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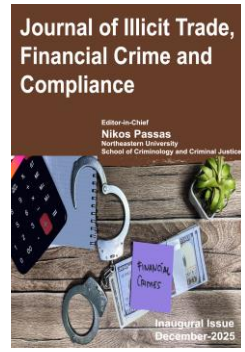

Major Improvements: Review on the Revision of Anti-Money Laundering Law of PRC

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ABSTRACT

This paper introduces the domestic and international background and the process of the revision of the Anti-Money Laundering Law of the People's Republic of China, compares the original law with the new one, demonstrates the significant meaning of what has been revised both in normative and practical aspects and puts forward some comments. The revised law improves or innovates regulations on the following eight aspects, which are the definition of anti-money laundering, the scope of extraterritorial application, the anti-money laundering obligations of specific non-financial institutions, the regulations on beneficial owners, administrative penalties, cooperation and data protection, client due diligence, and transaction reporting system. This paper describes eight major improvements in detail and comments on them in order to show a high level of legislation, and to make a well understanding of these "shinning points" which help to enhance the quality, efficiency and status of China's anti-money laundering work.

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1. Background and Process of the Revision of the Anti-Money Laundering Law of PRC

The original Anti-Money Laundering Law of PRC, which came into force on January 1, 2007, has played an important role in fighting against money laundering and its predicate offence, and preventing the money laundering risk by financial institutions. It also created a normative system for anti-money laundering in China. However, in recent years, crimes especially organized ones have become increasingly serious, and the methods of money laundering have been constantly updated with the fast development of times. Thus, the difficulty of monitoring and preventing new types of money laundering risks has greatly increased. Besides, in the Fourth Mutual Assessment of China's Anti-Money Laundering work carried out by the Financial Action Task Force (hereinafter referred to as "FATF") in 2018, it was pointed out that there were some deficiencies in China's anti-money laundering work, like beneficial owners, and the administrative penalties. FATF also gave us lots of recommendations [1]. Faced with the upcoming fifth round of mutual assessment, it is imperative to revise the law.

The revision and adoption of the Anti-Money Laundering Law of PRC have gone through systematic research and painstaking work. As early as June 2021, the People's Bank of China (hereinafter referred to as "PBC") issued the Anti-Money Laundering Law (Revised Draft for Public Consultation) and openly solicited opinions from the public. On April 23, 2024, the Anti-Money Laundering Law of the People's Republic of China (Revised Draft) (hereinafter referred to as the "First Draft") was submitted for review, with a total of 62 articles in 7 chapters. After soliciting opinions from all sides, the Anti-Money Laundering Law (Revised Draft for Second Review) (hereinafter referred to as the "Second Draft") was submitted for a second review on September 10, 2024, and was once again open for comments. On November 8, 2024, the newly revised Anti-Money Laundering Law of the People's Republic of China was voted and passed, and it will come into effect on January 1, 2025. This is the first major overhaul since the original law has been implemented in 2007.

This revision effectively connects with both other domestic existing regulations and practices related to anti-money laundering, and responds to the new situation at home and abroad, trying to enhance China's anti-money laundering core competitiveness. This paper aims to outline the key legislative improvements in the newly revised Anti-Money Laundering Law of PRC and assess the legislative quality of the relevant provisions.

2. Core Changes of the Revised Anti-Money Laundering Law of PRC

The new law retains the 7-chapter structure, but there are now 65 articles, adding 28 articles in total.

Among them, Chapter I, "General Provisions", adds 5 articles, which stipulate the guidelines and objectives of anti-money laundering work, the obligations of any entity or individual to cooperate with client due diligence, and overseas jurisdiction.

Chapter II, "Anti-Money Laundering Supervision and Administration", adds 7 articles, which are mainly about the anti-money laundering management of specific non-financial institutions, identity of the beneficiary, assessment of new money laundering risk, and the confirmation of high-risk countries or regions for money laundering.

Chapter III, "Anti-Money Laundering Obligations", adds 8 articles, which include provisions on the obligation of financial institutions to assess the money laundering risks in new fields, of domestic and foreign financial institutions to share information, and of units and individuals to cooperate with client due diligence. It also adds articles on the right to object to money laundering risk management measures, and object to being on the "blacklist" and special preventive measures.

Chapter IV, "Anti-Money Laundering Investigation", combines Articles 24 and 25 of the original law into one.

