Kingdom case dated 08.02.1996, Condron v. United Kingdom case dated 02.05.2000, and Beckles v. United Kingdom case dated 08.10.2002, heard by the European Court of Human Rights, the right to remain silent is not among the unconditional rights of the accused.

Charging a person of the crime of laundering and the court sentence on the proof of that charge shall be adopted, verified, and assessed according to Articles 32, 125, 143-146 of the CPC, as well as other rules of criminal law and procedure on evidence and proof.

According to Article 137 of the CPC, If material obtained as a result of a search operation on property obtained by crime and laundering of

such property is obtained according to the Law of the Republic of Azerbaijan On Operative Search Activity and provided according to the requirements of this Code, it may be accepted as evidence for the prosecution. The information obtained by the criminal prosecution body in cooperation with the Financial Monitoring Service (hereinafter - FMS), performing special functions in the field of combating money laundering and terrorist financing, can form the basis for searching and finding evidence, and the material collected in this regard can be used as evidence for the criminal prosecution after being verified according to Article 144 of the CPC.

VII. Provisions Related to Sentencing for the Crime of Laundering and Other Matters

According to the new unified judicial practice formulated by the Resolution of the Plenum of the Supreme Court of the Republic of Azerbaijan On Judicial Practice in Money Laundering Cases, as Well as Some Issues Concerning the Acquisition, Ownership, Use, or Disposal of Funds or Other Property Knowingly Obtained by Crime, in the criminal proceedings in the laundering crime cases, all necessary information, including that sufficiently characterizing the personality of the accused, shall be collected to ensure sentencing serving the purposes of the punishment specified in Article 41.2 of the CC, meeting the requirement of the principles of justice provided for in Article 8 of the CC and the rules of sentencing, including Article 58.3 of the CC, and this information shall be thoroughly analyzed and properly considered by courts when sentencing. Article 73-2 of the CC, dedicated to the issue of exemption from criminal liability for economic crimes, does not provide for the possibility of exempting the offender from criminal liability due to the voluntary return of the laundering crime object (the proceeds from it). Exemption of the offender from criminal liability for the predicate crime according to Articles 73-1 and 73-2 of the CC due to the payment of the damage caused and the income obtained by the appropriate predicate crime (where appropriate, also payment of the appropriate amount to the state budget and reconciliation with the victim) cannot be considered as a ground for his/her exemption from liability for the crime of laundering.

The voluntary transfer of the property directly or indirectly obtained by the predicate crime, as well as the property, which is the object of laundering and crime provided for in Article 194 of the CC, to the criminal prosecution body to return it to legal owners or confiscate to the benefit of the state; cooperation with the prosecuting body to clear the

crime of laundering during the investigation of the predicate crime and vice versa and identify the offenders shall not be assessed as a circumstance(s) mitigating the sentence provided for in Article 59.1.10 of the CC or, if there are appropriate grounds, Articles 59.1.12 and 59.1.13 of the CC and requiring the application of concessionary terms to the sentence imposed on the offender (in the absence of circumstances aggravating it), provided for in Article 60.1 of the CC.

CHAPTER 3

Acquisition, Analysis, and Use of Information

I. Financial Intelligence Data

To perform a financial investigation of money laundering, an investigator has access to financial, administrative, law enforcement, and intelligence information. Some intelligence information obtained at the initial stage may be provided to the court as evidence at a later stage.

Given the aforementioned, below are 6 separate basic categories of materials that can be helpful in financial research. Considering those categories shows that certain types of materials are used in all cases only for intelligence purposes while others can be collected as evidence at the initial stage, or, despite initial obtaining for intelligence purposes, can later become evidentiary material.

1. ***Criminal records and intelligence: These are materials on a specific person(s) being the investigation target or certain types of criminal activity, available at law enforcement bodies. This includes not only information on previous arrests, prosecutions, convictions, and sanctions but also details of relations between individuals. Also, criminal intelligence is usually obtained through informants, surveillance, the use of covert tools, interviews, interrogations, and data analysis.***

2. ***Information disclosed as part of combating money laundering: This includes Suspicious Transaction Reports (STR) and other information to be collected according to national law (e.g., information on cash transactions, electronic money transfers, and declarations or disclosures of other transactions exceeding a certain monetary limit).***

3. ***Financial data/records: These are materials on the financial affairs and transactions of individuals or legal entities. They are valuable since not only show the details of specific transactions but also provide information on criminal resources, structures, and potential criminal transactions. Such data also helps in forecasting further activity and defining the location of funds and assets. Certainly, materials in this category are often kept by third parties such as banks or other financial institutions. Typical examples of materials in this category include bank statements,***

bank account details, financial statements, other recorded data of financial transactions of individuals or businesses, other information collected during the audits performed as part of official duties, and 'know your client' protocols (i.e. detailed information on clients).

4. *Confidential information: This category includes materials collected and stored by intelligence agencies for national security purposes. Access to this information is most likely to be restricted.*

5. *Material from open sources: These include all information and details that can be obtained by studying open sources such as the Internet, social, print, and electronic media, as well as state (and in some cases private) archives and registers.*

6. *Information from regulatory bodies: This information is kept by regulatory bodies. Access to them is usually limited to only persons performing official functions and duties. This includes data from central banks, tax authorities, as well as revenue collection and some other government agencies.*

II. Cooperation Between the Criminal Prosecution Body and the Financial Monitoring Service (MFS)

The Financial Monitoring Service (FMS) is an institution exercising powers in the field of preventing money laundering and terrorist financing, as prescribed by law, and participating in policy building in the appropriate field. The Financial Monitoring Service of the Republic of Azerbaijan was founded by Decree No. 66 of the President of the Republic of Azerbaijan, dated February 23, 2009, as an independent unit under the Central Bank of the Republic of Azerbaijan; on February 3, 2016, a new organization - the Financial Market Control Chamber was established, and the Financial Monitoring Service was integrated into it with the function of a financial monitoring body. According to Decree No. 95 of the President of the Republic of Azerbaijan, dated May 25, 2018, the Financial Monitoring Service public legal entity was founded to strength the potential of government institutions in combating money laundering, create a mechanism for the effective coordination of activity in this field, improve the efficiency of cooperation and a system of data exchange between them,

and expand international cooperation. The Financial Monitoring Service has the following functions:

- *Participate in building and implementing a unified policy;*
- *Exercise regulation and control;*
- *Assess the national risk, coordinate the activity of government bodies and institutions in this field;*
- *Coordinate the activity of monitoring participants, other persons involved in monitoring, supervisory and other government bodies, collect and analyze the information received from them;*
- *Ensure the implementation of a unified information system;*
- *Adopt regulatory acts and participate in preparing appropriate draft legal acts;*
- *Ensure the development of the AML/CFT system.*

The key mission of the FMS activity is to support combating money laundering and terrorist financing through the acquisition, analysis, and exchange of data from the monitoring subjects and transform the Financial Monitoring Service into a financial monitoring body meeting the latest requirements and serving to ensure a financial system free of criminal exploitation in the country.

In Azerbaijan, FMS plays an important role for financial investigators since it is one of the authorities empowered to initiate or expand a financial investigation depending on the country concerned. In simple terms, FMS is a central institution in the territory of the state that receives financial statement data, processes it in a certain way (e.g., analyzes intelligence), then provides it to relevant government agencies or prosecution authorities, and thereby supports combating money laundering. It is important to note that FMS can ensure rapid data exchange between financial institutions and law enforcement/prosecution authorities, as well as different countries.

In international practice, the Financial Intelligence Unit (FIU) acts as a body investigating financial issues. Worldwide, FIU adopts one of two basic forms of activity. The first one (referred to as FIU's judicial, law enforcement, or hybrid models) is that the FIU implements anti-money laundering measures in parallel with operating law enforcement systems. As for the second form of activity (referred to as FIU's administrative and hybrid models), the FIU here operates as a unified administration intended for the centralized reception and assessment of financial data and reporting the information obtained as a result of this assessment to competent law enforcement or prosecution bodies. In Azerbaijan, the

second model is adopted in the form of an administrative FIU, which is the Financial Monitoring Service.

Currently, FMS collaborates with law enforcement bodies in the Republic of Azerbaijan as follows:

- FMS reports information on suspicious transactions, obtained by itself as a result of analysis, to law enforcement bodies;
- FMS receives information on suspicious transactions from monitoring bodies and further reports it to law enforcement bodies for investigation.

According to the national practice, in 2022, the Anti-Corruption General Directorate initiated 6 criminal cases under Article 193-1.3.2 of the Criminal Code of the Republic of Azerbaijan based on the information on suspicious transactions reported to the General Directorate by FMS.

FMS is entitled to request feedback on the information suspicious transactions it provides to law enforcement bodies. Thus, according to the requirements of Article 19 of the Law of the Republic of Azerbaijan On Combating Money Laundering and Terrorist Financing, feedback is reporting appropriate data by the body (institution) receiving the information and documents to the sending party in the manner prescribed by Articles 19.3-19.5 of that Law to follow-up the results of the measures taken responding to the information and documents provided in the manner prescribed by law, control their quality, and collect statistical data. The following information and documents shall be provided as part of the feedback:

- ***information on the acceptance and investigation of information and documents provided;***
- ***a summary of the next steps as a result of the investigation of information and documents;***
- ***information on the quality and usability of information and documents;***
- ***periodic statistical data on reported transactions.***

The Egmont Group of Financial Intelligence Units is an international organization facilitating cooperation and intelligence exchange between national financial intelligence units (FIUs) to combat money laundering. National FIUs collect data on suspicious financial transactions and are responsible for processing and analyzing the received data. When FIU receives sufficient evidence of any illegal activity, it shares it with law enforcement bodies. The Egmont Group was founded in 1995 as an informal network of 24 national FIUs, headquartered in Toronto, Canada. The group took its name from the Egmont Palace in Brussels, where the founding meeting of the group was held. The Egmont Group's Secretariat

established its permanent headquarters in Toronto on February 15, 2008. It also has offices in Ottawa, the capital of Canada. The Egmont Group aims to provide a regular forum for FIUs worldwide to improve cooperation in combating money laundering and promote the implementation of internal programs in this field. The Egmont Group supports its member FIUs through:

- expanding and systematizing international cooperation in data exchange;
- improving the performance of FIUs by arranging training and encouraging staff exchanges to improve the experience and skills of the FIU staff;
- improving quality and security of communication between FIUs through the implementation of technology such as Egmont Secure Web (ESW);
- encouraging better coordination and support between the member FIU's operational units;
- promoting operational independence of FIUs;
- encouraging the establishment of FIUs with jurisdictions having money laundering programs or areas with programs in the early stages of development.

Currently, Egmont Group includes the Financial Monitoring Services of 167 countries. At the end of 2009, the Financial Monitoring Service of the Republic of Azerbaijan applied to the Egmont Group Secretariat for membership. In this regard, relevant procedures have been initiated, concerning the membership of the Financial Monitoring Service in the Egmont Group. As part of those procedures, the financial monitoring bodies of the Russian Federation and the Republic of Ukraine have been adopted as sponsoring institutions for the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan. As part of the membership procedure, the Financial Monitoring Service was invited to participate as an observer in the 18th plenary meeting of the Egmont Group, held on June 27 - July 1, 2010. The plenary meeting discussed the next stage of the procedure for the admission of the Financial Monitoring Service to the Egmont Group membership. The Financial Monitoring Service participated two more times as an observer in the meetings of the Working Subgroups of the Egmont Group (Moldova, October 2010; Aruba, March 2011). At the meeting of Working Subgroups held in Aruba, the Legal Working Subgroup recommended the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan for membership in the Egmont Group. According to the decision adopted at the 19th plenary meeting of the Egmont Group held on July 11-15, 2011, the Financial

Monitoring Service under the Central Bank of the Republic of Azerbaijan was elected a full member of the Egmont Group along with the financial monitoring bodies of six other countries.

