MONEY LAUNDERING ACCOMPLICE LIABILITY FOR OMISSION-BASED FAILURES TO DISCHARGE AML DUTIES

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In recent years, anti-money laundering (AML) has emerged as a significant concern in China's financial regulation and criminal law. As financial supervision and criminal regulation have become closely intertwined in this field, 'Strengthening and improving China's AML regime through criminal law measures stands as a critical task confronting us.'[1] However, compared with the extensive scholarly and practical attention devoted to issues such as the protected legal interests of the crime of money laundering, the scope of predicate offenses, and the relationship among related offenses, the question of how criminal liability should be imposed for omission-based participation in money laundering remains underexamined.[2] In practice, major money laundering cases are often closely connected to omission-based failures by financial institutions and their employees, who bear AML obligations.[3] The *National Money Laundering and Terrorist Financing Risk Assessment (Executive Summary) (China, 2025)*, issued by the People's Bank of China, further notes that, compared with sectors assessed as low or medium-low in money laundering risk — such as law firms, notary offices, accounting firms, real estate developers and agencies, and corporate registration agents — China's financial sector faces relatively higher money laundering risks overall. Specifically, the banking sector and the non-bank payment sector are assessed as high, whereas the securities sector and the personal insurance sector are assessed as

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1 Wang Xin, *A Judicial-Practice Inquiry: Reassessing the Role of Criminal Punishment in Combating the Crime of Money Laundering*, 5 Criminal Science 47 (2008).

2 *See* Wang Gang, *The Protected Legal Interest and the Act of Execution in the Crime of Money Laundering*, 1 China Journal of Applied Jurisprudence 138 (2025).

3 *United States v. Aquino* is a paradigmatic example. The charging instrument alleges that *Wilfredo Aquino*, then an assistant store manager at TD Bank, repeatedly failed to discharge core operational AML duties at the point of transaction execution. In particular, he allegedly (i) omitted to identify the true 'conductor' of large cash transactions on required Currency Transaction Reports; (ii) accepted only electronic images of identification for absent nominal account holders rather than verifying the identity of the person actually conducting the transactions; and (iii) continued to process transactions and maintain account access notwithstanding internal warnings and account-closure decisions signaling elevated laundering risk. On the government's case, these omissions materially reduced transaction-level compliance barriers and thereby facilitated the laundering of funds through TD Bank accounts: *Aquino* alone processed the issuance of official bank checks totaling over USD 92 million, while the wider network allegedly moved approximately USD 474 million through TD Bank accounts. *Aquino* subsequently pleaded guilty to money-laundering conspiracy.

medium-high.[4]

On November 8, 2024, China promulgated the revised *Anti-Money Laundering Law*, which further refined the AML obligations of financial institutions and their employees while retaining a cross-referential criminal-liability clause. Article 62(1) provides that 'Where a violation of this Law constitutes a crime, criminal liability shall be pursued in accordance with law.' Meanwhile, the 2026 AML Work Conference emphasized that establishing a regularized mechanism for combating and addressing money laundering offenses, and further strengthening AML monitoring and analytical capacity, will remain a key priority for China's AML work both at present and in the period ahead.[5] Against this backdrop, the central question is no longer whether AML duties exist, but whether and how their non-performance should be incorporated into the doctrine of complicity. Therefore, this article examines the conditions under which financial institutions and their employees may incur criminal liability for money laundering when they facilitate laundering through omission-based failures to discharge AML duties.

I. FRAMING THE CORE ISSUES

Where financial institution employees act in 'bilateral coordination in intent' with money launderers in relation to a laundering scheme, and participate in money laundering by way of commission that contributes to the completion of the offense, it suffices to hold them criminally liable as perpetrators (including co-perpetrators) or as accessories to the crime of money laundering. This is because, at the level of objective illegality, the physical or psychological causal nexus between their conduct and the laundering result can be affirmed; and, at the level of subjective culpability, the perpetrator's intent or accessorial intent with respect to laundering can likewise be established without difficulty.

However, practice also presents scenarios in which 'upstream and downstream actors may be entirely unacquainted and lack any direct communication, yet their conduct — viewed holistically — remains normatively connected.'[6] A paradigmatic example concerns financial institution employees who, without 'bilateral coordination in intent' with the launderers, fail to discharge AML duties by way of omission and

4 *See* NATIONAL MONEY LAUNDERING AND TERRORIST FINANCING RISK ASSESSMENT (EXECUTIVE SUMMARY) (CHINA, 2025), at https://www.pbc.gov.cn/fanxiqianju/135153/135282/index.html (Last visited on January 28, 2026).

5 *See* THE PEOPLE'S BANK OF CHINA HOLDS THE 2026 ANTI-MONEY LAUNDERING WORK CONFERENCE, at https://www.pbc.gov.cn/goutongjiaoliu/113456/113469/2026012716575359930/index.html (Last visited on January 28, 2026).

6 Ren Suxian, *Revisiting Three Adjudicative Approaches After the Criminalization of Self-Money Laundering*, 1 China Journal of Applied Jurisprudence 109 (2025).

thereby facilitate laundering. How should such cases be assessed? Two doctrinal issues are central. The first concerns attribution at the level of objective illegality. Some commentators maintain that money laundering is, by nature, an offense of commission, such that AML obligors incur no criminal liability unless they actively engage in laundering acts.[7] Others argue, by contrast, that 'the crime of money laundering may, in principle, be committed by omission.'[8] Therefore, the immediate issue is whether the omission-based failures to discharge AML duties by financial institution employees can be attributed to the crime of money laundering. The second concerns the determination of subjective fault. Failures to discharge AML duties by financial institutions and their employees are often driven by profit- or efficiency-oriented incentives — for instance, capturing market share or retaining client resources — rather than by any manifest volitional commitment to laundering as such (such as 'desire' or 'active pursuit'). The more typical posture is one of 'taking chances' or 'not delving into the matter'.[9] Such attitudes are frequently regarded as closer to negligence, which appears to create a doctrinal obstacle to imposing liability for the crime of money laundering, an offense commonly treated as intent-based.[10]

Thus, the genuine doctrinal difficulty arises not in 'coordinated' cases, but in structurally 'uncoordinated' cases where the employee's conduct is omission-based.

