

## **Money Laundering Via Electronic Means: Electronic Check**

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### **Abstract**

The objective of this study is to elucidate the sequential phases included in the electronic money laundering procedure and to explicate the legal strategies employed to counteract electronic money laundering. Furthermore, it aims to underscore the stance of criminal legislation about this illicit activity. The research has reached several results and recommendations, the most important of which is that the Jordanian legislator has excelled in enacting a law that regulates electronic transactions and electronic signatures and has established controls for electronic documentation. This has placed a significant barrier in front of criminals who exploit electronic checks and other electronic means in money laundering. The research moreover suggests the promotion of collaboration and the sharing of information across nations in combating illicit financial activities, given that electronic money laundering offences are characterized by their digital nature and their influence is confined to the boundaries of a singular nation.

**Keywords:** Money Laundering, Electronic Means, Electronic Check, Legal Conditions

### **Introduction**

The current state of technology growth has resulted in noticeable changes in our everyday lives. It is no longer impossible for the common individual to get his daily necessities from any country in the globe in record time. The Internet enables individuals to engage with the global community and reach many conclusions. Traditional techniques are challenged by legal processes and the record time required to complete an identical transaction in one's native country (Abdullah, 2006).

Commercial developments are perhaps one of the most significant examples of the changes brought about by the technological revolution in our lives. With technological advancement, commercial activity has altered dramatically. A hitherto unknown universe of trade has evolved, known as electronic commerce. Not to mention that conventional trade has started to stabilize. Electronically related issues (Al-Aqeeli, 2007).

Technology has advanced rapidly, and banks have realized that using modern technology in their operations would allow them to serve the most

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customers at the lowest rates and prosper in the market. As a result, they started expanding their banking offerings and created a large number of electronic payment methods, or traditional ways of making payments (Hijazi, 2006). These electronic means, the most prominent of which is the electronic cheque, facilitate electronic commerce and the movement of money between countries, but some people have used them to commit money laundering crimes and find a haven (Issa, 2002).

### **Methodology**

The objective of this research is to identify the stages of money laundering via electronic media and to explain the legal methods for combating money laundering via electronic media, as well as to clarify the stance of penal legislation on this crime.

The study uses a descriptive analytical approach to describe, diagnose, and analyses money laundering via electronic media in all its dimensions to clarify its features and aspects.

### **Results and Discussion**

#### **What are the electronic check and the legal conditions necessary to create an electronic check?**

Banks offer a wide range of services to its consumers, which vary according to their diverse operations. Banks' fundamental job is to open accounts for clients to deposit money, manage them, and lend to other customers in exchange for an economic profit margin that banks always seek and with the expansion of life sectors. Economic operations have changed, and banks now perform many banking functions. They have begun advising consumers to various investment industries and assisting them in stock purchase and trading. Along with paying and collecting invoices, opening bank credits, and collecting the value of various products and commercial papers, banks offer and always endeavor to create more financial services (Bosworth-Davies, 2007a; Al-Billeh & Abu Issa, 2022).

With the rise of modern e-commerce, banks had to offer services that fit their customers' businesses, including electronic payment methods that were suitable for e-commerce. Banks developed paper-based payment methods so they could be traded electronically between banks. The critical function that banks play in the development of numerous facets of economic life has been abundantly proved by contemporary technology. In this research, we will describe the legal idea of the electronic check in the first requirement, and then in the second requirement, we will analyze electronic payment methods, showing the location of

the electronic check (Bosworth-Davies, 2007b; AL-Hammouri et al., 2023a; Al-Billeh, 2023a).

### **What is an electronic check?**

The check is now a highly essential payment mechanism that replaces the usage of money in transactions. It plays a vital part in bank operations since it is used to withdraw deposits from banks, transfer them, and execute foreign exchange transactions. Because of the benefits it provides, the check is the most commonly used commercial paper at work as a payment tool. Of the benefits and protection that the legislature provides for people who interact with it (Brindle, 2001; Al-Hammouri & Al-Billeh, 2023; Al-Billeh, 2024a).

The legal status of an electronic check is the same as that of a regular check because it is one of the electronic payment methods that evolved from traditional checks. It should be noted that the Jordanian legislator addressed the provisions of all electronic documents to the general rules included in the legislation rather than introducing particular legal requirements for the electronic check. Commerce, pointing out that compared to paper checks, computerized checks provide far greater privacy (He, 2006; Al-Billeh & Al-Hammouri, 2023).