Chapter V, "International Anti-Money Laundering Cooperation", adds 2 articles on the principles of conducting foreign investigations, and the information legally gained should not be provided for foreign countries and organizations without authorization.

Chapter VI, “Legal Liability”, adds 8 articles which are mainly on legal liabilities of domestic and foreign financial institutions that violate international obligations, of specific non-financial institutions and their liable personnel, of any unit and individual that fail to take special preventive measures against money laundering, and of those who fail to submit beneficial owner information in accordance with the law.

Chapter VII, “Supplementary Provisions”, is reduced by 1 article. The relative content is incorporated into Article 2 of the General Provisions.

The above is a general overview of the revisions of each chapter. The following sections will focus on eight major improvements in detail, and make comments respectively.

2.1. Clarifying the Definition of Anti-Money Laundering

The new law begins with a clear definition of anti-money laundering in Chapter I, stating that relevant legal measures are adopted to prevent money-laundering activities that disguise or conceal the illicit source or nature of seven categories of predicate offence and other crimes. The new law sets a broad scope of anti-money laundering, including both the seven categories of predicate offence covered by the article of money-laundering in Article 191 in the Criminal Law, and other booty crimes. Although in the First Draft, the legislator deleted the enumeration of the seven specific types of predicate offence and expanded the scope of the definition to any crime, saying “money laundering and other related criminal activities”. However, in the new law, the enumeration of the seven types was reused, and "related criminal activities" was deleted. From this change, it can be seen that, on the one hand, the legislator took into account the fact that those types of predicate offence are still representative. Besides, other criminal activities of similar nature should also be applicable to the law so that it can better prevent the money laundering and other relevant crimes. On the other hand, the meaning of "related criminal activities" is not clear enough to guide the application of the law in judicial practice. In addition, the new law adds a paragraph, stipulating that "this law applies to the prevention of terrorist financing activities". This shows what the FATF recommends have been accepted, making counter-terrorism financing an integral part of anti-money laundering [2].

With regard to the amendment clarifying the definition of anti-money laundering, the expanded definition now encompasses not only the seven categories of predicate offenses covered by the crime of money laundering, but also by the crimes of concealing or disguising criminal proceeds and the proceeds of crime. It seems that expanding the definition in the revised Anti-Money Laundering Law of PRC may violate the Criminal Law. This paper, however, does not agree with the argument above. First, at the normative level, as an administrative law, the Anti-Money Laundering Law of PRC should coordinate with Criminal Law, but do not need to be exact the same with it. Second, in China’s judicial practice, the Anti-Money Laundering Law of PRC should act for prevention. The newly revised law expands the scope of application, enabling anti-money laundering work more comprehensively cover various criminal activities that may involve money laundering. In particular, it helps focus on key areas with prominent risks — such as telecommunications and online fraud, online gambling, illegal fundraising, corruption, drug-related crimes, and underground money exchanges — and intensifies efforts to investigate and crack down on related money laundering activities. Third, such definition makes China’s law stay consistent with other regulations in international economies, such as the EU, which believes that in addition to criminal penalties, preventive efforts can also play a role. However, the expansion of the definition has also caused challenges to the subjects of duty in practice, as there will be more anti-money laundering work, which needs more energy and cost.

2.2. Expanding the Scope of Extraterritorial Application

One of the objectives of the revision of the Anti-Money Laundering Law of PRC is to promote the extraterritorial application of the law. The new protection jurisdiction clause clarifies that although money laundering and terrorist financing activities take place outside our territory, as long as they infringe upon China's interests, the law can be applied. This shows that the Anti-Money Laundering Law of PRC has a multi-pronged approach to jurisdiction, forming a dimensional net to curb money laundering crimes.

The revised Anti-Money Laundering Law of PRC introduces “protective jurisdiction” provision, which is an innovation that marks a further step towards a cross-border regulatory system of anti-money laundering work. From the perspective of the logical relationships among legal provisions, the Criminal Law explicitly stipulates a hybrid jurisdiction model centered on territorial jurisdiction, supplemented by personal jurisdiction, protective jurisdiction, and universal jurisdiction, thereby conferring extraterritorial application on China's criminal law. As a precursor to the Criminal Law, the Anti-Money Laundering Law of PRC includes provisions on extraterritorial application, ensuring consistency between the two laws in terms of their scope of regulation and protection. From the perspective of judicial practice, if an overseas branch established by a Chinese financial institution encounters anti-money laundering measures from foreign states, we can also passively defend as a home country and refuse excessive extraterritorial intervention by invoking this protective jurisdiction clause.