Against this background, some scholars advance legislative proposals, such as creating a specific offense of failing to perform AML obligations or introducing the crime of negligent money laundering.[11] However, expanding the catalogue of offenses under the *Criminal Law* does not necessarily equate to more effective governance outcomes.[12] Moreover, 'the proposal

7 *See* Chen Mo & Yu Chong, *A Study of AML Obligations for DNFBPs in the Internet Era*, 4 Journal of Beijing College of Politics and Law 37 (2024).

8 Wang Gang, *supra* note 2.

9 *See* CASE 2 OF SIX MODEL CASES ON PUNISHING MONEY LAUNDERING OFFENSES JOINTLY RELEASED BY THE SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA AND THE PEOPLE'S BANK OF CHINA: THE MONEY LAUNDERING CASE OF LEI AND LI, at https://www.spp.gov.cn/spp/xwfbh/wsfbt/202103/t20210319_513155.shtml#2 (Last visited on January 28, 2026).

10 Although the *Amendment (XI) to the Criminal Law of China* removed the term 'knowing' from the statutory description of the crime of money laundering, this change does not alter the fact that the offense remains an intentional crime. *See* Liu Yanhong, *Interpretation and Application of the Crime of Money Laundering Following the Removal of the 'Knowing' Element*, 4 Contemporary Law Review 3-6 (2021).

11 *See* Yang Meng, *Criminal Risks and Regulatory Responses Relating to AML KYC Obligations of Online Financial Platforms*, 11 Law Science 116-117 (2019); Li Yunfei, *Systemic Disorder and Its Causes Under China's Broad Concept of the Crime of Money Laundering*, 8 Political Science and Law 41 (2014); JIN ZEGANG, STRATEGIES FOR COMBATING CORRUPTION, MONEY LAUNDERING, AND RELATED ANTI-MONEY LAUNDERING CHALLENGES, *in* COLLECTED ESSAYS ON CRIMINOLOGY, at 436 (Wang Mu ed., China Procuratorial Press, 2004).

12 *See* Liu Yanhong, *China Should Engage in Decriminalization in Legislation in the Governance of Minor Offenses: Reflections on the Promulgation of the Amendment XII to the Criminal Law*, 1 Journal of Comparative Law 35 (2024).

to introduce new crimes lacks specific demonstrations of the inadequacies in the regulatory functions of the constituent elements of the crime of money laundering in China, and struggles to resolve the contradiction between the lag of criminal legislation and the practical demands of AML governance.'[13] For these reasons, before turning to proposals *de lege ferenda*, it is analytically prior to testing whether the existing complicity doctrine can accommodate these cases in a principled way. From the standpoint adopted in this article that the complicity doctrine concerns a form of wrongdoing at the level of objective illegality and that 'unilateral complicity should be recognized',[14] an adequate criminal law response is available without resort to legislative expansion. Specifically, where financial institution employees, absent 'bilateral coordination in intent' with the launderers, fail to discharge AML duties by way of omission and thereby facilitate laundering, their conduct may be assessed within the framework of complicity in the crime of money laundering.

The following issues warrant further clarification. With respect to objective illegality, although *China's Anti-Money Laundering Law* imposes a range of AML obligations on financial institutions and their employees, failures to discharge administrative law duties do not automatically translate into criminal liability. Two questions follow: (i) Based on the widely accepted theory of causal-complicity, which omission-based failures by financial institutions and their employees, in the absence of 'bilateral coordination in intent' with the launderers, can satisfy the objective elements of complicity in the crime of money laundering? (ii) Given that 'the perpetrator/accessory distinction bears directly on offense attribution and, most immediately, on sentencing, thus requiring further clarification as a fundamental issue',[15] do those omission-based failures qualify as perpetration (including co-perpetration) or as aiding? With respect to subjective culpability, as the concept of intent has become increasingly normativized and functionalized,[16] can mental states such as 'taking chances' or 'not delving into the matter' in cases lacking 'bilateral coordination in intent' with money launderers nevertheless be evaluated as 'intent'?

13 Jing Lijia, *Types of Wrongness of 'Negligent Participation in Money Laundering' in the Context of Digital Currency*, 4 Wuhan University Journal (Philosophy & Social Science) 176 (2021).

14 Even if unilateral complicity should, as a matter of principle, not be recognized, an exceptional acceptance of unilateral complicity is nevertheless warranted — at least for the crime of money laundering. *See* Fu Yuming & Li Xiang, *Technical Architecture and Abductive Imputation: Criminal Governance of Blockchain-Enabled Money Laundering*, 4 Law and Modernization 65-66, 68-69 (2025).

15 Chen Wei, *Normative Identification of Joint Crime After the Criminalization of Self-Money Laundering*, 3 Law Review 47 (2024).

16 *See* XIA LANG, A STUDY OF 'KNOWING' IN CHINA'S CRIMINAL LAW, at 4-7 (Hubei People's Press, 2025).