A successful anti-money laundering prosecution depends on an effective investigation. The investigation efficiency, in turn, depends on the following:

monitoring of funds/assets and financial flows;

understanding the principles and objectives of the financial investigation;

understanding financial systems and (old and new) payment/ transfer methods;

establishing partnerships with banks and other financial service providers;

proper use of NCBs and international anti-money laundering networks;

coordination between prosecutors and investigators.

According to the 2014 and 2018 US State Department Reports, most of the illegal income in Azerbaijan is obtained from the following crimes:

- tax evasion (this accounts for about 75% of money laundering risks);
- corruption (this accounts for about 10% of risks);
- manufacture and trade of drugs and weapons;
- theft and looting of another's property;
- fraud;
- trafficking;
- smuggling.

Currently, national law does not consider financial investigation as an independent institution, and it is performed along with the basic investigation line during a criminal prosecution. The financial investigation is aimed at defining and recovering the damage caused by the crime, as well as illegally acquired property, thereby preparing it for further confiscation. According to FATF standards, this investigation should be performed separately from the basic one - parallel to it. As mentioned in the previous sections hereof, the relevant Resolution of the Plenum of the Supreme Court requires special attention to the financial investigation and its practical implementation.

According to international practice, the prosecuting entity shall ensure the effective financial investigation of any grave greed-motivated crime.

The key objectives of the financial investigation are:

- identify funds or assets obtained, used, or intended to be used by crime;
- obtain evidence related to the investigated case;
- expand the existing financial intelligence database;
- uncover the financial structures of a criminal or terrorist organization or network;
- obtain financial intelligence data and evidence forming a basis for freezing/seizure and confiscation of funds and other assets;
- prevent criminal activity;
- collect financial intelligence data and evidence supporting the charge in judicial proceedings related to confiscation;
- collect evidence to fulfill a request received from another state as part of legal mutual assistance.

Financial Transactions: Tracking, Identifying, and Freezing of Funds (Assets)

In the context of tracking funds and assets, it is important to remember that a fictitious/shell company or, alternatively, any legal entity can be used as an asset flow tool. In this regard, identifying an individual who is the beneficial owner of has a beneficial interest in the assets in question is always among the key objectives. Simply identifying the beneficiary legal entity is not enough, attention should be paid to identifying the individual(s) standing behind that legal entity.

When considering the issue of tracking funds used or intended to be used during the investigation of money laundering crimes, the investigator shall consider the intention of the suspect(s) to 'convert' illicit proceeds into legal ones, or at least conceal their flow to make them untraceable. To do this, the suspect(s) can use the classic three-stage money laundering process:

Placement - this is usually the first stage, mainly aimed at 'cleaning' the assets of any traces of illegality. This can be achieved in various ways, e.g., by introducing the funds into the financial system (through a financial institution or conversion into financial instruments);

Layering - after the assets have been 'successfully' introduced in the legal market, the second stage is creating a tracking scenario for them. Assets can be converted into another type of asset or transferred from one country to another through a shell company;

Integration – this is the final stage, where assets or income are introduced or integrated into the legitimate economy; this can be done by acquiring real estate or a share in any business or placing the funds in the

traditional banking system, thereby making those funds more credible and facilitating their flow.

When identifying and tracking assets, the investigator tries to answer the following preliminary questions:

- Whether real estate or other values have been purchased?
- Have assets been concealed in other countries/offshore zones?
- The assistance of which partners/sponsors/third parties was used?
- Is this related to other criminals?
- Which 'lifestyle' evidence is available?
- What indicates the relations/communications of the perpetrators/suspects (e.g., phone call receipts)?
- Have certain bank transfers/electronic money transfers taken place?
- Is there evidence of using couriers delivering cash and informal money transfers?
- Have the funds been placed in the accounts of charitable organizations/NGOs/businesses?

Herewith, there are certain methods and approaches to be considered in such cases:

- Checking background data of individuals;
- Checking registry data of companies/legal entities;
- Checking registry data of charitable organizations/NGOs;
- Interviewing witnesses/sources;
- Checking bank/financial transaction documents, communication-related phone call receipts/records and information, reviewing transportation and other expenses of individuals who are the investigation targets and related supporting records/evidence, government institution records (including information on border crossing, applying for a license, etc.);
- Checking real estate registry data;
- Covert monitoring of accounts/transactions;
- The use of special investigative techniques and general clandestine action methodology, including covert searches, electronic surveillance/wiretapping, and undercover agents.

If required when investigating criminal cases related to money laundering, the confiscation or freezing of the offender's assets as a preventive measure is very important from the standpoint of the comprehensive, complete, and objective performance of the investigation. According to the FATF Recommendations (4, 32, and 38), **freeze** means to prohibit the transfer, conversion, disposition, or movement of any

property, equipment, or other instrumentalities based on and for the duration of the validity of an action initiated by a competent authority or a court under a freezing mechanism, or until a forfeiture or confiscation determination is made by a competent authority.

In the law of the Republic of Azerbaijan, the term 'freezing of assets' is reflected only in Chapter 60 of the Criminal Procedure Code of the Republic of Azerbaijan, entitled 'Proceedings on Inclusion in the Domestic List of Individuals and Entities to be Sanctioned as Part of Combating Terrorism and Terrorist Financing.' The analysis of that chapter allows for concluding that the assets of the individuals who have committed acts of terrorism and financing terrorism can be frozen.

An alternative procedural measure to the freezing of assets in national legislation is the investigative procedure of seizure of property. According to the requirements of Article 177.3.3 of the CPC of the Republic of Azerbaijan, the investigative procedure of seizure of property is usually performed upon receiving a court decision. According to Article 177.4.3 thereof, the investigator can seize the property mandatorily without an appropriate court decision in the cases provided for in Article 249.5 of the Code. Article 249.5 of the CPC states: "In cases that cannot be postponed, when there is precise information giving ground to assume that the crime perpetrator may destroy, damage, spoil, conceal, or, to satisfy a civil claim, alienate property or items obtained by crime, the investigator may seize the property without a court decision if the requirements of Articles 177.2-177.5 hereof are met."

