

# THE ETHIC – A MODERN WAY TO PREVENT THE ILLICIT ACTIVITIES

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## **Abstract:**

*The business from the financial field must submit to a great volume of the new legal obligations which wants to attract them in a network of the secure and control system and their goal is to detect the money washing and the finance of the terrorist activities, when they appear, and to stop the law breakers to obtain the incomes from the illicit activities.*

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The business from the financial field must submit to a great volume of the new legal obligations which wants to attract them in a network of the secure and control system and their goal is to detect the money washing and the finance of the terrorist activities, when they appear, and to stop the law breakers to obtain the incomes from the illicit activities.

The money washing is a process which gives or tries to give a legality appearance of some profits obtained illegal by the law breakers who benefit after that by those incomes, without to be compromised.

This dynamic process is evolved in three phases: obtaining and moving the funds obtained directly or indirectly from the malpractice, hiding the traces or the origin the incomes to avoid any suspicious or investigations, and, finally, to available the money and their reinvest in the legal activities.

1) In the initial phase or **embarking** the money washing, the law breaker includes his illegal profit in the financial system. It can be done through divided the big amount of money into smaller ones which are directly deposited into a bank account or using in buying some financial instruments (cheques, the order tickets etc.).

2) After the entrance the funds in the financial system, it takes place the second phases – **stratification**. In this phase, the law breaker does some conversion or moving the funds to estrange more by the provenience source, the more used way being the electronic transfer in a series of accounts in the different banks from all over the world. There are preferable these geographical zones or jurisdictions

which do not cooperate with the investigation organs specialised in combating this law-breaking phenomena.

3) After two money washing phases, the law breaker or law-breaking group pass to the third phase – **integration** –when the funds come into a legal economical circuit. The money washer can invest the legal funds on the real market, on the luxury goods or in the business.

The all-three phases can be distinct evolved, but it can take place simultaneous or, frequent they can superpose.

Through their illicit processes, the law breakers can invest in the economical sectors when the assets can be used then like the money washers. More, in an economy when the advance technology and globalization permit the fast funds transfer, the missing control over this law breaking phenomena can disrupt the financial stability. In a country with precarious financial statements, the extracting of annual millions or milliards of dollars from the normal process of the economical increasing represents a real dangerous for the credibility, the economical stability and the national security.

The facts done by the terrorist entities are sanctioned in the following conditions:

a) They are done with violence, as a rule, and product the anxious state, incertitude, frightening, panic or terror between the populations;

b) They attempt hardly over the specific or unspecific human factors and over the material factors;

c) They follow to realise some specific objectives by the political nature through determining the authorities of the state or an international organization to dispose, to give up or to influence taking the decisions in a terrorist entities favour.

In concordance with article no. 3 of the same normative act, the terrorism acts are the transnational nature, if:

*“a) they are done less on the two states territory;*

*b) they are done on the state territory, but a part of planning, preparing, leading or controlling take place on the other state territory;*

*c) they are done on the state territory but involve a terrorist entity which evolve activities on the other state territory;*

*d) they are done on the state territory but they have substantial effects on the other state territory.”*

More times, the terrorist is the citizen of the A state but he has the nationality of the B state, he actions against the C state with guns from the D state gave by the intermediate people from the E state, he wants his documents to has a bigger publicity in these states, to captivate the mass-media interest and the sympathy of his countrymen.

Essentially, the principal objective of the terrorism which represents the most dangerous phenomena of the international organised crime is to intimidate the population or to oblige a government or an international organization to do or not to do any action. Generally, the terrorism is an action of on organised group, with ethnic reasons and rarely is a desperate action of some isolated people.

Generally, obtaining the profit is the objective of other types of organised crime. While the difference of the final goals between each of these activities can reach some limits, the terrorist organizational need the financial sustain to reach their goals. A success terrorist group like a criminal organization must be capable to build and conserve an efficient financial infrastructure.

Generally, the terrorism finance has two principal sources:

a) The first source is the financial support by the states or organizations with a sufficient infrastructure to collect and dispose the funds to the terrorist organization. So, the sponsor-states of the terrorism decline in the last years and replaced with other ways for sustaining. A physic person with enough financial resources can give substantial funds to the terrorist groups. For example, Osama bin Laden, owner of some factories contributed with significant sums from his fortune at the found of the terrorist network Al-Qaeda;

b) The second major source of the funds for the terrorist organization is represented by the indirect gain from the activities which generate the incomes.

Like the criminal organization, the incomes of the terrorist group can be obtained from the law breaking or other illegal activities.

The traumatic events since 11 September, Bali, the bomb assault since July, 7<sup>th</sup> from London and others do impossible the counteraction of the official insistences that the new controls are, the least, necessary in the public interest. But only, when do the accountants, auditors and lawyers break their professional principles to respect the new legal requirements give their contribution against the illegal activities?

The promoter of all standards of regulation which are now introduced in the entire world, in this field, is the Financial Action Task Force (FATF), an intergovernmental organism with the headquarters in Paris which was found in 1989 by G7.

The mission of this group is to look over the used methods by those who wash the money and by the terrorism financers and to recommend the adequate protection and control measures which the national government should implement to fight against the threats.

Although, the FATF visited and concentrated over the bank sector, its applicability is extended, it regulation a large business area and new non-financial profession including the accountants (the financial auditors), lawyers, the real agents and casinos.

