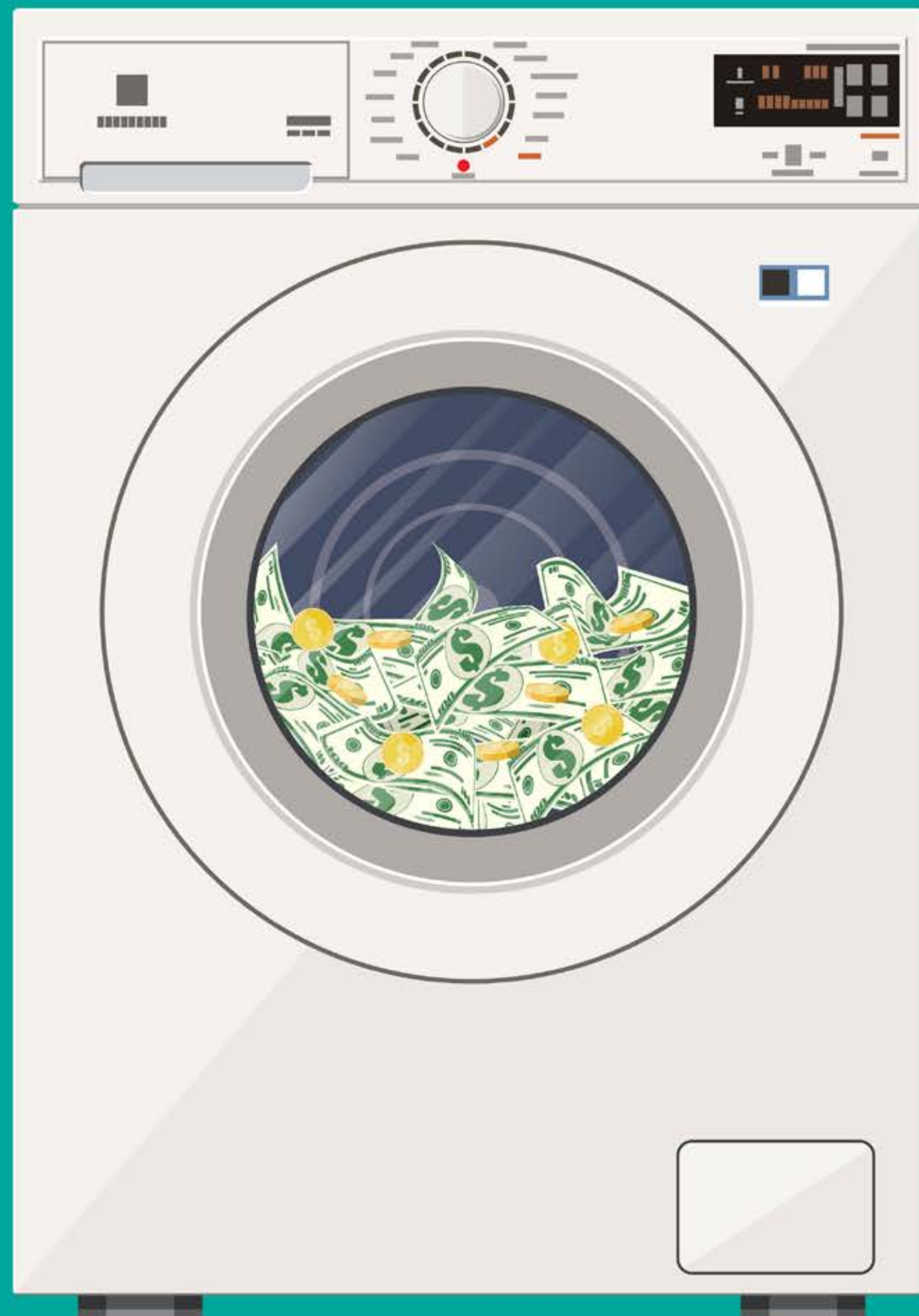


# Objection!

July 2020

**INVISIBLE DANGER IN COMMERCIAL LIFE:  
LAUNDERING OF ASSETS ACQUIRED FROM  
AN OFFENCE**

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## **INVISIBLE DANGER IN COMMERCIAL LIFE: LAUNDERING OF ASSETS ACQUIRED FROM AN OFFENCE**

Through the constant development of technology, the trading and investment transactions have become even simpler and it has become common to perform such transactions on internet. As the asset management getting more practical, it has become harder to monitor individuals' transactions performed through internet and various databases. In particular, tracking of the money transfer network both on an individual and general basis has become difficult due to the number and speed of transactions made.

Notably in the recent period, it has become increasingly difficult to detect the source of the money transferred with the mobile banking, bitcoin trading platforms, various investments websites and applications. High amounts acquired through undetected and suspicious manner also cause market fluctuation.

Within this context, the offence of laundering of assets acquired from an offence formerly named as “money laundering” is regulated with the Article 282 of Turkish Penal Code. While the legal value protected by this offence is essentially the provision and preservation of peace and tranquility in public, it has also important effects on economic and commercial life. In this context, the offence of laundering of assets acquired from an offence aims to prevent the financing of crimes, to fight against organized crime and illicit traffic of narcotics, to bring down of economic power of criminal organizations, to protect the economic balance, stability, integrity and reputation and to prevent the spread of bribery. Within this context, the offence in question has a vital importance in terms of both the values protected and the possible risks and damage to public.