Beneficial owner institution. Identifying an individual who is the beneficial owner of or has a beneficial interest in the assets is extremely important when investigating criminal cases in connection with anti-money laundering measures. Note that identifying the beneficiary legal entity is not enough, the main attention should be paid to identifying the individual(s) standing behind that legal entity. FATF Recommendations provide meanings of the '**beneficiary**' and '**beneficial owner'** concepts. Thus, according to those Recommendations, the term '**beneficiary'** means the person(s) entitled to benefit from any enterprise, institution, or organization.

The beneficiary can be both an individual and a legal entity. 'Beneficial owner' means the individual(s) who ultimately own(s) or control(s) a customer or on whose benefit a transaction is being performed. This concept also includes those who exercise ultimate effective control over a legal entity or arrangement. Beneficial ownership means that one or more individuals are the direct or indirect owners of any company or have the opportunity to control its formal owners while

benefiting, directly or indirectly, from the financial and non-financial assets of that company.

Ukraine was the first to introduce the concept of beneficial owner into the law, so in February 2015, the Law On Combating and Preventing the Money Laundering and Financing of Terrorism and Proliferation of Weapons of Mass Destruction came into force. That law explicitly explains the concept of beneficial owner and notes that there are individuals who may affect the activity of any legal entity, regardless of the personality of its formal owner.

According to the current international practice, the disclosure of the following information while keeping a register of data on the beneficial owners of any legal entity based on the below criteria is of great importance when investigating criminal cases of the aforementioned type:

1) Keeping an electronic central register of beneficial owner data and disclosing such information;
2) Free public access to such registers;
3) Regular verification of beneficial owner data by appropriate government institutions;
4) Determining the obligation for financial and non-financial institutions and other arrangements to identify, verify, and report detected inconsistencies in beneficial owner data according to the anti-money laundering law;
5) Determining administrative or criminal liability for the violation of the procedure for keeping the beneficial owner data register and the disclosure of such information depending on the violation nature and degree.

Summarizing criminal actions of tax evasion according to a complex scheme, investigated in the Republic of Azerbaijan, allows for the conclusion that in most crimes, the beneficial owner (actual manager) is hidden, the nominal persons (formal directors) performing banking transactions do not know the beneficial owners, and enterprises are managed through coordinating persons. Note that monitoring subjects are obliged to identify the beneficial owners of legal entities, as well as store and report data by law.

Since the beneficial ownership institution has not yet been implemented in Azerbaijan and there is no corresponding database, law enforcement agencies cannot respond to appropriate inquiries from foreign partners. Data exchange on the founders of legal entities is performed under international conventions, to which the Republic of Azerbaijan is a party, and based on the principle of mutuality.

Although the current requirements recognize the obligation to identify the beneficial owner, they do not regulate the ways to do it. This issue is governed by only regulatory acts of banking law.

The law does not provide for the requirements for obtaining beneficial owner data during the registration of legal entities. Problems related to the quality of data collected by other persons involved in monitoring have a limiting effect on the quality of investigative actions.

Virtual and cryptocurrencies. Although the terms 'virtual currency,' 'digital currency,' and 'cryptocurrency' are ' interchangeable, there are some important differences between them. Cryptocurrencies that are neither a legal payment instrument in any country (currently, Japan and Switzerland recognize them as a legal payment instrument) nor issued or supported by any government have become a particular problem for those investigating the flow and transfer of funds. Their characteristics such as anonymity of transactions, low spending demand, and difficulty in tracking transactions, make them particularly attractive to money launderers.

There are both centralized and decentralized (i.e., without a single administrator or custodian) virtual currencies; dealing with the latter is particularly problematic. Bitcoin is the first decentralized virtual currency, and tracking financial transactions with Bitcoins can be difficult for the following reasons:

- the lack of traceable relationship between individuals and virtual currency accounts;
- the use of tools creating obstacles to the tracking (mixers, tumblers, anonymizers);
- the possibility of creating an unlimited number of accounts.

It is useful to note the following key differences between virtual currencies and cryptocurrencies:

- Although cryptocurrency is a type of digital currency, there are some fundamental differences between them. Digital currencies are centralized ones with a specific group of people and computers regulating the state of transactions on the network. Cryptocurrencies are decentralized ones, regulated by many users.

- Digital currencies require the identification of the user. You should upload your photo and certain documents issued by government authorities. Purchase, investment, and any other transactions with cryptocurrencies do not require any of these. However, cryptocurrencies are not completely anonymous. Although the transaction performer's data does not contain confidential information such as name, residential address, etc., every transaction is recorded, and the cryptocurrency

senders and receivers are known to the users. Thus, all transactions can be tracked.

- Transactions with digital currencies are not transparent. You cannot choose the address of the electronic 'wallet' and view all money transfers. This information is confidential. Cryptocurrency transactions are transparent. Anyone can view the transactions of any user since all income flows are located on the open 'chain.'
- A central authority deals with solving problems in transactions with digital currencies. It may cancel or freeze transactions at the request of the participant or government authorities, or if fraud or money laundering is suspected. Cryptocurrency transactions are regulated by a community of users.
- Many countries have a certain legal framework for digital currencies such as the EU Directive No. 2009/110/EC or the US Uniform Commercial Code, Article 4A. We can't currently say the same about cryptocurrencies. In many countries, their official status has not been determined. Forming a legal framework is still at an early stage.

Although the user may perform all transactions with virtual currency, he/she often needs to cash out and withdraw it from the system. Therefore, sooner or later, 'real' currency will be converted into a virtual one and vice versa. This type of exchange is essential for the functionality of virtual currency. In a centralized virtual currency system, the user can directly deal with the company managing these transactions to place or withdraw cash in/from the system while decentralized systems do not provide such a service. As a result, third-party entities called 'currency exchangers' are created, providing a platform for placing or withdrawing cash in/from the system and converting one virtual currency into another.

