

联合国《打击跨国有组织犯罪公约》(2000)

United Nations Convention against Transnational Organized Crime (2000)

背景：《联合国打击跨国有组织犯罪公约》于 2000 年 11 月 15 日在第五十五届联合国大会上通过，2003 年 9 月 29 日正式生效。中国已于 2000 年 12 月 12 日签署了该公约，全国人大常委会于 2003 年 8 月 27 日批准了该公约。

《联合国打击跨国有组织犯罪公约》是目前世界上第一项针对跨国有组织犯罪的全球性公约。它确立了通过促进国际合作，更加有效地预防和打击跨国有组织犯罪的宗旨，为各国开展打击跨国有组织犯罪的合作提供了法律基础。公约规定缔约国应采取必要的立法和其他措施，将参加有组织犯罪集团、洗钱、腐败和妨碍司法等行为定为刑事犯罪。

该公约共 41 条，与洗钱活动密切相关的有以下内容：第 6 条，洗钱行为的刑事定罪；第 7 条，打击洗钱活动的措施等，在此引用与洗钱犯罪有关的内容。

Article 2

Use of terms

(b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

Article 6

Criminalization^[1] of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law,

such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition^[2], movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there^[3];

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations^[4] ;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided

that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances[5].

Article 7

Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime[6] for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible[7] to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions[8];

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national center for the collection, analysis and dissemination[9] of information regarding potential money-laundering[10].

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments[11] across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline[12] the relevant initiatives[13] of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavor to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

[1] criminalization[5kriminlaizeiFEn] 刑事定罪

[2] disposition[dispE5ziFEn] 处置

[3] However, offences committed …… had it been committed there:但是, 如果犯罪发生在一缔约国刑事管辖权范围以外, 则只有该行为根据其发生时所在国本国法律为刑事犯罪, 而且若发生在实施或适用本条的缔约国时根据该国法律也构成刑事犯罪时才构成上游犯罪。

[4] Secretary-General of the United Nations:联合国秘书长

[5] objective factual circumstances:客观实际情况

[6] regulatory and supervisory regime:监督管理制度

[7] susceptible [sE5septEbl] 易受影响的

[8] reporting of suspicious transactions:报告可疑交易。指当金融机构按照规定的有关指标, 或者经判断认为与其进行交易客户的款项可能与洗钱或其他犯罪活动相关时, 必须在规定的时间内向指定机构进行报告。

[9] dissemination [di7semi5neiFEn] 分发

[10] Shall, without prejudice to …… potential money-laundering:在不影响本公约第 18 条和第 27 条的情况下, 确保行政、管理、执法和其他负责打击洗钱的当局 (本国法律许可时可包括司法当局) 能够根据其本国法律规定的条件, 在国家 and 国际一级开展合作和交换信息, 并应为此目的考虑建立作为国家级中心的金融情报机构, 以收集、分析和传递有关潜在的洗钱活动的信息。

[11] negotiable instruments:可转让票据, 可流通票据。例如支票、汇票等可以转让、流通的金融工具

[12] guideline[^aidlain] 指导方针

[13] initiative [i5niFiEtiv] 倡议