II. ILLEGALITY: COMPLICITY FOR OMISSION-BASED FAILURES TO DISCHARGE AML DUTIES

A. Scope: Operational AML Omissions as a Basis for Complicity

The AML obligations of financial institutions and their employees may be broadly divided into (i) antecedent, abstract organizational compliance obligations relating to institutional design and internal AML systems (hereinafter referred to as organizational AML obligations), and (ii) operational AML duties arising in the course of concrete business operations (hereinafter referred to as operational AML duties). The former primarily includes the adoption and refinement of internal AML control rules, the establishment (or designation) of a competent AML compliance unit, the allocation of personnel commensurate with the institution's size and risk profile, and the provision of AML training. The latter chiefly consists of conducting customer due diligence (CDD), keeping customer identification and transaction records, and reporting large-value and suspicious transactions. This article argues that, in the absence of 'bilateral coordination in intent' with the launderers, omission-based complicity liability should not extend to failures to discharge organizational AML obligations, as otherwise the scope of criminal attribution would be improperly expanded.

First, whether liability is framed as perpetration (including co-perpetration) or as an accessory, it presupposes a causal nexus with the relevant laundering outcome.[17] Under the general principles of causation, only violations committed in the course of concrete business operations can potentially stand in the requisite causal relation to the ultimate money laundering result. In other words, a financial institution may be deficient in institutional design, yet it may still conduct careful scrutiny when processing client transactions … Even if the consequences specified herein occur (i.e., the proceeds of crime and their benefits being concealed or disguised, or the occurrence of terrorist financing consequences) — they cannot be attributed to the institution's failure to discharge its organizational AML obligations.'[18] This is reflected in article 55 of *China's Anti-Money Laundering Law*. This provision ties the aggravated consequences — 'the proceeds of crime and their benefits being concealed or disguised, or the occurrence of terrorist financing consequences'

17 *See* ZHANG MINGKAI, CRIMINAL LAW, at 570-571 (Law Press・China, 2026).

18 INTERPRETATION AND APPLICATION OF THE ANTI-MONEY LAUNDERING LAW OF THE PEOPLE'S REPUBLIC OF CHINA, at 163 (Wang Xin ed., China Legal Publishing House, 2025).

— to failures to discharge operational AML duties prescribed in articles 53 and 54 of *China's Anti-Money Laundering Law*, rather than to failures to discharge organizational AML obligations prescribed in article 52.

Second, even if one posits that failures to discharge organizational AML obligations may, in a broad sense, facilitate laundering,[19] not every causally relevant condition warrants treatment as complicity. On the one hand, such failures to discharge organizational AML obligations exert, at most, a remote causal contribution. They do no more than increase the likelihood that operational AML duties will later be omitted — that is, they facilitate omissions at the operational level. If, as argued below, omission-based failures to discharge operational AML duties should be properly characterized as aiding, then omission-based failures to discharge organizational AML obligations amount to 'aiding the aider' rather than 'aiding the perpetrator (including co-perpetrator)'. In light of the principle of restraint (minimal criminal intervention),[20] extending criminal liability to such second-order assistance is unwarranted. On the other hand, criminalization is generally reserved for serious antecedent illegality, consistent with the subsidiary role of criminal law as a last resort.[21] Compared with failures to discharge operational AML duties, failures to discharge organizational AML obligations typically involve relatively mild administrative illegality. Indeed, it has been noted that cases in which an institution fails to establish and implement internal AML controls — despite resulting in serious consequences — are not sanctioned under article 55, the most severe administrative penalty provision of *China's Anti-Money Laundering Law*.[22] If so, such conduct is, *a fortiori*, ill-suited to ground criminal liability.

Accordingly, where there is no 'bilateral coordination in intent' with the launderers, omission-based complicity in money laundering at the level of objective illegality should, in principle, be confined to failures to discharge operational AML duties, such as failing to conduct CDD, failing to report large-value or suspicious transactions, or failing to adopt enhanced AML measures in relation to specific clients or transactions.[23]

19 *See* Wu Wenyong, *Money Laundering Offenses in the Context of Monetary Digitalization and the Reconstruction of Criminal Law*, 3 Criminal Science 121 (2020).

20 *See* Liu Yanhong, *The Integration and Development of Humanistic Civil Law and Object-Oriented Criminal Law*, 4 Social Sciences in China 134-137 (2020).

21 *See* Shi Yanan & Wang Yijue, *Criminal Control on Using Bitcoin for Money Laundering*, 2 Journal of National Prosecutors College 53 (2019).

22 *Supra* note 18, 162.

23 As for cases in which a financial institution's failure to discharge antecedent, abstract organizational compliance obligations relating to institutional design and internal AML systems makes it difficult — or even impossible — for employees to discharge operational AML duties arising in the course of concrete business operations, the question whether those employees who failed to discharge operational AML duties should be subjected to criminal imputation turns on issues of 'feasibility of action' or 'expectability' of compliance.

B. Mode: Operational AML Omissions as a Form of Aiding

Having established that omission-based complicity (absent 'bilateral coordination in intent' with the launderers) should, as a rule, be confined to operational AML omissions, the next question concerns the proper characterization of such omissions: do they amount to perpetration (including co-perpetration), or merely accessory liability?

1. Against Characterizing Operational AML Omissions as Perpetration. — Some scholars attempt to characterize such omissions as perpetration. A first line of argument relies on article 191(1)(v) of *China's Criminal Law*, invoking the residual clause — 'covering up or concealing by any other means the nature or source of the illegally obtained proceeds and the gains derived therefrom' — to subsume omission-based failures to discharge AML duties under 'any other means'.[24] From this perspective, because 'any other means' constitutes a statutory mode of conduct under the crime of money laundering, omission-based failures to discharge AML duties falling within it would *ipso facto* count as perpetration.

