



COMPETENT ADMINISTRATIVE AUTHORITIES IN COMBATING MONEY LAUNDERING

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Abstract

The Iraqi legislature and the most of the national and international legislation have criminalized money laundering operations by granting the Competent administrative authorities represented by: The Central Bank of Iraq, The Federal Integrity Commission, and the Federal Financial Supervision Bureau, a fundamental and active role in Controlling & auditing, inspecting and investigating the Financial and banking system, by setting strict regulatory legal rules that regulate the work of the entities Subject of Supervision under the Law Central Bank of Iraq in force .

Key words: - The Law Central Bank in Iraq, Controlled entities, Potency Inquiry and investigation, Control and inspection

INTRODUCTION

First: Research topic:

The effective role of national legislation in a real and positive manner by granting the administrative authorities an essential and important role in combating money laundering operations, represented by: the Central Bank of Iraq, the Federal Integrity Commission, and the Federal Financial Supervision Bureau, as they are administrative bodies specialized in controlling, controlling, auditing and inspecting the financial and banking system in the face of risks Money laundering crimes. Therefore, this matter called on the officials in these administrative bodies to adopt a set of legislations in regulating this, as the Central Bank Law No. (56) of 2004 AD, the Federal Integrity Authority Law No. (30) of 2011 AD, and the Federal Office of Financial Supervision Law were enacted No. (31) for the year 2011 AD, to put effective solutions to those negative effects produced by this dirty crime.

Second: the importance of research:

The importance of the research lies in the spread of this serious crime and its wide scope nationally and internationally, and with the presence of technical and technological development, the absence of integrity and transparency in financial and banking transactions, and the weakness of laws, regulations, and financial and banking instructions in most countries, which increased the importance of the existence of the competent administrative authorities that are involved in combating and confronting money laundering crimes. The main objective of these competent administrative authorities is to clarify the advantages and disadvantages of the entities subject to supervision by reviewing the legal rules regulating them, applying the principle of legality and monitoring their performance, and adopting transparency and integrity in combating financial and administrative corruption, including money laundering crimes.

Third: Research problem:

The research problem lies in the following questions:

- 1- What is the concept of the competent administrative authorities in combating money laundering in national laws?
- 2- To what extent is the effectiveness of the competent administrative authorities regulated by Law No. (39) of 2015, in force to combat money laundering and terrorist financing, and other related laws, to reduce this dirty crime?
- 3- What are the obstacles or negatives facing the tasks of the competent administrative authorities? Putting effective solutions to these negatives and overcoming them clearly and soundly by these parties.

- 4- What is the extent of the adequacy and effectiveness of the tasks and duties of these competent administrative authorities, which were established by the Iraqi legislature to confront money laundering?
- 5- Is there an inability, weakness, negligence or negligence on the part of the competent administrative authorities in performing their duties and tasks within the legal and legislative frameworks in covering recent developments such as technically and technologically advanced money laundering methods?

Fourth: Research Methodology:

In discussing the issue of the competent administrative authorities in combating money laundering, we will rely on the descriptive approach and the analytical approach of the legal texts contained in the Central Bank of Iraq Law No. (56) for the year 2004 AD in force, the Federal Integrity Commission Law No. (30) for the year 2011 AD in force, and the Federal Office of Financial Supervision Law No. (31) for the year 2011 AD in force, which defines those competent administrative authorities.

Fifth: Research Objectives:

The research objectives lie in the following:

- 1- Shedding light on money laundering crimes, and trying to find effective solutions to reduce them through the competent administrative authorities and their effective role in that.
- 2- Shedding light on the competent administrative authorities represented by the control, audit and inspection by the Federal Office of Financial Supervision, the Federal Integrity Commission, and the Central Bank of Iraq on the bodies subject to supervision.