In this revision, the expansion of the extraterritorial jurisdiction shows that we are devoted to protecting China's financial security, and following the trend of international legislation. First, the new law clarifies that if foreign financial institutions do not cooperate with our investigations on money laundering and terrorist financing activities, they can be included in the "blacklist" and certain restrictive measures can be taken against them. This enables China to stand in a dual position where it can "active supervise" and "passive defend" in conducting anti-money laundering investigations and safeguarding national sovereignty, which is of great significance for protecting national security and fighting against cross-border money laundering crimes. Second, the international legislation on extraterritorial jurisdiction provides normative support for us. The attitude of the International Court of Justice towards this issue is that as long as international law does not expressly prohibit it, a state has the right to enact and implement domestic laws with extraterritorial effects, but the scope of facts should be limited to where the state has jurisdiction [3]." In this sense, this revision is appropriate.

In terms of practical application, when applied in conjunction with Article 40 of the Anti-Money Laundering Law of PRC, this provision can provide guidance for judicial practice to a certain extent and clarify the penalties applicable to foreign financial institutions. If a foreign financial institution fails to cooperate with our investigations into money laundering and terrorist financing activities, it may be listed as "High Risk". For foreign financial institutions on this list, measures such as enhanced due diligence by domestic obligated subjects, restrictions on or denial of cross-border financial services [4], and a prohibition on domestic financial institutions from opening nominee accounts for them may be implemented.

However, it can not be denied that although the newly revised Anti-Money Laundering Law of PRC provides for administrative penalties—such as fines and warnings—against non-compliant foreign financial institutions, the actual enforcement of these penalties depends on the institutions' having objectively existing assets within China and subjectively cooperating with enforcement. Otherwise, cross-border administrative penalty decisions may remain mere formalities on paper, unable to be effectively enforced. To avoid such situation, China could draw on the provisions regarding in rem actions in the United Kingdom and the United States by establishing civil forfeiture procedures within the Anti-Money Laundering Law or relevant specialized legislation. With regard to money-laundering-related assets flowing into China, there is no need to require a criminal conviction as a prerequisite; such assets can be directly recovered through civil litigation procedures [5]. As for illicit assets transferred with the assistance of foreign financial institutions, the relevant assets located within China may be frozen or confiscated.

2.3. Clarifying the Obligations of Specific Non-Financial Institutions

First, Article 6 of the new law clearly stipulates that specific non-financial institutions shall bear anti-money laundering obligations such as conducting client due diligence, reporting large and suspicious transactions, and establishing and improving their internal control system. Second, Article 42 adds that specific non-financial institutions shall follow the "risk-based" work guidance and perform their duties with reference to financial ones. Third, the First Draft regulated the legal liabilities of specific non-financial institutions and their personnel in a general way, while the official law regulates clearly. Fourth, to make sure that the anti-money laundering work performs in an effective way, the new law enumerated what should fall into specific non-financial institutions, and with a catch-all clause. However, compared with the previously released and implemented regulations, the new law adds spot trading of gemstones dealers and company service providers to the clause. Besides, compared with the Second Draft, the official law adds the condition of "more than the prescribed amount" for those traders. As corresponding provisions have been added in different chapters for specific non-financial institutions' anti-money laundering obligations and legal responsibilities, the new law has established a relatively comprehensive system to make up for the lack of high-level regulations in this area.

Although financial institutions are high-risk platforms for money laundering, they are not the only channel. With the continuous supervision on financial institutions, money laundering activities have gradually infiltrated non-financial fields. As more actors disguise and conceal the illegal nature of the proceeds of crime by purchasing real estate, jewellery, antiques and valuable works of art, the anti-money laundering work becomes more severe. Therefore, it is inevitable to equip “specific non-financial institutions” with anti-money laundering obligations.

This revision not only raises the position of previous regulations related to specific non-financial institutions in a normative sense, but facilitates their work in practice more efficient. On the one hand, in Forty Recommendations on Anti-Money Laundering issued in 2012, FATF have put forward recommendations for specific non-financial industries on client due diligence, transaction report as well as supervision of them. Separating the recommendations for specific non-financial institutions from the financial ones does show their significance. On the other hand, as the definition of “specific non-financial institutions” and their obligations being systematically stipulated, the situation of only financial institutions could practice anti-money laundering work has been changed.