### **What is the Concept of Asset Value?**

It should be understood from the concept of asset value that all of the rights and obligations of a person that can be measured by money. In this sense, asset value can be anything tangible or intangible having an economic value. Any document, paper or record that represents or expresses such values must also be accepted within this scope.



## **In Which Cases the Offence of Laundering of Assets Acquired from an Offence Come into Question?**

The offence in question is regulated under the Article 282 of Turkish Penal Code as “Where a person conducts any act in relation to an asset, which has been acquired as a result of an offence which carries a minimum penalty of one year imprisonment, in order to transfer such asset abroad or to give the impression that such asset has been legitimately acquired and conceal the illegitimate source of such, shall be subject to a penalty of imprisonment for a term of three to seven years and a judicial fine of up to twenty thousand days.”. In this sense, in order for this offence to occur, one of the optional acts which are to transfer the asset acquired from an offence abroad or to give the impression that such asset has been legitimately acquired or to conceal the illegitimate source of such must be carried out.

It is important to state that in order for this offence to occur, the asset must be earned from an illegitimate way. In other words, the predicate offence in which the asset is acquired, is the reason of the laundering offence. Likewise, the fact that the lower limit of the offence, which is the acquiring source of the assets, requiring an imprisonment of 6 months or more is crucial.

However, it is not necessary that the individual who committed this offence is also the person who committed the offence from which the asset was acquired. In order for this offence to occur, it is sufficient that the individual is aware that the asset is not legitimately acquired and tries to launder it by transferring it abroad, or giving the impression that such asset has been legitimately acquired or concealing the illegitimate source of such.

## **With Which Acts the Offence of Laundering of Assets Acquired from an Offence is Committed?**

In terms of the offence of laundering assets acquired from an offence, the acts especially such as investing the assets in capital market instruments, acquiring an insurance policy, inserting the assets in financial system, transferring assets abroad via financial system, transferring assets into multiple account to be merged again or to different bank accounts, depositing the assets in bank account on behalf of someone else and using assets as legal investment; raise suspicion and conviction that the asset in question is acquired legitimately.

In addition to that, with regards to this offence, not only the acts conducted through online platforms but also the acts such as constantly buying a great number of overpriced real estate or vehicle, buying expensive artworks suspiciously, dividing high amounts of money between multiple different receivers and then merging it, can also be mentioned amongst the various actions to commit this offence. However, nowadays individuals who benefit from the technological developments and the increasingly easy and convenient use of the internet, also with the effect of the spreading of bitcoin, mostly prefer online platforms for the transactions on their assets.

Especially with the bitcoin becoming wide-spread and the increase of the transactions carried out with bitcoin and the investments on bitcoin, bitcoin trading platforms have become popular and individuals conduct their important transactions through such platforms. At this point, the accounts that individuals opened at bitcoin trading platforms have a number composed with a lot of complex digits, thus even if the account number is determined, most of the times the account owner cannot be identified and his/her transactions cannot be tracked. Therefore, it could be inferred that bitcoin both increases the conduct of an offence of laundering of assets acquired from an offence and makes it difficult to be tracked of such conduct.

For instance, on April 2019, a Danish citizen attracted suspicion by selling bitcoin for a price more than 10 times of it's worth and it was revealed that he laundered the assets he acquired from an offence by trading bitcoin excess price and executing transactions on public auction platforms. Likewise, in January 2020 two young men from San Diego who were selling illegal substance on a platform and laundering the money they received with the transactions conducted via Bitcoin platforms, were judged upon the claim of 20-year imprisonment and 500 thousand dollars of criminal penalty. Lastly, in June 2020 the laundering operation carried out on a Romanian-based cryptocurrency exchange, ended with the capture of the network. In fact, the possibility to commit this offence with bitcoin not only affected individuals but also some companies. Such that, in January 2020 an England based company, have implemented a bitcoin trading add-on, but closed the platform after 3 months due to the difficulty of tracking and controlling the platform and the possibility of illegal transactions.

In the light of all the facts mentioned above, with the use of bitcoin and platforms suitable for the use of bitcoin are increasing in daily life as they become widespread, examples of this offence keep increasing, and thus monitoring of such platforms should be carried out closely and meticulously.

## **What is the Sanction of the Laundering of Assets Acquired from an Offence in Turkish Penal Code?**

According to the Turkish Penal Code, it has been stipulated that individuals who committed this offence shall be sanctioned with imprisonment of three to seven years and judicial fine of up to twenty thousand days. This crime does not depend on the complaint in terms of its nature, nor can a reconciliation procedure be applied. However, depending on the amount of sanction to be given, the institutions may find a place of application for deferment of the announcement of the verdict or the postponement of the sentence.



# Answers. Not theories.

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Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at [www.gokce.av.tr](http://www.gokce.av.tr) for further information on our legal staff and expertise.

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