The investigator shall keep in mind that virtual currencies allow for a higher level of protecting users' anonymity than a system based on transactions with 'real' currency. Even if an investigator succeeds in tracking a transaction, he/she may hardly establish a relationship between a virtual account and a specific individual. Undoubtedly, the lack of a centralized system increases this difficulty.

Most of the financial investigation tools are effective in relation to virtual currency. Some common examples are as follows:

- Virtual currency transactions performed through centralized systems can often be successfully tracked as in conventional online payment services.
- Transactions performed through decentralized systems can be tracked when those systems use open transaction registries (all

transactions performed through the network are recorded in such registers).

- During the investigation, cyber-investigation methods are often helpful, e.g., taking a computer 'image' of the suspect and obtaining data recorded by the Internet service provider.
- If the 'currency exchanger' is located in a foreign country, early contacts with the appropriate institution of that country are important to obtain administrative and legal mutual assistance.
- Even when an electronic 'wallet' is used in transactions, if the transaction time is known, the open transaction registry can identify the electronic address to which the virtual currency has been sent.
- The most difficult is usually to link the Bitcoin transaction address to the corresponding individual. The currency destination address can sometimes be linked to an individual based on data obtained from a registered 'money exchanger' (in states with mandatory regulation); thus, 'money exchangers' (in the states with effective regulation) are required to verify the personality of their clients.
- Some Bitcoin users post their Bitcoin addresses online, which allows for identifying them, along with their other data.
- If the law provides for the confiscation of virtual currency, law enforcement shall obtain the device/equipment or carrier (e.g., laptop, tablet, or USB) containing an electronic 'wallet' to confiscate currency such as bitcoin, or at least they are legally required to have access to them. Immediately after the confiscation, bitcoins shall be transferred to a government-controlled electronic 'wallet,' and the 'wallet' data carrier shall be removed from the device/equipment and kept offline. It is not enough to simply confiscate an electronic 'wallet' and keep it as evidence since the network or another physical carrier may contain backup versions of that 'wallet.'

Note that the lack of a legal framework for one-time transactions with virtual assets and electronic transfer of funds in the Republic of Azerbaijan largely complicates the investigation of criminal cases on crimes, committed using those assets, by investigators.

Thus, various crimes can be committed using virtual assets or electronic transfer of funds. Therefore, to investigate laundering and other crimes comprehensively, completely, and objectively, the country's law should be supplemented with the rules for performing one-time transactions with virtual assets and electronic transfer of funds. Thus, the creation of a single base determining customer compliance measures before or during one-time transactions with virtual assets and transfers in the Republic of Azerbaijan, the rules and conditions for electronic transfer

of funds performed in the Republic of Azerbaijan through local banks or their branches and departments, local branches of foreign banks, or organizations providing postal and financial services, customer compliance measures during electronic transfers, requirements for business relations between financial institutions, and the form and content of the documents to be drawn up during business relations between financial institutions, as well as the payment document, with the inclusion of provisions reflecting the aforementioned matters in the relevant law would be a significant contribution to the investigation.

However, one important matter should not be forgotten: cross-border or domestic transactions performed by individuals or legal entities to transfer funds to recipients by electronic methods provided by financial institutions (through a bank account, without opening an account, or using new payment methods), as well as transfers during the purchase of products and services using payment cards, where unique data allowing to identify the card are transmitted throughout the entire transaction chain, and settlements and transfers between financial institutions for their purposes are not considered electronic transfers.

III. Specifics of Investigative Actions to be Performed by the Investigator

During the preliminary investigation of the pending criminal case, the investigator shall determine various aspects that may be important for the investigation and ensure the investigation is mainly focused on those issues. A money-laundering investigator shall consider the issues of preparing financial intelligence, planning the financial investigation in detail (which may require applying special investigative techniques), restriction and subsequent confiscation, as well as management of assets, and shall not overlook potential financial aspects in the course of other investigative actions.

To ensure a comprehensive, complete, and objective investigation of the aforementioned criminal cases, the investigator shall prepare an investigation plan specifying the issues to be taken considered during the investigation and continue the work based on the below matters.

- Determining the criminal action(s), as well as the evidence required for each element of the corpus delicti, including the subjective element of the crime;
- The crime scene-related strategy;
- Criminalistic expertise strategy (perform a forensic examination of computer hardware in money laundering cases and consider the

opportunities to legally obtain the materials therein and further submit them as evidence);