It is worth noting that the new law does not specify the detailed operational procedures for such institutions to fulfill their anti-money laundering obligations. In terms of the process of refining legal regulations, this legislation represents only a phased achievement; it suffices to establish the basic principles for fulfilling these obligations. However, to better prepare for the fifth round of mutual evaluation of FATF, China can draw on the experiences of other jurisdictions which recently assessed by the FATF as “compliant/largely compliant” [6]. Building upon existing regulations, we should further clarify the corresponding competent authorities or self-regulatory bodies for various specific non-financial sectors. Detailed rules, such as specific penalty standards, for each industry, can be formulated by the relevant competent authorities after they have gained experience, taking into account actual circumstances and guided by these principles set in Anti-Money Laundering Law of PRC.

On the basis of the analysis above, the new law especially clarifies the definition, and obligations of specific non-financial institutions, and at the same time leaves the problem of “how to specifically perform their duties” to be explored in the future. This not only sets clear normative requirements for specific non-financial institutions, but also lays foundation for further improvement on this issue.

2.4. Adding New Provisions on “Beneficial Owner”

The revised Anti-Money Laundering Law of PRC innovates to regulate beneficial owners. First, from the normative perspective, the new law defines beneficial owners at the legal level for the first time. In the First Draft, the concept of it was defined but placed in Supplementary Provisions, while in the official law it was moved up. This fully shows the importance. At the same time, this is also a legislation response to the amendment proposals made by PBC. Second, the new law adopts FATF Recommendations issued in 2012, clearly defining “beneficial owner information identification” as a statutory obligation. Third, identifying the information of beneficial owners is no more a unilateral obligation of financial institutions, clients should also truthfully submit and update related information. To put it further, if a financial institution discovers that the beneficial owners’ information is erroneous, inconsistent or incomplete, it can report to PBC and clients should cooperate, which is consistent with what says in the regulation, the Administrative Measures for Beneficial Owner Information, coming into effect recently.

The addition of “beneficial owners” in the revised Anti-Money Laundering Law of PRC has significant meanings. To begin with, gathering and amending systematic provisions on it are a consolidation and improvement of other existing norms. Besides, as there is no clear definition of the beneficial owner, determining and identifying it in reality are difficult. After this revision, the concept of “beneficial owner”, its obligations and legal liabilities become clear. This not only raises its importance in a normative sense, but guides relevant anti-money laundering work in practice. Second, the obligation of clients to cooperate with submitting and updating true and complete information on beneficial owners has been regulated in the new law. This is a great progress, facilitating financial institutions to practice anti-money laundering work smoothly, and enhancing the transparency in the commercial environment. Third, from the international perspective, the revision provides legislative support for passing the upcoming fifth round of mutual anti-money laundering work assessment. In conclusion, it is necessary to revise the law on such issue, which reflects our positive attitude towards fighting against money laundering activities committing under the shelter of beneficial owners and taking part in international cooperation.

However, as the newly revised Anti-Money Laundering Law of PRC is the first time that establish provisions regarding the beneficial owner system, the current framework of this system is not yet fully comprehensive. This can be seen in the following two aspects. First, the scope of "beneficial owners" is narrowly limited. the entities subject to the current regulations are limited to "legal persons, unincorporated organizations, financial institutions, and specified non-financial institutions." However, the focus of "beneficial ownership" should lies on people who actually own and utilize the capital or assets of a legal person, as well as those who exercise effective control over it, rather than merely those who nominally hold such rights on paper [7]. Second, the standards for beneficial owners to provide and update information to financial institutions and competent authorities are too general. If a legal entity issues a notification and the beneficial owner fails to respond in a timely and truthful manner, or if the beneficial owner fails to proactively report changes, current regulations lack provisions establishing mandatory obligations for cooperation in responding and for proactive disclosure.