The progress and the applicability of the law breakers suggest that for sustaining the impact of the secure services already included – like an apparent grade of success in the bank case, should be extended, so that, to be applied to other types of intermediate which can be involved conscious or not in the money washing.

Because of this fact, there are advised the government that the control standard methods and fighting against the money washing must be applied to the accountants and financial auditors or at least the accountants from the public sector which are involved in the specific actions of the clients (which refers at the manage

of the client funds and at the buying or selling the goods and properties in the client name).

The accountants (and the financial auditors) have the fiduciary responsibilities beside their clients; they are tied by the ethic codes and have professional values which impose to respect the confidentiality of the information of their clients business.

This thing does not mean that the confidentiality fender should be used to help and sustain the illicit activities of the client. The ethic responsibilities of the accountants (and the financial auditors) can alternate the detail, in different countries, but the majority will follow the base principle fixed by the ethic code by the IFAC (The Accountants International Federation).

This code includes the next elements:

- Before accepting a new client, the accountants and the financial auditors should analyse if there are aspects of the potential client which can affect the capacity to action with integrity, in concordance with the different aspects of the code – if there are these kind of aspects that accountant (the financial auditor) feels that cannot correlate with his obligation respecting the code, he must refuse to represent this client.
- Like the integrate element of the professional behaviour, the accountant (and financial auditors) should conform to the relevant laws and must avoid any action which can denigrate or discredit the profession.
- The accountants (and the financial auditors) should not divulge the confidential information out of the company during the professional relation with a client or with a potential client without a specific and clear authorization or without the legal or professional right to do this thing.

From the two first elements of the list above result that the accountants (and the financial auditors) will be asked to look critically at the potential clients and decline any action in the client name when they think that is impossible to action without to compromise the proper obligations and to respect the professional norms. Also, there is in the ethic code a strong caution against any type of illegal activity. More, the code admits that the confidentiality given to the client is a norm and to divulge the information can do in the case when this is a legal obligation.

An optimum function of the market rules is determined by the quality of the sociologic, culture, and moral values proposed and stated. The culture and the ethos of the community are vectors and finance sources for supplying the behaviour. They define the limits and permissibility, acceptability and non acceptability, desirable and non desirable, in the maximum objectiveness zone of the economic. So that, the quality and the functionality of the norms and values which regulate the community medium are supports at the product and they reproduce the model of the conduit and the behaviour in the business. Of course, in a society there are created structures and institutions, norms and rules, especially by the juridical nature, solitudes to promote these existential values that are compatible with the people looking for. The market economy is an open

concurrency. The finality of the competition is the profit. The behaviour rules are at the limit.

In a well known book “THE PROTESTANT ETHIC AND THE CAPITALISM SPIRIT”, MAX WEBER, the German sociologist in the XIX century, averts over the risks that the capital world to divorce by the moral values. Observing the compatibility of the business is different by the moral values, because the different finality and the mechanism of expression, often opposite, Weber put the two categories of the human activities under the sign ....”two different fundamental precepts from the ethic view and absolutely contrary”. He named those “the conviction ethic” (the moral) and “the responsibility ethic” (business). The conviction ethic shows a moral authentic attitude, in a pure moral sense, abstract. On this base the person who action conforms to his convinces without to think at the consequence of the action. The responsibility ethic is specific to the businessman who see not only the immediate intentional consequences and those the unintentional. Although, sometimes, the Weber conception was interpreted like a disjunction between the business and moral, his pleading was for osmosis business-moral “the responsibility ethic and that of the conviction (moral) are not excluded one another, they are completed”, but together formed a real man, that man who can have the vocation of the businessman, of the undertaker, of the authentic entrepreneur.

“The ethic paradox” can be put under the grave interrogation for the business man to assume the responsibilities and the inherent risks of his economical actions or to remain at the moral, abstract judge without the responsible engage? This dilemma – responsibility/morality move the accent to the conduit code of the businessman from the “morality” at the “the responsibility ethic”.

In the business a series of the moral commune values (clemency, altruism, love, philanthropy etc.) can produce the failure, the bankruptcy with all the a-moral consequences which derive from an organizational catastrophe.

Romanian societies, in a transition, which pass over the limited threshold, evolutes towards the market economy, where there are the business in the centre like the principal actors. As a pity, the sociological medium and the mechanisms promoted contain the multiple dysfunctions a-ritual for the market economy. The perverse and undesirables effects generated by the socio-economical medium are because the successive and repeated fails of the political power in the concurrencies economy. The political power failed until now in assuming the responsibilities, abandoning the double obligation: the citizens’ obligation to conform and obligation of the government to satisfy the requirement of the citizens.

Incapacity or political aboulia for assuming the responsibilities generates multiple effects what put in a critical situation the business ethic, because a hostile medium of the business born a-ritual behaviours, shaking the system of the ethic values. The bureaucracy, corruption, taxation, more politics etc. are the enemies of the free economy. In the surviving effort of the businessman are determined to abandon the conduit code of the specific deontology. The relation between the business ethic and the political ethic are fundamental.

How a well known French sociologist, Raymond Pollin, says in *Etique et politique* (1968):

“The good government which realisations are good and assures the effective rightful and common well is the only legal government”. The legality crises of the power have profound effects and lasting over the ethic crises in the business. So that, the moral health and the quality of the ethic values of the community determine the quality of the business ethic.

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