As for the mechanism for dealing with electronic checks, it is noted that the Jordanian legislator has granted the Central Bank the right to issue special instructions specifying the mechanism for working with electronic checks. However, the practical reality indicates that there is no legislation developed to define the concept of the electronic check and its working mechanism. However, the electronic check has a special nature that distinguishes it in many respects from the traditional check, as will become clear to us through this study (Ping, 2004; Al-Billeh & Abu Issa, 2023a; AL-KHALAILEH et al., 2023; Al-Khawajah et al., 2023).

Unlike other electronic business documents, the electronic check was not defined explicitly by the lawmakers in Jordan or Iraq; instead, they resorted to the basic guidelines found in the commercial legislation. As a result, it made it possible for jurists to attempt to define electronic business papers in a way that is consistent with their intangible electronic character while still considering the rules' provisions. When the legislators started to establish laws related to electronic transactions, it may have been because of the modernity of electronic payment methods and the lack of widespread dealing with them at the local level. Thus, the legislator experimented with electronic business documents in light of the general regulations and allowed the option. Jurisprudence attempts to define it comprehensively (Ping, 2003; Al-Billeh, 2022a; AL-Hammouri et al., 2023b).

Among the definitions that were said regarding the electronic check, I defined it as: "It is a digital document that includes a promise from the drawer to pay a certain amount to the beneficiary upon request

Consider applying Jordanian and Iraqi trade laws to this term. This definition does not assume that there are three people in the cheque: the drawer, the drawee, and the beneficiary, as the Jordanian legislator's definition does, nor does it indicate the existence of two previous legal relationships on creating the cheque (the first between the drawer and the drawee, resulting in payment consideration or balance, and the second between the drawer and the beneficiary) (Hinterseer, 2001; Al-Billeh, 2022b; AL-Hammouri et al., 2023c; Al-Billeh, 2023b).

The Jordanian legislator defined a promissory note as "an instrument written under conditions mentioned in the law and includes the pledge of its maker to pay a certain amount upon sight or at a specific date or the matter can be assigned by another person, who is the beneficiary or the holder of the bond." we note that the previous definition suggests the presence of elements similar to the elements on which the promissory note (bill of exchange) is based. Consequently, the previous definition is not consistent with the Jordanian legislator's definition of the check, as the legislator has stipulated a set of elements that must be present in the check for it to be considered valid (Issa, 2002; Al-Billeh, 2022c; Khashashneh et al., 2023; Al-Billeh & Abu Issa, 2023b).

Some have defined an electronic check as "a digital document drawn up according to formal conditions stipulated by the law that includes an order from the drawer" in light of the extrapolation of the amended texts of the Jordanian Trade Law No. (12) of 1966 and regarding the Jordanian Electronic Transactions Law No. (15) of 2015. To the drawee, the bank, to pay a certain amount of money at sight to a third party, the beneficiary, or upon this person's direction, depending on the drawer's wish. As a result, it is consistent with the Electronic Signature Law's definition of electronic documents. Information and documents that are created, merged, stored, sent, or received, in whole or in part, by electronic means, including electronic data exchange, e-mail, telegraph, telex, or telegraphic copying, and bearing an electronic signature".

It should be noted that the preceding definition explained the notion of the check based on its electronic character, as well as the requirements that must be lawfully satisfied in the check. Nonetheless, notwithstanding all that differentiates this concept, such as its compliance with Jordanian legal sources and its recognition of the electronic character of the electronic check ,it did, however, restrict the situations of issuing an electronic check to two: issuing it for the benefit of another person (the beneficiary) and issuing it to the order of the

beneficiary (the check is to the order of the beneficiary and endorsable). However, Jordanian law allows the check to be issued to the bearer or the profit of the drawer himself, and this is not prohibited in electronic checks (Hijazi, 2006; Al-Billeh, 2022d).

Based on the foregoing, we may define an electronic check as "a digital instrument that is processed electronically, in whole or in part, under the conditions specified in the law that includes an order from a person who is the drawer to another person who is the payee" (Hinterseer, 2001; Al-Billeh, 2022e).

Who is a bank and who is the drawee to pay to a third person or his order or to the bearer of the check." He is the beneficiary - or even for the benefit of the drawer himself - a certain amount of money once he sees the check (Shafik, 2007; Alkhseilat et al., 2022).