It is recommended that the gaps be filled through the following measures. First, improve the ability to look through nominal shareholders and nominal directors, and clarify the legal liability of the relevant natural persons. As the substantive consequences of corporate regulatory enforcement directly affect the company, not just the natural persons responsible for the violations [8], we could draw on other jurisdiction imposing fines and/or imprisonment on directors and executives who persistently or intentionally violate regulations [9]. Additionally, we could restrict a company's ability to transfer shares, distribute profits, or exercise voting rights until it meets compliance requirements, thereby motivating shareholders and management to fulfill compliance obligations. Second, the statutory duty of legal entities to cooperate with financial institutions during due diligence and the required response period should be further specified. We could follow the examples of the United Kingdom [10] and Singapore [11] by explicitly requiring that when a legal entity or unincorporated organization opens an account or conducts business with a financial institution or certain non-financial institutions, it must truthfully and comprehensively disclose its underlying equity structure and hidden control arrangements, including any "shadow contracts" and nominee holding agreements, as well as the identities of its ultimate beneficial owners. Furthermore, the law should specify in detail that if substantive changes happen to beneficial owner information, such as equity transfers or the signing of voting rights agreements, information must be updated within the statutory period, such as 14 or 30 days.

2.5. Making more Severe Administrative Penalties

The newly revised Anti-Money Laundering Law of PRC has strengthened administrative penalties in two ways, which are by broadening the scope of application horizontally and by increasing the severity of administrative penalties vertically. The vertical strengthening of administrative penalties is further manifested in expanding the types of penalties and increasing the severity of administrative penalties two ways.

The newly-revised law expands the scope of application in the following three ways. First, the official law adds funds, futures and trust industries into financial institutions. Second, with "specific non-financial institutions"' added as the subjects of duty, they should take their duties, otherwise will be punished. Third, "a functionary of any other state organ" may become the target. Article 51 adds a new paragraph stipulating that those who divulge state secret, commercial secret or individual privacy will be punished according to law. Fourth, "financial institutions outside China" that violate regulations and refuse to cooperate with investigations may also be punished and may be subject to special anti-money laundering preventive measures.

To increase the severity of administrative penalties vertically, the new law increases the types of penalties and refines the classifications of violation levels. First, the circumstances of violating duties become 24 from 14. To be more specifically, what has been added mainly involve money laundering risk assessment, the formulation and improvement of transaction monitoring standards, duty performance of those liable people, and special preventive anti-money laundering measures. Second, any entity that provides information to foreign states or organizations without authorization shall assume administrative penalties. Third, the new law classifies the severity of violations of anti-money laundering obligations into 4 categories, which are general violations, relatively serious, serious or the corrective action fails to be taken within the period, and cause statutory consequences. Compared with the original law, the new law adds “relatively serious”, deletes “particularly serious”, expands “serious” to “serious or the corrective action fails to be taken within the period”, and expands statutory consequences from “lead to money laundering” to “cause proceeds of crime and income derived therefrom to be disguised or concealed through it, or causes terrorist financing”.

To increase the severity of administrative penalties vertically, the new law also increases administrative fines. On the one hand, let’s see from the perspective of obligated institutions. First, for “general violations”, in addition to taking corrective action within a specified period, the new law also imposes a fine of up to 500,000 yuan under some circumstances. Second, for “relatively serious” violations of the core obligations, a warning will be given or a fine of up to 200,000 yuan will be imposed. This standard did not exist in the original law, nor the corresponding penalty. Third, for “serious” violations, the new law increases the maximum fine to 5 million yuan, which is as ten times as that in the original law. Fourth, for violations that result in statutory consequences, the new law provides for a maximum fine of twice the amount involved in the case (more than 20 million yuan), while the maximum fine under the original law was only 5 million yuan. On the other hand, the fines become much higher from the perspective of relevant liable personnel. First, for general violations, a warning may be given or a fine of up to 200,000 yuan may be imposed depending on circumstances, while in the original law, only under some serious circumstances may the liable people be fined up to 50,000 yuan. Second, for violations that result in statutory consequences, the new law increases both the minimum and maximum level, and retains the punitive measures related to disqualification from holding office and practicing.

Though the new law generally strengthens the administrative penalties, it also adds Article 61, providing a possible way for obligated institutions to mitigate their duties. Moreover, it adds Article 56, regulating a due diligence exemption for liable people, which is an innovation of this revision.