Sixth: Research Structure

The structure of the research is centered on the subject of the competent administrative authorities in confronting money laundering in the form of three investigations. We will devote in the first topic: the Central Bank of Iraq, which we will divide into two requirements: Combating money laundering and terrorist financing operations. As for the second topic, we clarify in it: The Federal Integrity Commission Which we will divide into two requirements: we focus in the first requirement on: the organizational structure of the Federal Integrity Commission in Iraq, and indicate in the second requirement: the terms of reference, tasks and functions of the Federal Integrity Commission in Iraq, as for the third topic, we will indicate in it: the Federal Financial Supervision Bureau, which we will divide into two requirements, We show in the first requirement: the organizational structure of the Federal Office of Financial Supervision in Iraq, and in the second requirement we stop: the terms of reference and tasks of the Federal Office of Financial Supervision in Iraq.

1. CENTRAL BANK

That the central bank is a legal body with a unique legal personality in its characteristics, concept, identity and functions, and the bank also enjoys financial and administrative independence, as well as that the bank manages a public economic utility from the state's facilities, and it has a special budget independent of the state's budget, and it occupies the top of the banking pyramid in the state with what it owns From a distinguished legal position that can carry out the function of controlling and supervising the financial and banking system in full, and protecting it from the risks that it may be exposed to, In the light of the foregoing, we will divide the first topic into two requirements: we discuss in the first requirement: the organizational structure of the Central Bank of Iraq, its functions and tasks, and we explain in the second requirement: the role of the Central Bank of Iraq in combating money laundering and terrorist financing operations.

1.1 The organizational structure of the Central Bank of Iraq

its functions and tasks, The organizational structure of the Central Bank of Iraq is represented by the existence of a specialized supreme administrative body in the bank, represented by an administrative body that is financially and administratively independent, and exercises its functions and powers within the framework of the supreme financial and banking policy of the state, in addition to the fact that central banks differ among themselves in terms of their administrative composition, according to the laws that regulate them. , and in a way that guarantees the administrative workflow in it with ease and smoothness, and the Central Bank of Iraq Law No. (56) for the year 2004 AD in force has been allocated in Articles (10_23) of the third section entitled (Management to regulate the provisions of the Board of Directors of the Central Bank of Iraq), as for the tasks And the functions of the Central Bank of Iraq, it

has undergone in Determining its responsibilities, functions, powers and authorities for a gradual development in the financial and banking history in various countries, which cannot be disclosed or interpreted in isolation from the ideological, financial and economic development of the country, and in light of the foregoing, we will divide the first requirement into two branches: we are looking at the first section: the organizational structure of the Central Bank In the second section, we explain: the tasks and functions of the Central Bank of Iraq.

1.1.1 The organizational structure of the Central Bank of Iraq

The rules for managing banks differ from one country to another, as there are banks that are wholly owned by the state, and other banks that the state owns part of (Ravel Hassan Hamid Muhammad, 2021 AD, pp. 96-97.) In addition to the fact that some governments have an active role in appointing senior employees and members of the board of directors of central banks, through this we conclude that the methods of managing banks differ according to the legislation and legal texts of each country, and according to the branches of central banks (Dr. Alan Bahaa El-Din Abdullah Al-Mudarres, 2016, pp. 154_155), In light of the foregoing, we will clarify the organizational structure of the Central Bank of Iraq in accordance with the effective Central Bank of Iraq law, as follows:

First: Board of Directors and Committees:

1- The Board shall be responsible for managing the business of the Central Bank of Iraq and for carrying out its responsibilities as explained in this section(The text of Paragraph (1) of Article (10) entitled (Board of Directors and Committees) of the third section entitled (Management) of the Central Bank of Iraq Law No. (56) for the year 2004 AD in force).

2- The Board forms the Review and Audit Committee, directly linked to it, and consists of (3) three members who are not employees of the Bank and who possess academic qualifications and practical experience in the fields of financial and accounting management, law and economics.

Second: Formation of the Board of Directors of the Central Bank of Iraq:

The board consists of nine members, they are: The governor manages the board(The text of Paragraph (a) of Article (11) entitled (Formation of the Council) of the third section entitled (Management) of the Central Bank of Iraq Law in force.

), And two deputy governors(The text of paragraph (b) of Article (11) entitled (Formation of the Council) of the third section entitled (Management) of the Central Bank of Iraq Law in force), And one of the general managers of the bank(The text of paragraph (c) of Article (11) entitled (Formation of the Council) of the third section entitled (Management) of the Central Bank of Iraq Law in force), And five members from outside the Central Bank of Iraq with expertise and specialization in financial, banking or legal affairs(The text of paragraph (d) of Article (11) entitled (Formation of the Council) of the third section entitled (Management) of the Central Bank of Iraq Law in force.

