



ICLG

The International Comparative Legal Guide to:

Anti-Money Laundering 2018

1st Edition

A practical cross-border insight into anti-money laundering law

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Caroline Collingwood

CEO
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

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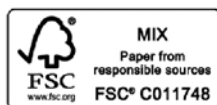
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China



Chen Yun



Liang Yixuan

King & Wood Mallesons

1 The Crime of Money Laundering and Criminal Enforcement

1.1 What is the legal authority to prosecute money laundering at national level?

Money laundering is a criminal offence under Article 191 of the *PRC Criminal Law* (the “**Criminal Law**”). The *Interpretation of the Supreme People’s Court on Several Issues Concerning the Specific Application of Law in the Trial of Money Laundering and Other Criminal Cases* provides further explanations on certain elements of the crime of money laundering.

The People’s Procuratorate is the body with legal authority to prosecute money laundering at all levels.

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

To establish a crime of money laundering against an offender, the prosecutor shall prove with irrefutable evidence that: (i) there are proceeds generated from predicate offences; and (ii) there are intention and acts of the offender to dissimulate or conceal the source/nature of such proceeds.

Predicate Offences

Money laundering predicate offences refer to criminal activities in relation to: (i) drugs; (ii) organised crime; (iii) terrorism; (iv) smuggling; (v) corruption & bribery; (vi) disruption of the financial regulatory order; and (vii) financial fraud.

Tax evasion is not a predicate offence of the crime of money laundering. Nevertheless, dissimulating or concealing proceeds generated by the crime of tax evasion will be charged under a separate crime, which is the crime of dissimulating or concealing criminal proceeds.

Knowingly

When determining whether an offender “knowingly” engages in the crime of money laundering, a PRC court will consider both objective and subjective factors, such as:

- the cognitive capacity of the offender;
- how the offender becomes aware of others’ criminal activities and/or criminal proceeds;
- the type and amount of the criminal proceeds;
- how the criminal proceeds are transferred or transformed; and
- the offender’s statement.

Acts

To be convicted of a crime of money laundering, the offender must have been involved with at least one of the following acts:

- making available accounts;
- assisting others in converting properties into cash, financial instruments or negotiable securities;
- assisting others in transferring funds through bank accounts or other funds settlement channels;
- assisting others in transferring funds offshore;
- assisting others in transferring/transforming criminal proceeds by the way of pawn, rental, sale and purchase, investing, fictitious transactions, false debts, forged security, misrepresenting income, lottery, gambling, and mixing the criminal proceeds with operational revenues of cash intensive businesses such as shopping malls, restaurants or entertainment places;
- assisting others in transferring criminal proceeds offshore/onshore by carrying, transporting or mailing such proceeds; or
- using other ways to transfer/transform criminal proceeds.

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

The *Criminal Law* gives the PRC authorities extraterritorial jurisdiction over the crime of money laundering:

- committed by the PRC citizens outside of the territory of the PRC;
- committed by foreigners against the PRC or PRC citizens outside of the territory of the PRC; and
- in accordance with international treaties/conventions.

Money laundering of the proceeds of foreign crimes is punishable under the *Criminal Law* following the above principles.

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

The public security authorities are responsible for investigating money laundering criminal offences and the People’s Procuratorate is responsible for prosecuting these criminal offences.

1.5 Is there corporate criminal liability or only liability for natural persons?

Both institutions (i.e. corporate) and individuals (i.e. natural persons) could be subject to criminal liability of the crime of money laundering.

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

The maximum penalty applicable to an individual convicted of money laundering is a 10-year fixed-term imprisonment with a criminal fine of 20% of the amount of laundered money. For an institution, the maximum penalty is a criminal fine of 20% of the amount of laundered money with its directly responsible personnel subject to imprisonment for a fixed term of 10 years.

1.7 What is the statute of limitations for money laundering crimes?

The statute of limitations for money laundering crimes is 15 years starting from the conclusion of criminal activities.