The revised Anti-Money Laundering Law of PRC stipulates legal liabilities following the guidance of “severe punishment and appropriate incentives”. On the one hand, in order to better motivate and supervise financial institutions and their liable personnel to undertake their duties, the new law increases its severity from multiple perspectives, involving broader subjects of duty, more punishment standards, more circumstances that should be punished, and higher fines. Only when feeling fear of being punished will the subjects of duty perform more actively and efficiently, thereby better monitoring money laundering risks. On the other hand, the new law also provides obligated institutions with a possible way to decrease their legal liabilities, and provides a due diligence exemption clause for their personnel. However, the extent to which obligated ones must fulfil their duties, and the extent to which their liability can be reduced are not clear enough. Therefore, in practice, the judiciary needs more experience to determine how to apply relevant provisions in specific cases.

However, for the revised law, this paper attempts to find the internal logic of the severity of the legal liability, but finds that it is not very obvious. According to circumstances in practice, the core anti-money laundering obligations should be three, which are client due diligence, preservation of clients’ identity materials and transaction records, and large transactions and suspicious transactions reporting. It is because of performing core obligations well that helps the whole anti-money laundering work run effectively. Therefore, when core obligations are violated, more severe penalties should be imposed, while violating other peripheral ones, the legal liability should be relatively moderate. However, in the new law, violating relatively peripheral obligations to a “serious” extent, such as failing to take special precautions against money laundering as required, or refusing to supervise or investigate money laundering activities, will be subject to fines of up to 5 million yuan, while violating those core obligations to the same extent, such as failing to conduct client due diligence as required or failing to report large transactions and suspicious transactions as required, will be subject to fines of up to only 2 million yuan. This is, to some extent, unreasonable. On the other hand, there is no difference of the punishment when violations resulting in statutory consequences. This allocation of legal liability reflects the immaturity of the newly-revised law, and it needs to be further tested in practice later.

2.6. Emphasizing Collaboration and Data Security

The revised Anti-Money Laundering Law of PRC emphasizes collaboration internally and externally. First, based on administrative affiliation, the original law stipulates that results of anti-money laundering monitoring and analysis should be reported to the PBC only, while after the revision, their work like money laundering clues can be reported to either the PBC or other relevant institutions, which provides normative support for anti-money laundering work in practice. Second, the new law sets an information sharing system. This can reduce the cost and improve the efficiency.

During this revision, a number of provisions on data protection have been added to the new law. On the one hand, the new law limits the powers of obligated institutions and increases their obligations. First, it clearly states in Article 1 that anti-money laundering work should be carried out legally, which reflects "respecting and protecting human rights" set in the Constitution [12]. Second, the new law strictly enlarges the circumstances under which the information obtained can be used. In addition, the official law stipulates that suspicious transaction reports submitted shall be kept confidential. Third, financial institutions are required to set a "fast pass" to promptly address objections raised by clients which are related to basic and necessary financial services. On the other hand, the new law grants citizens and incorporated organizations more ways to safeguard their interests. First, the new law adds a provision that entitles them to raise objections, complaints and file a lawsuit if they disagree with the money laundering risk management measures taken on them. Furthermore, compared with the First Draft, the official law removes the requirement that objections should be raised before suing. Second, citizens and incorporated organizations have the right to tip money laundering clues off, and they can be commended and rewarded because of it. This can better motivate the public, accumulating social efforts to fight against money laundering crimes.

The new law lays emphasis on collaboration during anti-money laundering work, which has significant meanings. First, the coordination and information sharing system provide a normative basis for their effectively monitoring money laundering risks and curbing relevant crimes in practice. Nowadays, criminals often take money laundering activities across institutions, industries, and even countries. However, the rights and obligations granted to subjects of duty are limited, which leads to information asymmetry, work inefficiency and waste of resources. After this revision, synergies in anti-money laundering supervision and investigation will be formed. Second, any entity or individual under investigation shall cooperate with the obligated institutions for anti-money laundering supervision, which can improve the quality and effectiveness of duty performance. However, what should be noted is that clients and financial institutions are equal, which means obligated institutions do not have the right to force their clients to cooperate with due diligence investigations, like providing beneficial owner information.

As the revision should further respond to social concerns and safeguard the legitimate rights and interests of incorporated organizations and individuals, provisions following this concept should be added to the law. This is a another "shinning point". With the development of science and technology, financial privacy needs more attention. First, the new law limits the power of those obligated institutions. More demands on procedures of gaining the information, as well as the scope of accessing and usage of what they gained, have been stipulated. Second, after adopting opinions of all parties in the society, the new law grants citizens and incorporated organizations that are investigated more rights to self-redress. However, granting such rights, on the one hand, requires financial institutions to simultaneously establish an objection response mechanism, which surly costs more. On the other hand, these institutions may be caught up in numerous lawsuits. Therefore, financial institutions might have to balance the fulfillment of their anti-money laundering obligations and the need of responding to the ensuing objections, complaints and litigation.