This argument is difficult to sustain. Residual 'any other means' clauses are ordinarily confined by an *ejusdem generis* constraint.[25] Whether the enumerated modes' essential features in article 191(1)(i)-(iv) of *China's Criminal Law* are understood as 'actively engaging in laundering acts and thereby causing a chemical reaction to the proceeds and benefits of upstream crimes',[26] or 'enabling the proceeds or gains of specific upstream crimes to enter the financial system or circulate through it',[27] the core point against characterizing operational AML omissions as perpetration is the same: omission-based failures to discharge AML duties do not share those essential features. Specifically, such omissions do not fall within the category of 'actively engaging in laundering' but instead amount to 'passively failing to discharge operational AML duties by way of omission'. They do not directly enable the proceeds or gains of specific upstream crimes to enter or circulate through the financial system. At most, they reduce the practical barriers to channeling criminal proceeds into or through the financial system. Moreover, the paradigmatic scenarios recognized in judicial interpretations under the

24 *See* Dong Lipei & Yao Li, *The Determination of Complicity in Internet-Based Money Laundering Involving Internet Financial Institutions*, 5 The Chinese Procurators 36 (2021); Pi Yong & Zhang Qifei, *Legislative Problems and Improvement of China's Money Laundering Legislation in the Internet Context*, 2 Qinghai Social Sciences 134-135 (2016).

25 *See* Zhang Mingkai, *The Protected Legal Interest(s) of the Crime of Money Laundering*, 5 Law Science 77 (2022).

26 *See* Wang Xin, *Legislative Developments and Spillover Effects of the Amendment (XI) to China's Criminal Law on the Crime of Money Laundering*, 2 Criminal Science 60 (2021).

27 Wang Gang, *Systematic Jurisprudential Analysis of Money Laundering Offenses*, 2 Journal of Comparative Law 107 (2025).

'any other means' clause overwhelmingly involve acts of commission rather than acts of omission. For these reasons, subsuming omission-based failures to discharge AML duties under 'any other means' sits uneasily with the *ejusdem generis* constraint.

A second line of argument focuses on article 191(1)(i)-(iv) of *China's Criminal Law*, seeking to treat omissions as 'mirror images' of the enumerated modes. The underlying claims are functional equivalences: 'Is it possible for money launderers to provide bank accounts by omission? ... Such a possibility cannot be ruled out ... If relevant financial institutions and their employees fail to fulfill their AML obligations as required — such as failing to re-verify the identity of abnormal-account holders or parties to suspicious transactions, or failing to restrict or suspend related businesses — they may constitute the crime of money laundering by providing bank accounts.'[28] 'When financial institution employees ... are aware that the client's identity is unknown but still provide services such as deposit or settlement ... and thereby cause money laundering conduct to occur, the employees shall be identified as having committed the crime of money laundering by omission.'[29]

This argument is also difficult to sustain. First, a straightforward reading of article 191 of *China's Criminal Law*, together with the relevant judicial interpretations, suggests that the legislature did not design the offense to cover omissions as modes of commission.[30] Second, even if we acknowledge that 'an expression formally regarded as commission may, through interpretation, fully encompass omission ... This is merely an issue of interpreting the constitutive elements',[31] the particular examples invoked above are inherently acts of commission rather than omission. For example, 'failure to restrict or suspend businesses' in practice entails the continued provision of services or the continued processing of transactions; attribution should be grounded in that positive conduct by commission, rather than achieved by redescribing it as an omission. Likewise, 'providing deposits or settlements to clients with unknown identities' violates the prohibitive

28 Yang Fangquan, *Misapplications and Corrections in Applying 'Providing Fund Accounts' in Money Laundering Offenses*, 5 Law-Based Society 112 (2023).

29 Cong Hua, *Preliminary Discussion on Improving China's Criminal Anti-Money Laundering Legislation*, 6 Journal of People's Public Security University of China (Social Sciences Edition) 111 (2012).

30 A comparable situation can be observed in Germany. When amending section 261 of the *German Criminal Code*, the legislature did not take omissions into account but focused instead on 'actively suppressing investigative measures'. Accordingly, the 'concealment' element in section 261 of the *German Criminal Code* is generally understood as capable of being realized only through commission, rather than by omission. Vgl. Altenhain, in: NK-StGB, 6. Aufl. 2023, § 261 Rn. 86; Hecker, in: TK-StGB, 31. Aufl. 2025, § 261 Rn. 23.

31 ZHANG MINGKAI, *supra* note 17, 222.

norm and is inherently a matter of commission, not omission.[32] In short, the putative 'mirror-image' cases are already captured as commission.

A third, more substantive line of argument emphasizes the substantial harmfulness of omission-based failures to discharge AML duties. For example, some scholars have argued: 'When financial institution employees ... are aware during their work that the transaction is suspected of money laundering but fail to report it to the relevant authorities, allowing the transaction to be completed smoothly — thereby enabling criminals to achieve the purpose of concealing or disguising the nature and source of criminal proceeds — such omission also leads to the serious consequence of criminal proceeds being laundered and thus bears considerable social harmfulness. Therefore, we may draw on foreign legislative practices to expand the objective elements of the crime of money laundering, stipulating that omission — i.e., intentionally failing to report transactions suspected of money laundering, which results in the laundering of criminal proceeds — shall also constitute the crime of money laundering.'[33] Although this proposal is framed as a *de lege ferenda* amendment, it implicitly presupposes a *de lege lata* claim: omissions of this kind are comparable in wrongfulness to the enumerated laundering modalities. If that is correct, such omissions should be capable of amounting to perpetration (including co-perpetration).