1.8 Is enforcement only at the national level? Are there parallel state or provincial criminal offences?

The *Criminal Law* is the only criminal code in the PRC and shall be applicable and enforceable across the whole country.

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

If a confiscation decision is made by a court, such court is the confiscation authority, and, when necessary, such court may require assistance from the public security authorities in enforcing the confiscation decision. If a confiscation decision is made by an administrative authority, the authority making such decision is the confiscation authority.

For a crime of money laundering, all criminal proceeds and gains obtained in relevant criminal activities are subject to confiscation.

If a People's Procuratorate decides not to prosecute a crime of money laundering but deems the relevant funds shall be subject to non-criminal confiscation, such People's Procuratorate shall form an opinion and hand over the case to another relevant administrative authority (e.g. the PBOC (as defined below)) for further handling.

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

We found, in most instances, employees of banks or other regulated financial institutions that have been involved in money laundering activities are convicted under separate crimes (e.g. the crime of corruption, which has a higher maximum sentence). Please note that the PRC court decisions are not all publicly available and we cannot be sure whether or not there are other cases where banks/other regulated financial institutions or their employees are convicted of money laundering.

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

Money laundering criminal offences cannot be resolved or settled outside the judicial process.

2 Anti-Money Laundering Regulatory/Administrative Requirements and Enforcement

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

The *PRC Anti-Money Laundering Law* and the *PRC Counter-Terrorism Law* set out systematic anti-money laundering ("AML") requirements for all financial institutions established within the PRC and certain non-financial institutions that have AML obligations (together, "AML Reporting Entity").

Besides, the People's Bank of China ("PBOC"), as the primary regulatory authority of AML issues, has promulgated various regulations and rules that stipulate specific AML requirements for AML Reporting Entities in conducting their businesses (e.g. the *Measures on the Administration of the Customer Identity Verification and the Identification and Transaction Documents Keeping by Financial Institutions*).

The China Banking & Insurance Regulatory Commission ("CB&IRC"), and China Securities Regulatory Commission ("CSRC"), as the regulators of banking, insurance, and securities sectors, respectively, have also published various rules that impose special AML requirements on financial institutions regulated by these commissions (e.g. the *Implementation Measures of the Anti-Money Laundering Work in Securities and Futures Sectors*).

At a high level, AML requirements can be summarised as follows (note: this is not a complete list):

- (i) Customer identity verification obligation – all AML Reporting Entities shall:
 - require their customers to provide valid identity certificates;
 - regularly review and continuously monitor their customers' identities; and
 - re-identify their customers upon the occurrence of certain changes.
- (ii) Customer identity and transaction records keeping obligation – all AML Reporting Entities shall:
 - retain copies of their customers' identity certificates;
 - keep records of their customers' identity information; and
 - maintain records of their customers' transactions.
- (iii) reporting obligation – all AML Reporting Entities shall timely report to the local PBOC office and the AML Data Center (as defined below) if:
 - their customers refuse to provide valid identity certificates;
 - their customers act suspiciously or any transaction is suspicious; and
 - the amount of any transaction exceeds the thresholds set out by the authority.
- (iv) other obligations – all AML Reporting Entities shall:

- set up/designate a special department to be put in charge of the AML issues;
- establish a complete AML internal control system; and
- organise AML training.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

There are AML requirements (e.g. a securities company shall ensure that their customers open accounts with such customers' real-names) imposed by self-regulatory organisations (e.g. the Securities Association of China).

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

Self-regulatory organisations, within their authorities, are responsible for AML compliance and enforcement against their members.

2.4 Are there requirements only at the national level?

The PBOC is responsible for compliance and enforcement of all AML requirements. In addition, the CB&IRC and CSRC are responsible for ensuring relevant financial institutions have established complete AML internal control systems and assisting the PBOC in enforcing certain administrative sanctions.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? Are the criteria for examination publicly available?