### **Conditions for creating an electronic check**

In addition to the substantive criteria of the check and any commercial document, the Jordanian legislator set many more formal conditions for the check in the language of Article (228) of the Trade Law, as well as in Article (138) of the Iraqi Trade Law. We find that the constraints imposed by Jordanian and Iraqi legislators are very comparable.

However, there are many differences in the applicability of these formal conditions between a traditional check and an electronic check, as it becomes clearer to us. For example, if the word (check) is written in the body of the traditional check, it indicates that it is negotiable by endorsement until This section does not apply to electronic checks without the command phrase since the law specifies that electronic instruments are not negotiable unless the drawer expressly agrees (Abdullah, 2006; AL-KHAWAJAH et al., 2022).

It appears to us that the general rule regarding the circulation of a traditional check is that it is negotiable unless the drawer provides an explicit statement stating that it is not negotiable (such as mentioning the phrase "not to order..."), but this rule's content is reflected in the electronic check, where the electronic check is not negotiable as a general rule. But it may become negotiable if the drawer explicitly states that it is negotiable.

On the condition (the name of the person obligated to pay), the drawee bank's name is always printed on check forms issued to customers, and the Jordanian Trade Law and Commercial Law require electronic checks to meet this condition. Because electronic checks are made exclusively on bank forms designed for this purpose, as will be discussed, the name of the drawee bank must be put electronically on these forms, and therefore there is no difficulty with this

criterion in electronic checks (Hijazi, 2006; Al-Billeh, 2022b; ALMANASRA et al., 2022).

Regarding (the place of payment of the cheque), most see no value in mentioning it except for the competent court's knowledge and specifying the applicable law in the event of a statute of limitations, even though the electronic cheque does not anticipate a statute of limitations. The electronic form is quickly distributed on the information network, but to avoid a similar problem, a legal solution must be developed, because fulfillment is frequently carried out in a location other than the site of production (Al-Billeh & Al-Qheiw, 2023).

The place of payment in an electronic check poses no practical difficulties because the electronic check, once drawn up and circulated, is directed to any bank directly via digital waves, eliminating the need for the beneficiary or endorsee to be present at the drawee bank. This is in addition to the fact that the majority of these institutions are electronic banks that solely deal with electronic checks via the network. When a disagreement arises, it is critical to know the appropriate court (Alshible et al., 2023; Al-Billeh et al., 2023a).

Jordanian and Iraqi legislators have addressed the issue of the date and location of the conventional check's creation. However, because the electronic check is written in electronic space and without regard for geographical borders, these general rules are inapplicable. Concerning electronic checks, it is required to consult the Electronic Transactions Law to learn about Jordan's legislative position on contracting over the information network. When an electronic check is entered into the information system, it becomes available and may be processed and presented inside the beneficiary's information system (Isa et al., 2022; Al-Billeh et al., 2023b).

When available, the electronic cheque is entered into the beneficiary's information system and can be processed and displayed, unless a technical defect prevents it from being processed or displayed. This cheque is worded as if never issued.

These electronic criteria that apply to the electronic check are governed by the Jordanian Electronic Transactions Law and the Iraqi Electronic Signature and Electronic Transactions Law. In Article Two of the Electronic Transactions Law of 2015, for example, the Jordanian legislator defined the electronic signature as "data that takes the form of letters, numbers, or Symbols, signs, or other things, which are included in electronic form or any other similar means in the electronic record, or are added to it or linked to it, to identify the owner of the signature, his unique use of it, and distinguishing him from others".

We find that the Iraqi Electronic Signature and Electronic Transactions Law defines the electronic signature in Article 1, paragraph 4, as: "A personal

mark that takes the form of letters, numbers, symbols, signs, sounds, or other things, and has a unique character that indicates its affiliation to the signatory and is approved by the certifying authority.” Also, the Iraqi legislator, through Article Four of the same article, gave full legal authority to the electronic signature in electronic transactions, as the aforementioned article stipulated that: “First, the electronic signature is considered valid and issued by the signatory if means are available to identify the signatory and indicate his agreement with what is stated in the electronic document.” According to the agreement of the signatory and the addressee on how to conduct the electronic transaction.

Second, in the context of civil, commercial, and administrative transactions, an electronic signature has the same power as a written signature if the requirements specified in Article (5) of this legislation are met.