1.1.2 Duties and functions of the Central Bank of Iraq

The tasks of the Central Bank of Iraq were determined according to Article (4) of the Central Bank of Iraq Law No. (56) for the year 2004 AD, as amended, which we will briefly and briefly explain as follows:

First: Formulating and implementing monetary policy in Iraq, including foreign exchange policy, as stipulated in Section Six(The text of Clause (a) of Paragraph (1) of Article (4) entitled (Tasks) of the amended Central Bank of Iraq Law in force, That is, it means controlling the rule of credit and supervising the implementation of monetary policy, as well as the possession and management of all official foreign reserves for Iraqis in accordance with the text of Article (27), with the exception of the operating balance of the government(The text of Clause (b) of Paragraph (1) of Article (4) entitled (Tasks) of the amended Central Bank of Iraq Law in force, That is, the central bank manages the country's foreign currency reserves and the exchange rate.

Second: Providing liquidity services to banks(The text of Clause (e) of Paragraph (1) of Article (4) entitled (Tasks) of the amended Central Bank of Iraq Law in force, possession of gold and management of the state's stock of gold(The text of Clause (C) of Paragraph (1) of Article (4) entitled (Tasks) of the amended Central Bank of Iraq Law in force).

Third: The Central Bank of Iraq may take the following measures, which it deems necessary(The text of Clause (a, b) of Paragraph (2) of Article (4) entitled (Tasks) of the amended Central Bank of Iraq Law in force).

1-Combating money laundering and terrorist financing by establishing regular legal rules that are carried out by the Anti-Money Laundering Office and Council for the purpose of imposing strict control and activating them to confront these crimes.

3- Establishing and supervising the rules regulating the work of lending companies, small loan companies, and any non-banking financial institutions that are not subject to regulation under Iraqi law. As for the tasks and functions of the Central Bank of Iraq in the Iraqi Anti-Money Laundering and Terrorism Financing Law No. (39) of 2015 AD in force, the law obligated the Central Bank of Iraq, which is among the supervisory authorities, which can be defined as: "It is the administrative authority competent to license or Authorizing financial institutions and designated non-financial businesses and professions, or supervising them and ensuring their compliance with the requirements required by combating money laundering and terrorist financing, and these include: the Ministry of Commerce and Industry, and the Central Bank of Iraq ...".

2. FEDERAL INTEGRITY COMMISSION IN IRAQ

The phenomenon of government corruption is a global phenomenon that does not concern a society in itself. It is a widespread phenomenon that both developed and underdeveloped societies suffer from. It is an integral part of political, social and economic conflicts. Recently, dangerous and unfamiliar criminal phenomena have emerged in society, such as: Organized crime, money laundering and terrorist financing crimes, and through that a commission was established in Iraq called the (Federal Integrity Commission), and in light of the foregoing, we will divide the second topic into two branches: We look at the first requirement: the organizational structure of the Integrity Commission in Iraq, and show in The second requirement: terms of reference, tasks and functions of the Integrity Commission in Iraq.

The first requirement

The organizational structure of the Federal Integrity Commission in Iraq

The enforceable Iraqi Integrity Commission law formed the commission's departments to be under the supervision, direction and management of its president. The second chapter was organized under the title (composition of the commission) of the same law, making it have a president assisted by two deputies and nine general managers), and the integrity commission is an administrative formation that has the moral personality And financial and administrative independence, and entrusted with a set of works in accordance with its law in force. The law has defined the departments affiliated with the Commission and the works, functions and tasks assigned to each department. Federal integrity.