The PBOC is responsible for compliance and enforcement of all AML requirements. In addition, the CBRC, CSRC and CIRC are responsible for ensuring relevant financial institutions have established complete AML internal control systems and assisting the PBOC in enforcing certain administrative sanctions.

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements? If so, are the criteria for examination publicly available?

The China Anti-Money Laundering Monitoring & Analysis Center ("AML Data Center") run by the PBOC is the FIU responsible for analysing information reported by all AML Reporting Entities.

Criteria for examination are publicly available as such criteria are set out in various published rules (e.g. the *Guidelines on Establishing AML Monitoring Standards of AML Reporting Entities and the Administrative Measures for Financial Institutions' Reporting of Large-Value Transactions and Suspicious Transactions*).

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

The applicable statute of limitations for competent authorities to bring administrative enforcement actions against AML violators is two years starting from the conclusion of the violations.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

The maximum administrative fine on an AML Reporting Entity for failure to comply with the regulatory/administrative AML requirements is RMB 5 million and/or such entity could be subject to the revocation of its financial permit. The maximum administrative fine on a directly responsible director, senior manager or employee of an AML Reporting Entity for failure to comply with the regulatory/administrative AML requirements is RMB 50,000 and/or such person could be subject to the revocation of his/her qualification to participate in financial activities and/or be banned from any financial related occupations.

Violations that may trigger the above penalties include but are not limited to:

- failure to establish a complete AML internal control system;
- failure to set up/designate a department to be put in charge of AML work;
- failure to have AML training for employees;
- failure to verify customers' identities;
- failure to retain customers' identity information and transaction records;
- failure to report large-value or suspicious transactions;
- engaging in business with unidentified customers;
- setting up anonymous or fictitious accounts for customers;
- disclosure of information in violation of the duty of confidentiality;
- refusal to cooperate with or obstruct AML investigation; or
- refusal to provide AML investigation materials or provide false materials on purpose.

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

Besides monetary fines and penalties as outlined in question 2.8, the order for correcting all violations within a time limit can be imposed on AML Reporting Entities and disciplinary sanctions (e.g. a warning) can be imposed on individuals.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

The penalties as outlined in questions 2.8 and 2.9 are only administrative penalties. Violations of AML requirements that trigger the crime of money laundering are subject to criminal sanctions as explained in Section 1 above.

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

Generally, there are three steps for the PBOC to make an AML sanction decision – discovery, investigation and disposal. If the PBOC discovers/notices any AML violations, it has the authority to investigate relevant AML Reporting Entities or their employees using methods such as questioning relevant persons, compelling entities to provide relevant materials, etc. After the investigation, the PBOC may choose whether or not to impose sanctions and, if so, which sanctions to impose on the relevant entities and/or persons. For violations that trigger the crime of money laundering, the PBOC will hand over the investigation to the public security authority for further handling.

Most resolutions of penalty actions, but not all, by competent authorities are publicly available on the respective competent authorities' websites.

An AML Reporting Entity or an individual may appeal an administrative decision made by a financial regulatory authority to the upper level authority for reviewing the decision or file an administrative action against such authority in a PRC court.

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and other businesses are subject to anti-money laundering requirements? Describe which professional activities are subject to such requirements and the obligations of the financial institutions and other businesses.

Financial institutions that are subject to AML requirements include:

- policy banks, commercial banks, municipal credit cooperatives, rural credit cooperatives and rural cooperative banks;
- securities companies, futures companies and fund management companies;
- insurance companies and insurance asset management companies;
- trust & investment companies, asset management companies, finance companies, financial leasing companies, auto finance companies and money brokerage companies; and
- other financial institutions as identified by the PBOC.

Other designated non-financial institutions that are subject to AML requirements include:

- institutions conducting money remittance, exchange, settlement and/or clearing business;
- funds distribution institutions; and
- other non-financial institutions as identified by the PBOC.

The PRC AML law regime focuses more on what kind of institutions (instead of what kind of activities) shall be subject to AML requirements. There is no consolidated list of activities that are subject to AML requirements. Nevertheless, the authorities, from time to time, issue rules to emphasise AML requirements of certain activities (e.g. establishing cross-border cooperation with a foreign financial institution).