This inference is unconvincing for two reasons. First, even if both active laundering and omission-based failures to discharge AML duties are said to 'cause' the laundering result, 'causation' admits of degrees: conduct may be merely facilitative, condition-setting, or causally adequate in the stricter sense.[34] The strength of the causal contribution matters for the allocation of objective illegality, as *Chen Wei* cautions: 'not every act that contributes to the realization of the money laundering purpose should be treated as perpetration.'[35] Second, even if omission-based failures to discharge AML duties are regarded as socially harmful, 'the legality principle precludes treating every socially harmful act as the *actus reus* of money laundering.'[36] In characterizing conduct as an execution act, the justificatory work done by the legal interest must be kept within limits: only conduct that falls within the crime's legally specified modalities may be treated as principal laundering, and it does not follow that every act capable of endangering the protected

32 *Supra* note 18, 89.

33 JIN ZEGANG, *supra* note 11, 437-438.

34 *See* Liu Yanhong, *The Cross-Section of the Criminal Causality Theory and the Establishment of Doctrine of Real Danger*, 8 Political Science and Law 64-82 (2024).

35 Chen Wei, *supra* note 15, 52.

36 *See* Liu Yanhong, *Advocating a Negative Conception of Criminal Law in Internet-Era Social Governance*, 2 Tsinghua Law Journal 177 (2022).

legal interest is, for that reason alone, a principal conduct of the crime of money laundering.[37] Hence, even if omission is harmful, the decisive issue remains its doctrinal location within the structure of participation.

2. In Favor of Characterizing Operational AML Omissions as Aiding. — The doctrinal criteria for distinguishing perpetrators (including co-perpetrators) from accessories in cases of participation by omission remain far from uniform. Among the competing approaches, however, the doctrine of significant contribution has two comparative advantages: it provides a single framework for distinguishing perpetrator (including co-perpetrator) from accessory in both commission- and omission-based participation, and it corresponds reasonably well to the functional distinction in China's criminal law between 'principal offender' and 'accomplice'.[38] For these reasons, this article adopts a significant-contribution test. According to this doctrine, whether an omission amounts to perpetration or merely accessory liability depends on the role the omitted duty would have played in preventing the result: if discharging the duty would have prevented the laundering result with near certainty — or at least with a very high probability — the omission is properly treated as perpetration; if discharging the duty would merely have made laundering more difficult, the omission gives rise, at most, to accessory liability.[39] In applying this test to omission-based failures by financial institution employees to discharge operational AML duties in the absence of 'bilateral coordination in intent' with the launderers, the analysis should begin with the function that *China's Anti-Money Laundering Law* assigns to the relevant duties, and then ask whether non-performance plausibly exerts determinative control over the laundering outcome or instead operates only as facilitation.

Consider the duty to report suspicious and large-value transactions. Modern financial systems are designed to enable rapid and frictionless transfers; participants in ordinary transactions do not, as a rule, verify the lawful provenance of assets. As a result, criminal proceeds that enter or move through the financial system readily acquire an appearance of legitimacy, while their true source and nature remain opaque.[40] The obligation to report suspicious and large-value transactions serves four functions in AML enforcement: (i) macro-level transaction analysis helps identify sectors,

37 *See* Zhu Qiwei, *The Attribution Dilemma and Judgment Logic for Identifying Causation in Economic Crimes*, 4 Journal of Shenzhen University (Humanities & Social Sciences) 114 (2025).

38 *See* Yao Shi, *Distinguishing Perpetrator from Accomplice in Inaction-Joint Offense: Judicial Practice and Theoretical Model*, 4 The Jurist 114 (2020); Wen Dengping, *The Nature of Participating in Other's Law Interest Infringement*, 4 The Jurist 138-139 (2016).

39 *See* ZHANG MINGKAI, *supra* note 17, 678.

40 *See* Wang Gang, *supra* note 27, 108-109.

regions, and transaction types that warrant AML attention; (ii) cross-analysis of filed reports against underlying transaction data assists in assessing whether a transaction is criminally suspect; (iii) analysis of reported transactions helps generate actionable leads on fund flows for AML inquiries and prosecutions; and (iv) cross-checking transaction patterns helps uncover trails that are indicative of predicate criminal activity.[41] It follows that the reporting duty is not designed to 'disprove' legality in the ordinary course. Rather, it serves primarily to trigger scrutiny and render asset legitimacy contestable. Its contribution is therefore to 'raise the costs and difficulties of laundering'[42] and to increase the likelihood of detection, not to prevent laundering with near certainty.

The same is true of failures to conduct CDD. Operationally, deficient CDD typically functions as a condition that makes it easier for launderers to carry out their own execution acts, such as opening accounts and moving funds, rather than as conduct that directly determines whether laundering will succeed.[43]

Accordingly, in the absence of 'bilateral coordination in intent' with the launderers, omissions in discharging operational AML duties rarely exercise determinative control over the causal course of laundering. Their typical contribution lies in lowering barriers, expanding opportunities, and smoothing the process of principal laundering acts. Therefore, they are more plausibly characterized, if at all, as aiding rather than perpetration.[44]

III. CULPABILITY: SUBJECTIVE FAULT IN OMISSION-BASED AIDING

Having confined accomplice liability at the level of objective illegality to omission-based failures to discharge operational AML duties and having further established that such omissions are accessorial in character (amounting to aiding), the remaining question at the level of subjective fault is whether

41 *See* INTERPRETATION AND PRACTICE GUIDE TO THE ANTI-MONEY LAUNDERING LAW OF THE PEOPLE'S REPUBLIC OF CHINA, at 176 (Xu Yongan ed., China Legal Publishing House, 2025).