2.1 Chairman of the Integrity Commission and his two deputies

The method of selecting the Integrity Commission goes through several stages. The first phase is the stage of proposing the appointment, and the second: approval of it, as the canceled Order (55) of 2004 AD stipulated that the Governing Council nominate the first head of the Integrity Commission, and appoint him as the Administrative Director of the occupation authority at the time (Paul Bremer).), and then the selection is made by the executive officer in Iraq from among three candidates nominated by the Supreme Judicial Council(Iyad Hadi Naji Al-Moussawi, 2018, p. 32.) And after the Integrity Commission Law was issued in force and Ordinance No. (55) of 2004 was repealed, the appointment of the Commission's president became through the House of Representatives forming a committee consisting of (9) members from the Parliamentary Integrity and Legal Committees; To choose three candidates for the position, and the Iraqi Council of Representatives approves one of them by an absolute majority(The text of Paragraph (First) of Article (4) of the amended Iraqi Integrity Commission Law in force), Upon the issuance of the first amendment to the Integrity Commission Law for the year 2019 AD, the mechanism through which the commission's president is chosen was changed, and it is based on a proposal from the Council of Ministers and with the approval of the House of Representatives(The text of Article (4) of Law No. (30) of 2019 AD (First Amendment to the Integrity Commission Law) No. (30) of 2011 AD).

2.2 Departments of the Federal Integrity Commission

Who is the Federal Integrity Commission as an administrative formation consisting of a group of departments that carry out its administrative activity, represented by:



1- The Investigation Department: The Investigation Department is the most important department of the Integrity Commission. The Investigation Department performs the duties of investigating and investigating corruption cases in accordance with the provisions of the Integrity Commission Law and the Iraqi Code of Criminal Procedure in force (The text of Paragraph (First, Tenth) of Article (10) of the amended and enforceable Integrity and Illicit Gain Commission Law).

2-The Legal Department: The legal department is one of the main departments in the Integrity Commission, and it is distinguished by its special nature from the legal departments in the rest of the ministries. It also prepares draft laws in accordance with the provisions of the law.

3-Prevention Department: It is an administrative formation of the Commission of Integrity stipulated in its law in force, and is concerned with the duties and tasks necessary to prosecute criminals, submit financial disclosure reports, monitor the integrity and validity of the information included in it, and check the inflation of the funds of those charged with providing disclosure of their financial liabilities in a way that is not commensurate with their financial resources. And you also prepare a code of conduct (The text of Paragraph (Third) of Article (10) of the amended and enforceable Integrity and Illicit Gain Commission Law).

4_ Department of Education and Public Relations.

5_ Department of Relations with Non-Governmental Organizations.

6_ Recovery Department: The recovery department is one of the departments established in the Integrity Commission according to its law in force and includes two directorates: one is concerned with recovering funds, and the second is for recovering the accused (The text of Paragraph (Seventh) of Article (10) of the amended and enforceable Integrity and Illicit Gain Commission Law).

7-Planning and Research Department.

8_ The Iraqi Academy for Anti-Corruption.

2.2 Terms of reference, tasks and functions of the Federal Integrity Commission in Iraq

The Iraqi legislator has granted wide competencies and tasks to the administrative authorities concerned with oversight, including the Integrity Commission specialized in combating corruption, including money laundering and terrorist financing crimes:

1_ The task of the commission is to investigate corruption cases and propose draft laws to combat corruption.

2_ Preventing and limiting illegal earning, disclosing financial disclosure, and issuing a regulation of professional conduct.

3_ Formation of performance evaluation teams, combating bribery, conducting questionnaires, and developing a culture of integrity, integrity, and transparency.

4_ Preparing studies and research, training workers in the field of combating corruption, and organizing publications of the Integrity Commission.

5_ Contributing to the means of progress, keeping pace with scientific development, and the possibility of saving notifications and reports.

3. OFFICE OF FEDERAL FINANCIAL SUPERVISION IN IRAQ

The Bureau is an oversight body that is financially and administratively independent of the executive authority, and through that and based on the provisions of Article (First) of Article (103) of the Iraqi Constitution of 2005 AD in force (The text of Paragraph (First, Second) of Article (103) of the Iraqi Constitution of 2005 AD in force, which states that: ((First: The Central Bank of Iraq, the Board of Financial Supervision, the Media and Communications Commission, and the Endowments Bureaus are financially and administratively independent bodies And the law regulates the work of each commission. Second: The Office of Financial Supervision is linked to the Iraqi Council of Representatives), The Federal Bureau of Financial Supervision Law No. (31) of 2011, as amended, has been in force ((The reasons for the Federal Financial Supervision Bureau No. (31) for the year 2011 AD, the effective amendment)).