3.2 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

AML Reporting Entities are required to have complete AML internal control systems which shall cover all AML requirements as outlined in question 2.1.

3.3 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

In respect of recordkeeping, an AML Reporting Entity is required to keep records of all transactions for at least five years, regardless of the value of the transaction.

In respect of large cash transactions reporting, an AML Reporting Entity shall report if the value of a single transaction or the accumulated value of all transactions within a day exceeds RMB 50,000 (included), or USD 10,000 (included) or the equivalent.

3.4 Are there any requirements to report routine transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

In respect of other large-value transactions, AML Reporting Entities shall also report:

- for fund transfers of institutional customers, if the value of a single transaction or the accumulated value of all transactions within a day exceeds RMB 2 million (included), or USD 200,000 (included) or the equivalent;
- for onshore funds transfers of individual customers, if the value of a single transaction or the accumulated value of all transactions within a day exceeds RMB 500,000 (included), or USD 100,000 (included) or the equivalent; and
- for cross-border fund transfers of individual customers, if the value of a single transaction or the accumulated value of various transactions within a day exceeds RMB 200,000 (included), or USD 10,000 (included) or the equivalent.

AML Reporting Entities shall also report suspicious transactions (please refer to question 3.8).

3.5 Are there cross-border transaction reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

Criteria for reporting cross-border large-value transactions are outlined in questions 3.3 and 3.4. Criteria for reporting cross-border suspicious transactions are outlined in question 3.8.

3.6 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

General customer identification and due diligence requirements for AML Reporting Entities include but are not limited to:

- for institutional customers, verifying the name, address, scope of activities, valid licences proving the lawful establishment

of the institution, shareholding structure, constitutional documents (including registration certificate, partnership agreement, articles of association, etc.), information of institutional shareholder or directors, and name, valid ID of the controlling shareholder/person, beneficiary owner, legal representative, responsible manager and authorised agent; and

- for individual customers, verifying the name, gender, nationality, occupation, residence/place of working, contact, and valid ID.

Enhanced customer identification and due diligence requirements for AML Reporting Entities include but are not limited to:

- for institutional customers whose shareholder is another institution, tracking down the individual who is the controlling person or beneficiary owner of such institutional customers, and verifying and registering information of each beneficiary owner;
- for institutional customers with high risk, verifying the beneficiary owner of such customers with even more stringent standards; and
- for individual customers who have special standings (e.g. senior managers of international organisations and officers of foreign countries), verifying the special standings of these customers, obtaining senior managers' approval before taking in such individuals as customers, understanding assets of such customers and sources of such assets, and enhancing the frequency and intensity of transaction monitoring.

3.7 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

All financial institutions are strictly prohibited from opening any account for or developing any cooperation with foreign banks which have no actual business activities in the countries where they are licensed and are under no effective supervision.

3.8 What is the criteria for reporting suspicious activity?

All AML Reporting Entities shall report suspicious transactions. Suspicious transactions refer to all transactions, regardless of the value involved, that an AML Reporting Entity has reasonable cause to believe that such transactions or any person engaged in such transactions are related to criminal activities. AML Reporting Entities shall formulate their internal transactions monitoring standards in accordance with the requirements of the law, use such standards to identify every suspicious transaction and report every identified suspicious transaction to the local PBOC office and the AML Data Center.

Specifically, all AML Reporting Entities must report a transaction if the transaction:

- is related to money laundering, terrorism financing or other criminal activities;
- will jeopardise national security or social stability;
- is linked to other serious situations or emergencies; or
- is related to anyone on the list of terrorism organisations and terrorists as published by the PBOC, the United Nations Security Council, or other organisations that the PBOC requires all entities to pay attention to.

3.9 Does the government maintain current and adequate information about legal entities and their management and ownership, i.e., corporate registries to assist financial institutions with their anti-money laundering customer due diligence responsibilities, including obtaining current beneficial ownership information about legal entity customers?