The Jordanian and Iraqi legislators' electronic cheque legal provisions are similar in that they do not define the electronic cheque and apply the general rules of the traditional cheque to it, with some privacy exceptions.

#### **The role of electronic checks in money laundering and ways to combat it**

The electronic technological development through the Internet, the launch of the era of globalization in its broadest terms, and the era's reliance on advanced means of communication and dealing between members of society have led to the exploitation of these electronic means to commit money laundering operations by criminals (Ping, 2003; Al-Billeh, 2024b).

Under this, the Jordanian Electronic Transactions Law No. (15) of 2015, the Iraqi Electronic Signature and Electronic Transactions Law of 2012, and the Electronic Crimes Law stipulated in their articles the procedures for electronic transactions conducted by electronic means, as Article Four required every ministry or official institution to conduct its transactions electronically.

This section will address the exploitation of these means, specifically the electronic check, in money laundering crimes, and we will show ways to combat this crime, as follows:

#### **The role of the electronic check-in facilitating the stages of money laundering**

Money laundering is one of the new crimes that have emerged at the international level in recent years, posing a worldwide issue since it has crossed national borders and has been related to several crimes. Money laundering has also been linked to a variety of other crimes, including terrorism, illegal drug trafficking, illicit arms trafficking, and organized crime. Counterfeiting, counterfeiting, and other crimes that contribute to money laundering.

However, the crime of money laundering differs from other crimes in that it is a subsequent stage to other physical crimes. It occurs, for example, after drug crimes, theft crimes, illicit arms trafficking, and other crimes. Political, social, and security changes at the international level are considered among the fundamentals that helped the emergence of This crime and its rapid spread (Webb, 2004).

Legislation and legal legislators' opinions have differed in defining the crime of money laundering, but most of them agree on some of the many aspects that indicate that money laundering means any activity carried out by a person aiming to legitimize money obtained illegally, to cleanse that money off the taint of illegality. This is accomplished by investing it in legal reasons (Ruiz, 2004).

As for the Jordanian legislator, he defined the crime of money laundering in the Anti-Money Laundering and Terrorist Financing Law No. 46 of 2007 in Article (2/A) as: "Every act that involves acquiring, possessing, disposing of, transferring, managing, preserving, exchanging, or depositing money." Or investing it, manipulating its value, transferring it, or any other act, and the intention of this act was to conceal or camouflage its source, true nature, location, movement, how to dispose of it, ownership, or rights related to it, or to prevent the knowledge of who committed the crime from which the money was obtained. Knowing that it was obtained from any of the crimes stipulated in Article (4) of this law".

The Jordanian Court of Cassation's ruling, which said: "...where the court decided, in light of the reconciliation, to drop the claim of personal rights, completely dropping the reconciliation, and after scrutiny, the court announced the conclusion of the trial," was confirmation of this. After reviewing all of the case materials and the evidence that was heard, the court concludes that at the time the complaint was filed and the prosecution began, there were emails sent from the defendant, Abdullah, to the Saudi Ministry of Health, where the complainant works, claiming that the complainant had fabricated his certificate and was involved in money laundering.

As for the position of Iraqi law, the Iraqi legislator adopted the broad concept of the crime of money laundering, as stipulated in Article 2 of the Anti-Money Laundering Law No. (39) of 2015. However, anyone who commits one of the following acts is considered to have committed the crime of money laundering:

First: Transferring, transferring, or exchanging money from a person who knows or should have known that it is the proceeds of a crime. To conceal or camouflage its illegal source or help its perpetrator, the perpetrator of the original crime, or whoever contributed to its commission or the commission of the original crime to escape responsibility for it.



Second - Concealing funds or camouflaging their identity, source, location, condition, method of disposal, transfer, ownership, or rights related to them, from a person who knows, or should have known, that they are proceeds of a crime.

Third: Acquiring, possessing, or using funds from a person who knows, or should have known at the time of receiving them, that they are the proceeds of a crime.