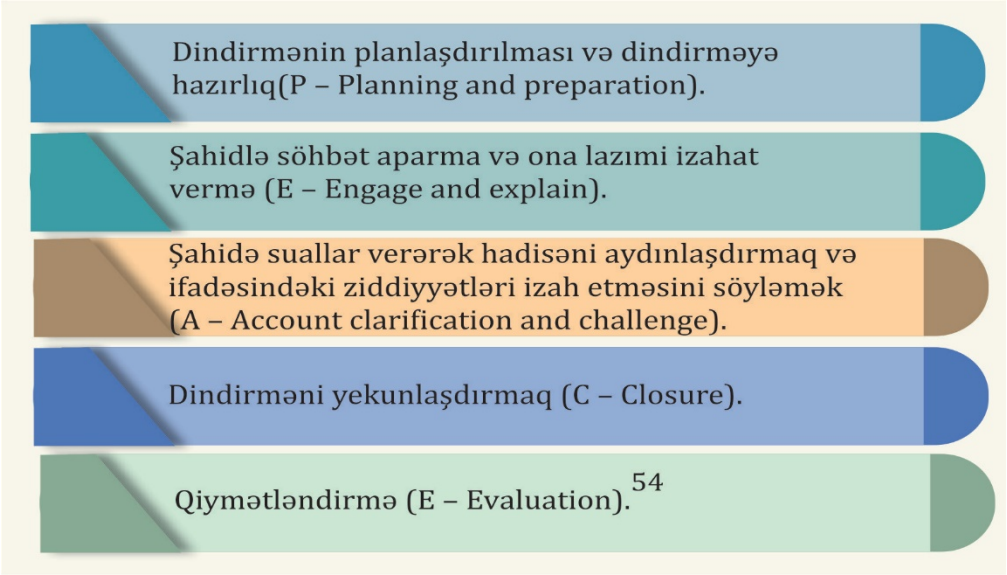
- Search strategy (search at home or office premises; when performing the search in office premises, consider measures and means of security (protection) of materials protected by law, determine the way of collecting electronic evidence (seizure of computers, laptops, tablets, trying to get access to encrypted data));
- Witness-related (and victim-related, if any) strategy;
- Evidence-related strategy - acquisition of evidence required to prove accusation;
- Treatment of digital evidence - safe storage and 'filtering' of such evidence;
- When legal entities' actions are investigated, obtaining the evidence required to determine liability;
- Financial evidence-related strategy – among other things, this component widely covers the issues of the content of intelligence information obtained from the FMS and other government institutions, especially information on income and taxes, the STR data and the rules for using them as evidence, accessible foreign financial data, the flow of funds, the nature of financial expertise that may be required to draw a picture of financial activity, restriction and seizure/confiscation measures, the ground for implementing these measures and assets concerned, and asset management and storage after the restriction and (or) seizure/confiscation measures have been taken;
- Rules for the effective implementation of the international cooperation strategy in case of possible requests for legal mutual assistance (consider the issues of determining the required type of legal assistance, the stage the request for such assistance shall be made at, and the request terms, filing informal requests through international institutions of which Azerbaijan is a member or contacting directly the government authorities of the State applying for legal assistance, the type of assistance requested, evidence collection, and the restriction, seizure, confiscation, or extradition measures);
- Special investigation method-related (SIM-related) strategy;
- Intelligence strategy;
- Suspect-related strategy – determining the investigation target, i.e., whether this is an individual or a legal entity or both; when the suspect or the investigation target is any influential person (politician, etc.), choosing a pretrial detention measure shall be thoroughly planned, considering the flight risk; when the suspect is a member of an international organization or a person with diplomatic immunity, the preventive measure duration

shall be determined considering the possibility of immunity issues; when the investigation target is a legal entity, the crime beneficiaries shall be identified;

- Issuing an operative task for covert surveillance;
- Public and media relation strategy (provide timely and accurate information to maintain public trust, assist in achieving the investigation goals and objectives, create public confidence in ensuring security, prevent the provision of false information, advise interested media representatives on inappropriate actions that may harm criminal prosecution, prevent disclosure of sensitive information or investigative tactics);
- Risk assessment and management strategy - investigations related to money laundering shall cover confidential financial-intelligence data, confidential information, etc. (especially considering the complexity, multi-episode nature, the need for considerable resources, and sensitivity of the investigation when it comes to crimes with a high public danger and a great public resonance). The said issues shall be resolved by regularly reviewing the investigation plan.

During the investigation, the investigator shall consider each of the aforementioned matters separately and determine which ones shall be included in the strategy.

Specifics of the witness interrogation methodology during the preliminary investigation of money laundering. Different witness interrogation methods are used during the preliminary investigation related to money laundering, and the proper approach in this area shall be agreed upon considering the specifics of Azerbaijan. An exemplary standard that may be particularly useful in this regard is the so-called PEACE model:



To effectively perform the interrogation, the investigator shall thoroughly gather the facts and plan the interrogation, establish contact with the interrogated, have effective listening skills, ask the appropriate event-related questions at the appropriate time, take security measures required for witness protection, know the rules of treating witnesses undisposed to testify, and provide witnesses with assistance and support.

Referring to the legal literature, in 1997, Australian judge Justice Young identified 14 principles that, in his opinion, help in the assessment of the evidence.

1. The probability of the occurrence of an ordinary event is greater than that of an extraordinary event;
2. The probability of the truthfulness of the witness's testimony without contradictions in the internal components of his/her information or testimony is greater than that of the witness's testimony with such contradictions;
3. The witness's testimony, which is consistent with other testimonies, is most likely true;
4. The witness's testimony corresponding to the written evidence is most likely true;
5. Do not assess the case only by tracing the person's behavior during the interrogation;
6. The witness's testimony based on observation should be assessed considering the extent to which the witness had the opportunity to observe, thus, his distance from the event scene and position, the lighting of that scene, and the observation period are important;
7. Many witnesses will lie when the matter being investigated is of vital importance to them or they try to avoid exposure;
8. Don't let defense arguments mislead lawyers.
9. In some cases, the only and irrefutable evidence shows which facts are true;
10. Consider cultural or other characteristics affecting the witness, as well as factors and forces that may affect the witness when giving testimony;
11. If on a particular matter, a witness states that's not the case, and certain aspects of his/her testimony seem to be false, this does not necessarily give grounds to conclude that the witness's testimony on that specific issue is not true;
12. Do not look at the issue from the standpoint of those involved in the case;

13. If one party to the case gives a testimony contradicting that given by the other party, the witness should be allowed to comment on the contradicting version;

14. Sometimes the truth can be inferred from the fact that the witness has concealed something.

The significance of forensic accounting expertise in the crime of money laundering. The appointment of forensic accounting expertise and obtaining an expert opinion are among the key types of evidence when investigating the crime of laundering. In many countries, accounting expert opinions play an important role in financial investigations and shall not be overlooked when planning further investigation strategies. When an investigator reviews information on a committed or prepared crime in the course of a financial investigation, and there is the need for checking the activity of a legal entity using special knowledge in science, technology, art, and other fields, before initiating a criminal case, he/she shall decide on ensuring the allocation of an expert from appropriate government bodies or auditor agencies.

Also, during the investigation after the initiation of the criminal case, along with appointing a forensic accountant, by the order of the prosecutor exercising the procedural guidance of the preliminary investigation, associated with the verification of the activities of various legal entities, government administrations and institutions, banks operating in the private sector, non-bank credit organizations, leasing and pawn organizations, a decision is made to verify the activity of a legal entity, based on which audit, service, and other similar inspections are performed. The results of those inspections are accepted as direct evidence in the aforementioned criminal cases.