42 Liu Yuanshan, *On Issues Concerning the Information Disclosure Regime of Financial Institutions in Anti-Money Laundering Offenses*, 5 Journal of Hainan Tropical Ocean University 25 (2002).

43 *See* Li Yunfei, *supra* note 11.

44 Even under the 'duty-differentiation approach' to complicity by omission, the same conclusion follows. On this view, duties to act are functionally divided into duties to protect legal interests and duties to supervise sources of danger: breach of the former is treated as perpetration, whereas breach of the latter is treated as accessory liability. *See* TAKASHI MATSUMITA, LECTURES ON THE GENERAL PART OF CRIMINAL LAW, at 206 (Qian Yeliu trans., Renmin University of China Press, 2013). The AML duties borne by financial institutions and their employees may be regarded as closer to duties to supervise sources of danger. ULRICH SIEBER, CRIMINAL LIABILITY OF NETWORK SERVICE PROVIDERS: CORE ISSUES IN THE GENERAL PART OF CRIMINAL LAW, *in* CRIMINAL LAW REVIEW, at 330-340 (Wang Huawei trans., Law Press・China, 2017); Li Yu, *The Desirable Shift in Standards for Attributing Liability in Online Joint Crime in the Web3.0 Era: Centered on the Identification of Perpetration*, 6 Law-Based Society 91 (2024).

such employees possessed the requisite intent to facilitate money laundering. Put differently, even where the objective elements of aiding by omission are satisfied (as shown above), criminal liability as an aider still requires the intent to facilitate money laundering. Therefore, the remaining culpability question is whether the employees intended their omission to have that assisting effect.

In practice, financial institution employees who fail to discharge operational AML duties, in the absence of 'bilateral coordination in intent' with the principal launderer, frequently argue in their defense that they lacked 'knowledge' or 'intent'.[45] Two paradigmatic scenarios call for separate analysis: (i) willful blindness coupled with omission. Under *China's Anti-Money Laundering Law*, financial institutions and their employees must conduct CDD, including verifying customer identity, understanding the purpose of the transaction, and examining the source and use of funds. If financial institution employees, by adopting a profit-first mindset — 'prioritizing profit over verifying the provenance of assets and disregarding whether clients are engaged in money laundering'[46] — remain ignorant as to whether a transaction involves money laundering or suspected money laundering, and thereby facilitate the materialization of a laundering outcome, can their omission be evaluated as intentional aiding? (ii) Risk awareness coupled with omission. If employees are aware that a transaction involves money laundering or is highly likely to do so, but nevertheless fail to discharge operational AML duties (e.g., by failing to file a suspicious transaction report or a large-value transaction report), and thereby facilitate the materialization of a laundering outcome, can this omission be evaluated as intentional aiding?

A. Cases Involving Unawareness of Money-Laundering Risks

Where financial institution employees, with willful blindness, fail to discharge relevant CDD duties and thereby facilitate the materialization of a laundering outcome, such cases are often said to pose a criminal law 'regulatory gap' on the ground that the cognitive element of intent to aid money laundering is missing.[47] That conclusion, however, rests on a factual and ontic reading of intent, that is, a psychological reading; from a normative

45 *See* Criminal Judgment No. 504 of the People's Court of Rui'an City, Zhejiang Province (2024).

46 Wang Suyu, Qi Lin & Liu Kun, *On Legal Application Issues in the Crime of Money Laundering*, 11 Financial Theory & Practice 81 (2019).

47 *See* Liu Xiaomin, *Evidentiary Difficulties and Expansive Approaches in Proving the Object-Related Cognitive Element of the Crime of Money Laundering*, 1 Criminal Science 127 (2025).

standpoint, the supposed gap may well dissolve. At the outset, the analysis must clarify what 'intent' means in a normativized culpability framework.

The *Anti-Money Laundering Law* requires financial institutions and their employees to conduct CDD precisely because financial activity is inherently permeated by latent laundering risks — 'such risks are well-known to financial institutions and their employees.'[48] Accordingly, under a normative account, this background understanding operates as a form of factual-concomitant awareness[49]: even absent CDD, the employee is not in a state of complete ignorance, but at least possesses an awareness that money laundering is 'not impossible'. More fundamentally, even if one maintains that the employee genuinely lacks the requisite cognitive element, the normative premise should take into account that 'intention — so far as culpability is concerned — is a construct whose decisive focus lies in the volitional element.' Hence, an excessive preoccupation with cognitive 'absence' risks mislocating the locus of blame when assessing intentional culpability.

1. Intent Despite Cognitive Insufficiency. — First, as some scholars put it, the blameworthiness of intent lies in the actor's subjectively 'disvalued will' to realize the act. Cognition as such cannot, and should not, be the object of censure; otherwise, the broader one's knowledge, the heavier one's potential punishment would become, turning knowledge itself into a kind of 'original sin'. Yet, a person is not blamed simply for knowing,[50] because 'cognition is neither good nor evil'[51] in itself: it is merely a subjective reflection of objective circumstances. Standing alone, it does not disclose an attitudinal choice, nor does it reveal the actor's evaluative stance toward the act and its consequences. The decisive question for imposing intentional culpability is not simply what the actor cognized or failed to cognize, but rather what the presence or absence of cognition signifies, and what volitional attitude underlies that epistemic posture. Where that volitional attitude is comprehensively repudiated by the legal order, a finding of intent is appropriate; where it is subject only to limited intervention, a finding of negligence is appropriate; where it is permitted, the case is best treated as accident or force majeure not calling for subjective imputation of culpability. This also explains why the law treats the following situations differently: (i) recognizing a low probability of the result yet hoping for or pursuing it, and (ii) recognizing the same low probability yet opposing the result: the

48 Shi Yanan, *Regulation and Criminal Punishment of Internet Financial Behavior*, 4 Journal of Xiamen University (Arts & Social Sciences) 105 (2020).