When we trace the modern and common methods used by money laundering criminals at present, we find that they are many, different, and diverse, and compatible with the development of life. There are several methods for money laundering, and these methods differ in their nature according to the type of money to be laundered. The most prominent of these methods is considered to be the one that is compatible with technological developments and banking services. Electronic use of electronic money, including (electronic check). This technology is considered a result of the tremendous development in the electronic and banking fields, where the individual can use the smart card and the Internet (which takes the place of money), without risk or costs associated with the exchange process without an intermediary. It is also characterized by rapid movement and change. Electronic checks are legally obligated to pay a certain amount of money to a person or organization on a specified date and are generated by electronic computers. The route that these checks take from the time of issuance to delivery, collection, and account entry is comparable to that of paper checks. They also include the same information as a paper check, including the electronic signature, beneficiary name, and date. 85% of all checks written worldwide are represented by this method (Brindle, 2001).

Electronic checks and money laundering are closely related since the former is dependent on the latter's bank account, which transfers and trades it online in transactions to which the client is a party and in which the electronic check serves as a trading tool. A person with a \$100,000 account could seek to launder it using an electronic check. To do this, he would set up many online transactions, including sales, loans, or rent, and the launderer would then purchase real estate or other movables in order to launder the money. Since the depository bank doesn't ask where the money came from, these transactions are done in confidence.

In the field of exploiting electronic checks in money laundering operations, we note that they have been exploited by drug criminals, whether individuals, organizations, or gangs. They did not require any technological development to carry out their criminal acts, facilitate the passage of crime, and benefit from the advantages of advanced technology in shortening time, distances, and speed of completion (Abdullah, 2006).

### **Methods to Combat Electronic Money Laundering**

Through this requirement, we will review the methods of combating electronic money laundering. There are legislative methods and preventive methods to combat this crime, and we will review them as follows:

#### **Legislative Methods**

If some countries were aware of the importance of combating money laundering as a first step, this would be true of the traditional picture, but with the beginning of the tangible impact of technology on money laundering methods and then the emergence of electronic money laundering as a new image and distinct from the image in which traditional money laundering crime occurs. From a legal standpoint, the legislative texts that were first enacted to combat traditional money laundering are confined to incorporating this new sort of criminality and punishment (Shafik, 2007).

However, due to the immaterial and virtual nature of the Internet, many current laws must be amended, in addition to introducing new laws to criminalize these behaviors, as long as these laws do not violate public order and morals, and because it is not possible to punish a person without a legal text, the legal pillar must be enacted. A law that is in line with current developments, and this is what the Jordanian and Iraqi legislators took note of in enacting a special law for electronic transactions and electronic signatures to address the use of electronic means, including the electronic check, in electronic commercial transactions so that it is not a haven for money launderers to use these means to carry out their criminal activities (Hinterseer, 2001).

Article (18) of the Jordanian Electronic Transactions Law regulates the subject of the electronic bond (electronic check), as it states: "1- The electronic bond is transferable if the conditions of a negotiable instrument specified in the Trade Law apply to it, except for the requirement in writing, provided that the drawer has agreed to Negotiability of the bond. 2- The holder of the electronic bond is considered entitled to use the rights attached to an electronic transferable bond if the drawer has agreed to the negotiability of this bond and provided that it is signed by a certified electronic signature".

The same Jordanian law governing electronic transactions required that the electronic signature be authenticated on all electronic documents, and it could not be authenticated unless the necessary conditions in the law were met, and it had to be linked to an electronic authentication certificate issued under the provisions of the law, as well as the regulations and instructions issued at the time of creating the electronic signature for any person. The entities listed below: (A) A licensed electronic authentication authority in the Kingdom. B- An electronic

authentication authority that has been accredited. C- Any governmental entity recognized by the Council of Ministers, whether a ministry, a public official institution, a public institution, or a municipality, provided that the Telecommunications Regulatory Authority's standards are satisfied.

### **Conclusion**

The prosperity of civilization and the spread of technical progress have helped facilitate many aspects of our lives, but at the same time, it has brought us many risks and harms related to computers and the World Wide Web, which have made criminals exploit them to commit their crimes, including money laundering through electronic banking means.

The escape of the perpetrators of this crime from prosecution and punishment is due to reasons mostly related to the difficulties and obstacles facing the investigator in these crimes. Identifying the source from which the accused derived his money, as well as the means used by the perpetrators to hide this money, maybe one of the arduous tasks for the investigator.

Encouraging cooperation and exchanging information between countries regarding combating suspicious financial transactions, given that electronic money laundering crimes are global and not subject to geographical borders, because it is rare for a money laundering crime to occur in its electronic form and its impact is limited to the territory of one country.

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