2.7. Improving Client Due Diligence

The revised law has perfected regulations on client due diligence. Overall, it follows the "risk-based" guidance, ensuring that measures taken are consistent with the risks. To begin with, the new law improved client due diligence from the perspective of obligated institutions. First, it formally replaces "clients' identity identification system" with "client due diligence", transforming the material-review duty into a substantive one. Second, Article 29 clearly stipulates that when conducting client due diligence, financial institutions should adopt different levels of investigations and reasonably allocate resources according to risk levels. For example, if there is a high money laundering risk, restrictive measures can be taken to manage it. Third, based on risk, the new law clarifies the circumstances by refining one article into three under which financial institutions should conduct client due diligence. Fourth, the new law extends the time period from five years to ten years when financial institutions should retain clients' information. Fifth, the new law strengthens the penalty of those who fail to undertake this duty diligently.

Furthermore, the new law lays emphasis on the cooperation among institutions and those under investigation during client due diligence. First, to clarify the responsible entities, the new law specifically lists the relevant departments that should cooperate in verifying the identity and other information of clients. Second, any entity or individual, as well as the clients, should cooperate and provide relevant information truthfully. If they refuse to do so, financial institutions may take anti-money laundering risk management measures and be reported as suspicious transactions. Third, where client due diligence is through a third party, the third party should provide information and cooperate continuously.

Compared with previous rule-based work concept,tThe revised law always follow the risk-based work concept when improving its anti-money laundering measures related to "client due diligence". On the one hand, it is conducive to urging obligated institutions to upgrade the "compliance" of client identity identification to "risk management", from "material" to "substantial", and from "passive defence" to "positive monitoring". Therefore, the anti-money laundering supervision will be more reasonable and efficient. On the other hand, giving financial institutions chances to decide how complex procedures will be used on client due diligence can also help better balance the relationship between money laundering risk management and providing financial services. To put it in another way, the implementation taken by subjects of duty needs to comply with the "proportionality principle" to ensure that the intensity of their work properly fit the level of risk. However, the new law does not set clear risk assessment criteria, which sets a problem for application in practice. Moreover, although the new law extends the time when obligated institutions should keep client-related information, which undoubtedly improves the accuracy of money laundering risk identification, it also increases the duty-performing cost. Therefore, those problems above need a proper internal balance by those financial institutions, making further detailed rules.

In addition to client due diligence, allowing financial institutions to take different regulatory measures according to different levels of money laundering risks presented by new technologies and products also mirrors the risk-based principle. This is another shining point in this revision. On the context of the growing trend of laundering money through virtual currencies, financial institutions can take some restrictive measures legally. However, the law do not explicitly put the representative form, "virtual currency", under the provision, but use "new technologies and products", a more general expression. On the one hand, the latter can cover more situations. On the other hand, virtual currencies have not been legalized in China. If they are under the anti-money laundering supervision, it will lead to an awkward situation where there is no "target" at all. However, it should be noted that the number of provisions related to new technologies in the Anti-Money Laundering Law of PRC is so few that this is inconsistent with the increasingly diverse risk structure and more complex patterns observed domestically, and it also conflicts with relevant international regulations. Therefore, efforts to improve regulations targeting money laundering activities involving new technologies—such as the use of virtual currencies—are still underway, placing higher demands on China's ability to monitor money laundering risks, issue early warnings, and track financial transactions.

2.8. Improving the Transaction Reporting System

12 articles are related to the transaction reporting system in the new law, which are mainly about its working principles, optimization of the transaction monitoring standards, circumstances of large and suspicious transactions reporting, and legal responsibilities for violations. Heavy proportion of articles directly reflects its great importance, and transaction reporting runs through the entire process of anti-money laundering work.

First, the institution which is responsible for receiving and analyzing large and suspicious transaction reports has been newly-named as the "anti-money laundering monitoring and analysis agency". The standards of reporting ought to be continuously updated and optimized based on reality. Second, to follow the "risk-based" concept, financial institutions may take risk management measures to suspicious transactions based on money laundering risk levels and actual needs. Third, the administrative penalties for those who fail to report large and suspicious transactions have been increased. For example, if those liable personnel causes statutory results, 1 million yuan will be imposed on them, which can encourage the subjects of duty to take their initiatives to find clues in advance, and fight against crimes in time.