49 Vgl. Kühl, Strafrecht Allgemeiner Teil, 8. Aufl. 2017, § 5 Rn. 100.

50 *See* Li Lanying, *What Is 'Volition'? A New Interpretation of Desire and Indulgence in the Concept of Intent*, 5 Science of Law (Journal of Northwest University of Political Science and Law) 53 (2005).

51 Chen Xingliang, *Intent in Criminal Law and Its Construction*, 6 Research on Rule of Law 12 (2010).

cognitive element may be similar, but the volitional attitude differs. *Hall* thus characterizes recklessness as a defect of attitude — 'hostility to law' or 'blindness to law' — and accordingly regards it as normatively comparable to intent in the relevant respects.[52] In this sense, the volitional element marks a fundamental fault-line between forms of culpability. On this view, the 'intent to assist money laundering' is best understood as the employee's volitional attitude — either hope or acceptance — toward the fact that omission-based failures to discharge AML duties assist a specific client in concealing or disguising the source and nature of funds and thereby facilitate the completion of money laundering (i.e., the materialization of the laundering result).

Second, if the core of censure in intentional culpability is anchored primarily in the volitional element rather than the cognitive element, a further question arises: what, exactly, is 'will'? This article adopts a normative account. 'Will' is not a psychological fact to be discovered (a 'psychological-factual will'), but a construct shaped by normative purposes — an evaluative attribution by a rational community within the actor's domain of responsibility.[53] Three considerations support this view. (i) Determinations of 'psychological-factual will' are often contestable, in part because there may be no such determinate inner item available for inquiry.[54] (ii) Even assuming such an inner item exists, current technology cannot directly identify or determine the contents of a person's mind;[55] ascertainment would therefore depend on a full and truthful account by the actor, which clearly lacks 'expectability' — not to mention that sometimes the actor cannot reliably reconstruct their own mental state at the time.[56] (iii) Even if such inner states were accessible, criminal law attribution should not stop at factual description, because 'will', as a normative construct serving imputation, must be capable of bearing the evaluative weight of blame. As *Jakobs* cautions, to conceive intent purely naturalistically, without

52 Vgl. Hall, Über die Leichtfertigkeit, Ein Vorschlag de lege ferenda, FS Edmund Mezger, 1954, S. 232 & 248.

53 *See* Carl Friedrich Stuckenberg, *Intent, Awareness of Wrongdoing, and Doctrine of Mistake*, 14 Journal of Science and Technology Law 154 (2019).

54 Vgl. Puppe, Der dolus eventualis und sein Beweis, ZIS (2019), S. 411.

55 Although most cognitive scientists — especially cognitive neuroscientists — adhere to some form of physicalist reductionism or an eliminativist ontology and thus strive to identify the putative 'neural correlates of consciousness' (NCCs), correlation is not the same as causation. Even if scientific techniques show that conscious experience reliably co-occurs with activity in certain brain regions, this alone does not warrant identifying the two, since consciousness and other aspects of the subjective domain exhibit many properties that are markedly different from those of the objective physical world. For this reason, the 'irreducibility' of the mind has become a central category in philosophers' critiques of cognitive-scientific approaches, crystallizing in what are known in philosophy as the 'hard problem' and the 'explanatory gap'. The former refers to the difficulty of accounting for consciousness using the methods of the natural sciences; the latter points to a qualitative divide between conscious states and physical brain states, such that physical phenomena cannot adequately explain conscious states — above all, the distinctive subjectivity of experience and its 'qualia'. *See* XIA LANG, *supra* note 16, 51-52.

56 *See* CLARKSON C. & KEATING H., CRIMINAL LAW: TEXT AND MATERIALS, at 116 (Sweet & Maxwell, 2007).

teleological or normative orientation, is to degrade the self-understanding of legal norms.[57] Precisely for this reason, as teleological accounts of culpability have gained traction, it has become increasingly acceptable to recharacterize conduct that is factually intended to cause serious injury as negligence, where substantive blameworthiness so requires.[58] By the same token, it is not entirely impossible to normatively evaluate conduct that is factually negligent (in aiding) money laundering as intentional (in aiding) money laundering.

Third, once it is accepted that intentional culpability is anchored in 'will' and that 'will' is an evaluative conclusion rather than a fact to be found,[59] a certain degree of cognitive 'insufficiency' does not necessarily preclude intent. Because the legal order should not impute intent to those who harbor no hostile or indifferent attitude toward legal interests or norms; but the presence of such an attitude does not depend exclusively on the actor's actually possessing full cognition. For example, in the context of criminal regulation of money laundering, to alleviate the prosecution's evidentiary burden, the U.S. Courts of Appeals for the First through Eighth Circuits have, in various formulations, adopted the following judicial practice: as long as the prosecution can prove that the defendant 'consciously avoided obtaining knowledge' of a specific illegal activity, the defendant shall be deemed to have 'knowledge'.[60] From this article's perspective, the underlying rationale of such practice/doctrine is precisely that the volitional attitude manifested by deliberate ignorance may be normatively equivalent, in relevant respects, to the attitude manifested by acting with actual knowledge; hence ignorance in such cases is blamed similarly to actual knowledge.[61]

In short, whether intent is established turns not on whether cognition is 'sufficient' in the abstract, but on whether the actor's falling into — or maintaining — a state of cognitive insufficiency is itself properly censured as expressing a legally repudiated attitude of will.