)Which was amended by Law No. (104) of 2012 AD, ((First Amendment Law of the Bureau of Financial Supervision Law No. (31) of 2011 AD)), which the Bureau was named under this law as (Federal Bureau of Financial Supervision), and in light of the foregoing, we will divide the topic The third is based on two

requirements: we are looking at the first requirement: the organizational structure of the Federal Office of Financial Supervision in Iraq, and we indicate in the second requirement: the terms of reference and tasks of the Federal Office of Financial Supervision in Iraq.

3.1 The organizational structure of the Federal Audit Bureau in Iraq

The organizational structure is the organizational form of the Bureau, which assists it in carrying out its tasks specified by its law in force by distributing tasks and responsibilities to its central and subsidiary management (The text of Article (19) of the Federal Audit Bureau Law No. (31) for the year 2011 AD, as amended). In light of the foregoing, we will divide the first requirement: into two branches: we will discuss the first section: the Federal Board of Supreme Audit, and clarify in the second section: the Federal Board of Financial Supervision departments.

First branch

Federal Board of Supreme Audit

The Board of Directors is the highest body of the Board of Supreme Audit, which is supported by a legislative framework to achieve its desired goals resulting from the system of collective management of the Supreme Financial Audit Institutions. To ensure its good performance, as the Board of Supreme Audit in Iraq consists of the President of the Bureau as its head, deputies to the President of the Bureau, and general managers in the departments of the Bureau as members (The text of Paragraph (First) of Article (20) of the Federal Bureau of Financial Supervision Law No. (31) of 2011, as amended, in force).

Section two

Departments of the Federal Office of Financial Supervision

The administrative organization of the Bureau of Financial Supervision has clarified the type and nature of administrative control practiced by the Bureau, as it detects financial irregularities and errors, and it should be noted that the distribution of administrative activities and responsibilities to the Bureau's departments in order to ensure the flow of information, orders and decisions at various levels to serve the achievement of its objectives (Muhammad Yassin Al-Rahahleh, Vol. 22, p. 2, 2006 CE, p. 296), And based on what was stated in the internal system of the Federal Financial Supervision Bureau, which consists of the following administrative formations (The text of Article (1) of the internal system of the Federal Bureau of Financial Supervision No. (1) for the year 2012 AD.

): (Administrative and Financial Department, Department of Technical Affairs and Studies, Legal Department, Central Audit Departments, Audit Departments in the Governorates, Parliament Affairs Department, Media and Public Relations Department, Internal Control Department, Office of the Chief of Staff Office, Contracts Division, Coordination and Follow-up Division, and Training Center (The text of Paragraph (Fifth) of Article (25) of the Bylaws of the Federal Bureau of Financial Supervision No. (1) for the year 2012 AD).

3.2 Functions and functions of the Federal Financial Supervision Bureau

The principle is to define the scope of the Bureau's competencies, powers, and oversight, by exposing the administrative errors and violations committed by public officials by bringing them to justice and obtaining their just punishment, bearing in mind that the Iraqi legislator has dealt with these competencies in Article (6) of the Federal Law of the Federal Audit Bureau in force, and called it The name (duties of the Bureau), and as stipulated in Article (13) of the same law on the powers of the Bureau, and in light of the above, we will divide the second requirement into two branches: we discuss in the first branch: the tasks of the Federal Financial Supervision Bureau, and we explain in the second branch: the powers and competencies of the Bureau of Supervision Federal Finance.

First branch

Functions of the Federal Financial Supervision Bureau

The Iraqi legislator has given the Federal Office of Financial Supervision several tasks, including:

- 1- Overseeing the financial and accounting activity of the entities subject to oversight, including money laundering and terrorist financing operations.
- 2- Monitoring the performance evaluation of the audited entities (The text of Paragraph (Second) of Article (6) of the Federal Bureau of Financial Supervision Law No. (31) of 2011, as amended in force, which stipulates that: ((The Bureau undertakes the task of monitoring the performance evaluation of the entities subject to the Bureau's supervision)).