The State Administration for Industry and Commerce maintains current and adequate institutional information of all corporates established within the PRC. The relevant authorities also publish information of special licences approved by such authorities. The above published information should be sufficient for AML Reporting Entities to meet their AML customer due diligence responsibilities.

3.10 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions?

Accurate information about originators and beneficiaries must be included in payment orders for all fund transfers. Such information shall also be included in payment instructions to other financial institutions.

3.11 Is ownership of legal entities in the form of bearer shares permitted?

The *PRC Company Law* permits joint-stock companies to issue bearer shares.

3.12 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

There are specific AML requirements applied to non-financial institution businesses.

3.13 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

The PRC AML law regime requires more attention to be paid to high risk business sectors (e.g. international trade).

4 General

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

According to an opinion issued by the General Office of the State Council in August 2017, various AML measures are under consideration (e.g. AML risk monitoring measures of non-financial institutions).

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force (“FATF”)? What are the impediments to compliance?

In the FATF’s Mutual Evaluations Report of China (2012) (<http://www.fatf-gafi.org/countries/a-c/china/documents/follow-upreportothemutualevaluationreportofchina.html>), the FATF concludes that the PRC has taken sufficient action to bring its compliance to a level essentially equivalent to most of FATF’s recommendations and has made progress in addressing the deficiencies.

4.3 Has your country’s anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Counsel of Europe (Moneyval) or IMF? If so, when was the last review?

The FATF evaluated the PRC’s AML regime in 2011 and the next FATF onsite visit will be around June/July 2018.

4.4 Please provide information for how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

Most AML rules are available on <http://www.pbc.gov.cn/fanxiqianju/135153/135173/index.html>. Websites of the State Council, PBOC, CB&IRC and CSRC also publish relevant AML laws, regulations and rules issued respectively by each of these authorities. These materials are not published in English but English versions can be found in the FATF’s Mutual Evaluations Report of China and other resources.

**Chen Yun**

King & Wood Mallesons
17th Floor, One ICC
Shanghai ICC 999 Huai Hai Road (M)
Shanghai 200031
P.R. China

Tel: +86 21 2412 6052
Email: chenyun@cn.kwm.com
URL: www.kwm.com/zh/cn

Mr. Chen Yun is a partner at King & Wood Mallesons specialising in banking, finance, foreign exchange and AML laws.

His practice includes general banking matters, financial compliance matters, syndicated lending, import and export credit facilities, international financial leasing, and receivables finance, among other areas.

He has extensive experience in assisting and advising foreign banks on their daily operations and business expansion in China. Mr. Chen regularly renders legal advice on the PRC regulatory requirements for AML compliance; marketing foreign banks' new products; structuring, negotiating and documenting transactions involving the banks' products; standardising bank daily operational documentation for matters such as opening accounts, credit extensions, securities, trade finance and derivatives; and assisting foreign banks in establishing, reorganising, and expending their business presence in China.

Mr. Chen Yun has been ranked as one of the leading individuals in banking and finance areas by *Chambers & Partners* for many years.

**Liang Yixuan**

King & Wood Mallesons
17th Floor, One ICC
Shanghai ICC 999 Huai Hai Road (M)
Shanghai 200031
P.R. China

Tel: +86 21 2412 6447
Email: liangyixuan@cn.kwm.com
URL: www.kwm.com/zh/cn

Ms. Liang Yixuan is an associate of Mr. Chen Yun at King & Wood Mallesons specialising in banking, foreign exchange and AML laws.

She has experience in assisting and advising foreign banks on their daily operations and compliance matters in China. Ms. Liang regularly renders legal advice on the PRC regulatory requirements for AML compliance; marketing foreign banks' new products; documenting transactions involving the banks' products; and standardising bank daily operational documentation for matters such as opening accounts, credit extensions, securities, trade finance and derivatives.

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- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms

glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com