The key task of forensic accounting expertise is to study the state of reflecting economic transactions in accounting to identify negative deviations in reports and reporting processes.

The expert entrusted with the execution of the decision on appointing forensic accounting expertise shall be entitled to:

- track transactions with funds/assets back to the start;
- explain complex transactions to the court;
- analyze cross-border/international financial flows;
- fully analyze and verify all relevant financial data collected during the investigation;
- assist the court in understanding activity/business activity in a specific area (when this activity is used for money laundering);

- identify unexplained transactions or records (this is especially useful in cases when money is laundered through a legal entity, or a charity or NGO is used for terrorist financing);
- determine the relationship between the parties (both individuals and legal entities);
- draw attention to supposedly distorted information (in complex cases involving enterprises, charities, or NGOs);
- explain accounting standards;
- review records in financial documents (including accounts);
- study samples;
- reduce large financial data volumes by presenting them in the form of easier-to-understand tables/lists and other forms for submission to the court;
- help understand the financial flows and rates in different countries;
- ensure the best use of IT resources related to financial issues;
- help track funds in both directions (forward and backward).

When investigating the crime of money laundering, the investigator appointing the forensic accounting expertise shall ask the expert to determine the following:

- whether the accounting of the legal entity has reconciled settlements with the enterprises, transactions with which it has performed;
- whether the financial and economic activity of a legal entity has been timely audited;
- whether the financial and economic transactions of a legal entity are reflected in the accounting and comply with the regulatory acts and accounting standards in force;
- whether cases of violations of the accounting and control standards have been allowed, which caused material damage and failure to timely detecting it;
- whether the funds received from the bank and external sources have been timely placed in accounts;

Questions of a preventive nature shall be asked to determine and eliminate the conditions that helped to create favorable conditions for the commission of crimes.

IV. A Different Approach to the Assessment of Evidence

Evidence shall be assessed during both the pre-trial and court investigation of the crime of money laundering by, respectively, investigators and judges. During the court investigation, the public prosecutor shall analyze whether the evidence related to the investigated issue is serious enough to support the charge and determine the most

appropriate way to support the charge in court. The judge, in turn, shall determine the appropriate strengths and weaknesses of the evidence provided to the court to draw certain conclusions on the facts and decide which evidence is not only convincing but also true.

Witness testimonies are particularly difficult to assess. Sometimes the truthfulness of the witness's testimony can be determined by his/her demeanor while testifying and the compliance of that testimony with other facts proven in the case. But herewith, even if a certain witness's testimony is convincing, the information on the events, provided by him/her, may contradict other irrefutable evidence. The requirement for the court to justify its decisions is consistent with both good practice and international law on human rights. Accordingly, the court's findings by facts shall be as transparent as possible and shall explicitly refer to the relevant evidence, which shall be analyzed and checked against the findings in the case as a whole.

Article 145 of the CPC of the Republic of Azerbaijan states that all evidence shall be assessed for relevance, credibility, and reliability. The totality of all evidence collected for criminal prosecution shall be assessed for the sufficiency to make an accusation. The investigator, prosecutor, and judge shall assess the evidence according to their inner conviction based on a thorough, complete, and objective review of the totality of the evidence, guided by the law and fairness. If the doubts arising in the proof of the accusation cannot be eliminated by other evidence, they shall be interpreted in favor of the suspect or accused.

Investigators and judges often find it useful to adopt the following approaches to assessing the evidence in a case:

- start assessing from the undisputable facts accepted by both sides;
- add other facts that are likely to be true to those facts;
- compare and consider each witness's testimony with undisputable facts and those that are most likely to be true to the extent possible. If the witness's testimony contradicts undisputable facts and those that are most likely to be true in any serious aspect or contains elements contradicting each other, that witness's testimony shall be considered invalid.
- not give too much importance to the witness's demeanor while testifying based on the probability of deceptive behavior.
- when checking each evidence element, consider the extent to which it is supported by objectively verifiable data;
- be wary of the witness's intuitive reactions, not supported by facts.

The short list above is a good starting point for the assessment. Note, however, that one shall be cautious about simply relying on the witness's demeanor. Keeping track of a witness and attentively considering

and assessing his/her answers and demeanor during detailed cross-interrogation may be one of the best approaches to drawing reliable conclusions on his/her testimony.

Logic cannot be ignored when assessing the evidence, but logic alone is not enough. Of course, if undisputable facts heavily contradict the very convincing witness's testimony, logic usually dictates that the undisputable facts should prevail, no matter how persuasive the witness's appearance, presentation of information, or demeanor may be. Decision-making in a criminal case involves not only logic but also a broader assessment of sometimes complex facts and considerations. In such cases, decision-making shall rely to some extent on world practice, common sense, and understanding of the person's demeanor.

CHAPTER 4

International Cooperation

I. Legal Mutual Assistance

Measures of international cooperation with other countries are taken, where appropriate, in investigations related to money laundering. The international cooperation actions include:

- ***legal mutual assistance (LMA);***
- ***mutual or informal assistance;***
- ***seizure and confiscation of criminal proceeds and tools;***
- ***extradition;***
- ***transfer of convicted or sentenced persons.***

Legal mutual assistance, unofficial/administrative assistance, and seizure and confiscation of criminal proceeds and tools are most often used in practice when investigating the aforementioned criminal cases.

Corruption and financial crimes are becoming more and more transnational both in our country and the international arena, in which regard, preliminary investigators and judges performing court investigations are required to collect evidence from abroad. In the world of financial networks that may cover many countries, the investigation of purely domestic criminal cases often requires obtaining evidence from foreign countries. For this purpose, the system and procedures for providing formal assistance by one state to another through a request (this process is called legal mutual assistance), as well as informal cooperation between investigators (this process is called administrative or, in some cases, mutual assistance, which is not sometimes treated understandingly and often depends on the approach and opinions of the people 'in places' to whom the request is addressed) are used.