3-Providing consultations and technical assistance within the scope of the financial and accounting system and evaluating the financial and economic plans and strategies of the state(The text of Paragraph (Third, Fourth) of Article (6) of the amended and enforceable Federal Bureau of Financial Supervision Law, which stipulates that: ((The Bureau performs the following tasks: Third: Providing technical assistance in the accounting, control and administrative fields, and related organizational and technical matters. Fourth: Evaluating the macroeconomic and financial plans and policies designed to achieve the goals set for the state and sticking to them)).

Section two

The powers and competences of the Federal Financial Supervision Bureau

Granting the Iraqi legislator, according to Article (13) of the Law of the Court in force, procedural and audit powers; In order to enable him to perform his duty in monitoring the activities of the entities subject to his control, as well as investigative powers such as conducting an administrative investigation, discovering an administrative financial violation and referring it to the competent investigative authorities, and in light of the foregoing, we will clarify the investigative procedural powers and terms of reference in a detailed and accurate manner, as follows:

- 1- **Procedural auditing powers: these powers are represented in:** reviewing records, transactions, and decisions related to control tasks, and examination processes based on a decision of the Board of Financial Supervision regarding grants, subsidies, loans, and investment for the purposes assigned to them.

2-Investigative powers:

The law authorizes conducting an administrative investigation of the Bureau according to Paragraph (Fifth) of Article (6) of the amended Federal Law of the Federal Audit Bureau in force, and this administrative investigation is in matters that the legislative authority requires it to investigate(See: the text of Paragraph (Fifth) of Article (6) of the amended and enforceable Bureau of Financial Supervision Law, which stipulates that: ((conducting the audit...)), Also, Paragraph (Fifth) of Article (28) of the same law empowered the Bureau to conduct the administrative investigation directly in the regions where there is no competent investigative body or the absence of a canceled General Inspector Office, or in the event that the office fails to complete the investigation within a period of (90 days). days of notifying the Court of that.

CONCLUSION

We conclude our research with a number of results and recommendations, the most important of which will be explained as follows:

RESULTS

- 1- The Central Bank as an administrative body specialized in confronting money laundering, one of its most important advantages is financial and administrative independence and its acquisition of moral personality, but this independence has been subject to many interpretations and interpretations due to the government's attempt to interfere represented by the executive authority in the tasks, duties and functions of the Central Bank of Iraq.
- 2- The Federal Integrity Commission considers one of its real purposes to combat financial and administrative corruption, including money laundering and terrorist financing operations, and to reduce the dominance of the executive authority and impose control over it, in addition to making the investigation of financial and administrative corruption cases permissible and not obligatory.
- 3- The Federal Bureau of Financial Supervision is considered as a supervisory and auditing body whose law in force permeates some weaknesses, which are the incompatibility of its powers with the size of financial and administrative corruption, and the inadequacy of the oversight and audit role that the Bureau performs, as for its role in the administrative investigation in the event that the bodies subject to audit do not respond to its request in the investigation In cases referred to him or the delay in responding to the investigation, Paragraph (5) of Article (28) of his law in force has dealt with them. As for exercising his powers to request referral to an administrative investigation, his legal basis is Article (14) of his law in force.



RECOMMENDATIONS

- 1- We recommend the Central Bank of Iraq to develop accurate treatments and effective solutions to control the currency window, by developing effective strategies and policies and modern economic plans for monetary policy in Iraq through the formation of specialized committees of people with competence and experience in this field.
- 2- We recommend to the Iraqi legislator that the competence to investigate cases of financial and administrative corruption be carried out by the competent investigating judge and not by the Federal Integrity Commission.
- 3- We recommend to the Iraqi legislator, in the law of the Federal Office of Financial Supervision in force, to refer the violating employee to the administrative investigation and to withdraw his hand when proving the charge attributed to him directly by the Bureau without a request from the minister or the head of the entity subject to auditing, as indicated by his law in force, and we also recommend the Iraqi legislator By merging all the competent administrative and control authorities into one administrative and supervisory authority, in order to prevent conflict and contradiction in the competencies and powers of these authorities, which creates a kind of functional confusion.

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