The new law improves the transaction reporting system mainly based on the reality, and it responds to recommendations given by international organizations. First, the collection, analysis and reporting of large transactions and suspicious transactions by obligated institutions are the keys to preventing and curbing money laundering and other related activities. In this sense, performing those duties can help distinguish clues of economic crimes from the normal capital flows in advance more efficiently. Second, the report of the Fourth Mutual Assessment given by FATF shows that our ability of financial institutions to assess risks and conduct anti-money laundering prevention work such as reporting suspicious transactions are just “generally compliant”. Therefore, it is wise to accept relevant recommendations, improve the ability of anti-money laundering risk management, and continuously monitor and regularly update our transaction monitoring models.

It seems that the revised law should have set objective criteria on suspicious transactions, otherwise the subjects of duty can not recognize accurately, thus probably making mistakes or even causing crisis. However, this paper does not agree with such opinion. First, once the standards set in the law, not only can it fail to adapt to the changing reality, but offers possibilities for criminals to avoid punishment effectively. Second, the number of the provisions would be large, if the law solves every problem encountering in reality. Therefore, it is wise that the Anti-Money Laundering Law of PRC stands aside of it.

However, the new law still has some shortcomings on the transaction reporting system. First, it is a great challenge for relevant liable people to meet both the quality and quantity requirements when reporting large and suspicious transactions. Thus, adding mandatory due diligence exemptions and incentive clauses may be a good choice, as it can deduce the cost, and motivate the initiative of institutions and their personnel to better perform their duties. Second, there is no regulations on large cash transactions. In practice, criminals take advantage of the anonymous and untraceable nature of cash transactions, as well as the ease, to cut the chain of crimes and conceal the facts and process of the transaction, which induces greater risks of money laundering. Therefore, the lack of regulations on large cash transactions should be remedied in the future.

The above is a summary that primarily identifies the major breakthroughs in the newly revised Anti-Money Laundering Law of PRC by comparing it with previous statutory provisions. And after reviewing the descriptive content, we provide commentary on the significance of these legal revisions and their potential shortcomings in light of relevant regulations in other jurisdictions, and offers recommendations.

3. Conclusion

Overall, the revision of the Anti-Money Laundering Law of PRC is of great significance. These revisions further refine the anti-money laundering legal framework and coordination mechanisms, continuously improve the anti-money laundering regulatory and prevention systems, and provide institutional guidance for significantly enhancing the effectiveness of combating money laundering and related crimes, as well as deepening international cooperation in anti-money laundering efforts. The vitality of the law lies in its enforcement. Currently, anti-money laundering work faces new circumstances and challenges, like an increasingly complex domestic landscape of money laundering and predicate crimes, the prominent threat posed by foreign organized crime and associated money laundering activities, and sophisticated cross-border money laundering networks that transfer funds through illegal channels such as underground banks. In the future, China will further strengthen coordination in anti-money laundering efforts; focus on implementing the newly revised Anti-Money Laundering Law of PRC and related supporting regulations to enhance the quality and efficiency of the anti-money laundering prevention system; improve the beneficial owner information management system, with the goal of enhancing the comprehensiveness, timeliness, and accuracy of beneficial owner information, and continue to promote the standardized operation of the beneficial owner system to improve information quality. At the same time, China will expand the effectiveness of efforts to combat and govern money laundering crimes, focus on key areas with prominent risks, continuously monitor changes in the risks associated with the illegal transfer of funds through new technologies and business models, intensify investigations and crackdowns on associated money laundering activities, and continuously enhance the targeting and effectiveness of these efforts [13]. In the realm of international anti-money laundering cooperation, China will continue to deepen practical cooperation with relevant countries and regions, actively promote the reform and development of the global anti-money laundering governance system, enhance the effectiveness of law enforcement and judicial cooperation, and effectively curb and combat cross-border money laundering crimes.

Author Contributions

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Conflict of Interest

Both authors declare that there are no financial, commercial, institutional, or personal competing interests that could influence the design, analysis, interpretation of data, or writing of this manuscript.

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Both authors have reviewed and approved this conflict disclosure statement.

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