When investigating criminal cases, investigators sometimes directly request legal mutual assistance without checking the factual need for administrative assistance, i.e., mutual assistance between investigators or prosecutors. It is often forgotten that the requested state may appreciate an informal approach, which may provide a more efficient and prompt response. Therefore, the issue of whether there is a need to send a formal request to obtain any particular evidence shall first be considered.

The general principle is that a formal request is made to obtain evidence, and an informal or administrative approach shall be used when intelligence or other information is requested. An empirical rule can be

added to this principle, i.e., if the requested evidence is not controversial and does not require applying coercive power (e.g., a court order) in the requesting State, then most states are usually capable of providing administrative assistance.

As a rule, the possibility of administrative assistance significantly reduces delays in responding to the request, which prevents unnecessary extension of the preliminary investigation in criminal cases. Similarly, when considering the issue of providing administrative assistance, the probability that a request for such assistance may be an initial step towards a later formal request should not be overlooked. E.g., initially seeking informal assistance may narrow the scope of a formal request.

When deciding whether to apply to a foreign country for evidence informally, investigators shall consider the following:

the evidence should be legally obtainable under the law of the requesting State and there should be no grounds for the probability of excluding it from the list of evidence at a trial in the requesting State;

the evidence should be lawfully collected under the law of the requested State;

the requested State should not object to that evidence.

The failure to consider the aforementioned elements may cause difficulty such as excluding the evidence from the list of evidence in court (in states where the evidence exclusion principle is applied).

Also, not less important is that failure to properly file an informal request may displease the foreign authorities, who may therefore be less inclined to further grant any requests. Of course, states also differ by the extent of willingness to help even at official requests. Although in many cases, the State's willingness to grant an official request depends on its internal law and relations with the requesting state, the decisive factor in this matter is often the attitude of those dealing with the request 'at places' in the requested State and their ability to help.

Therefore, to obtain reliable, prompt, and effective legal mutual or administrative assistance, it is extremely important to establish and maintain strong transnational working relations. Establishing positive relations and cooperation with key officials operating in this field in other countries would more likely facilitate the acquisition of materials through informal assistance. Such relations with investigators and prosecutors can be established by arranging joint pieces of training, staff exchanges, seminars, and regional data exchange sessions with other states.

Further progress can be achieved in this area by assigning a law enforcement officer as a liaison in other states. Such liaisons shall have

access to all authorities responsible for the appropriate field according to the law of the state they are assigned to.

Establishing effective personal business relations with professional practitioners working in this field in the requested states is sometimes difficult. E.g., the scale and complexity of the criminal justice system in the United Kingdom can make this difficult. However, collaborative networks are important and should be established.

While a formal request is needed to obtain legal mutual assistance during the investigation, remember that the legal mutual assistance regime is intended for obtaining evidence and not receiving information, intelligence, or even arresting a suspect. When preparing the request, remember that it is an independent document. The requested state shall be informed of all the information requested to decide whether to help and perform the requested investigations.

In both national and international practice, authorities often express concerns that requests are delayed or denied for conflicting reasons. The regional discussions show several reasons for such delays or refusals. Those reasons are as follows:

- The requests are not accurate, or the facts specified in the request are not related to the assistance requested therein;
- The translation quality is low;
- The request does not specify the contact data of the investigators in the requesting state;
- The requested evidence is factually either unavailable or obtained by the delay because it is at third parties (e.g., banks) or the relevant documents have been destroyed since the evidence has expired.

Some of these common omissions are due to inexperience and can be avoided by building an active legal mutual assistance network.

II. Circumstances to be Specified in the Request for Legal Mutual Assistance

The request format and content are among the most important issues during criminal investigations. Thus, poorly worded or incomplete requests may result in a less favorable outcome of the assistance provided. Below is a short list of matters to be included in the request:

Confirmation of the requester's authority;

Cites from appropriate agreements, laws, codes, and conventions;

Guarantee (i.e., the guarantee of cooperation; guarantee that the country filing the extradition request has a similar law on the same crime, etc.);

Identification of the accused/suspect's personality;

The requester's status in investigation/criminal proceedings;

Persons under investigation/criminal prosecution;

A general overview of the facts and their relation to the request (the facts should be described in maximum detail and should specify why the evidence is needed for criminal prosecution purposes);

Assistance required: The request should be related to a criminal proceeding, i.e., an investigation or trial of a criminal offense under the common law (whether the request is made at the investigative stage or after the trial);

Signature and contact data of the requester.

III. Ground for Refusing a Request for Legal Mutual Assistance

Granting requests for legal mutual assistance is related to exercising the states' sovereign rights. Therefore, in general, states are authorized to refuse to provide such assistance; when legal mutual assistance is requested based on a bilateral or multilateral agreement, this authority is conditioned by the obligations thereunder.

However, the major difficulties are related to not the direct refusal but the delays in issuing and granting the formal request and the excessive tediousness of the process. Imperative international standards encourage states to resolve problems they encounter when exercising requests by taking appropriate measures rather than refusing to exercise the request.

Such measures may include laying down certain conditions on exercising or the postponement of exercising the request (e.g., if the investigations requested may harm a pending criminal investigation in the requested State). Also, when a State intends to refuse a request, it shall notify the requesting State of the reasons for the refusal and, where practicable, confer with the requesting State until a final decision is made (with the hope of removing the obstacle to assistance through discussion). Thus, establishing cooperation 'networks' and arranging conferences between the requesting and requested states are of great importance.

In international practice, refusals to exercise requests are quite rare and associated with the impossibility to exercise the request at all. This is caused by the lack of sufficient information to locate the evidence or the witness. In rare cases, a request may be refused for legal reasons such as the absence of a similar law for the same offense in the requesting country.

The legal framework for legal mutual assistance in Azerbaijan comprises:

- multilateral agreements (UN conventions);
- bilateral agreements for legal mutual assistance;
- Law of the Republic of Azerbaijan On Legal Assistance in Criminal Cases, dated June 29, 2001;
- Minsk Convention On Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters;
- Chisinau Convention On Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters;
- Convention On Extradition;
- European Convention On Mutual Assistance in Criminal Matters.