2. Deliberate Ignorance as a Basis for Intentional Aiding. — Since 'insufficiency' in the cognitive element does not necessarily preclude intent, it is more precise to ground the imputation of intent not on the claim that 'in the course of account-opening, financial institution employees, who fail to exercise reasonable care to verify the applicant's identity and the

57 Vgl. Jakobs, Das Schuldprinzip, 1993, S. 20.

58 *See* Chen Xuan, *The Principle of Culpability, Preventive Policy, and Cognition of Unlawfulness*, 5 Tsinghua Law Journal 98 (2018).

59 *See* Chen Eryan, *The Normative Turn in Determining Intent and Its Limits*, 2 Peking University Law Journal 497 (2025).

60 *See* Emily Wood, *Money Laundering*, 58 American Criminal Law Review 1231 (2021).

61 *Farinacius* adopts a similar view. He argues that even if one maintains that the will cannot extend to what has not been cognized, it may nevertheless extend to ignorance itself. Such ignorance may be described as 'error affectatus' — that is, a 'feigned' or 'affected' mistake — and therefore lacks the significance required to preclude intent. Carl Friedrich Stuckenberg, *supra* note 53, 148.

purpose of the account opening, shall be presumed to have the knowledge required for money laundering',[62] but on the view that 'such informational inertia — a deliberate posture of not asking and not checking — can itself be sufficient to manifest at least the attitude of indulgence.' In other words, 'by their very inaction, they have already expressed the attitude that the result ought to occur.'[63] Conversely, where financial institution employees have diligently and conscientiously discharged their CDD duties yet still failed to detect money-laundering risks associated with the relevant customer or transaction, they should not be held criminally liable even if the laundering result ultimately materializes. From the standpoint of subjective fault, such employees lack even the volitional attitude of 'allowing' money laundering.[64] In this sense, 'the proper performance of monitoring and reporting duties functions, in substance, as compelling evidence negating participation in money laundering.'[65]

B. Cases Involving Awareness of Money-Laundering Risks

Beyond the scenario of deliberate ignorance, practice also presents cases in which financial institution employees — without any 'bilateral coordination in intent' with the launderer — are aware that the customer and relevant transactions are suspected of involving money laundering, yet nonetheless fail to discharge operational AML duties (e.g., failing to file suspicious transaction reports or large-value transaction reports), thereby facilitating the materialization of a laundering outcome. On this issue, one view maintains that the employee's form of subjective fault should be characterized as negligence;[66] if so, then even where omission-based aiding is established at the level of objective illegality, liability for money laundering — an intentional crime — cannot follow. The opposing view, by contrast, holds that, in principle, intent (to aid money laundering) may be found so long as the employee fails to discharge the relevant reporting duties or otherwise breaches the duty of care commensurate with their professional

62 Zhang Xiaoning & Song Lixiao, *The Difficulty in Identifying the Subjective Elements of Money Laundering Crime and Its Solution*, 3 Qilu Journal 98 (2023).

63 Jing Lijia, *Reshaping Types of Physical Illegality of the Cyber-Related Omission as Criminal Participation*, 11 Political Science and Law 48 (2020).

64 Article 56(3) of *China's Anti-Money Laundering Law* provides that 'No penalty shall be imposed on a director, supervisor, senior manager, or other directly responsible person of a financial institution who can prove that he or she has acted with due diligence and taken anti-money laundering measures'.

65 Zhou Jinyi, *Function Analysis of Money Laundering Criminalization from the Perspective of Anti-Money Laundering*, 5 Journal of Nanchang University (Humanities and Social Sciences) 62 (2022).

66 *See* JIN ZEGANG, *supra* note 11, 437.

competence.[67]

In reality, however, the money-laundering risks associated with different customers and transactions vary widely. It is therefore overly crude to treat all omission-based failures to discharge operational AML duties, once laundering risk is recognized, as either intentional aiding or negligent aiding. This article argues that the classification should instead turn on the degree of certainty in the employee's risk cognition. The reason is that 'will', as the object of normative evaluation, may be inferred from cognitive elements: the more certain the cognition, the stronger — given a decision to omit — the inference that the actor accepts the outcome, and the more salient the attributes of intent become.[68] Accordingly, with further focus on the determination of the subjective fault of financial institution employees who commit AML omissions, the evaluative logic may be stated, in broad terms, as follows: the higher the risk tier of the customer or transaction, the heavier the duty of care, and the more readily the omission may be normatively evaluated as intentional aiding.

1. Virtual-Certainty Awareness May Constitute Direct Intentional Aiding. — It is a near-consensus in the literature that 'where an actor foresees a result as virtually certain yet proceeds, the conduct is highly blameworthy and its classification as direct intent is therefore warranted.'[69] Yet it bears emphasis that this standard formulation typically does not expressly invoke a desiderative volitional element — 'not because volition is trivial or dispensable, but because, in this setting, the volitional stance is effectively self-evident: it cannot plausibly be an attitude of opposition to the result, and thus requires no separate finding.'[70] On that footing, where financial institution employees — absent 'bilateral coordination in intent' with the launderer — know that the relevant transactions are necessarily money-laundering activities and nevertheless resolve to omit the corresponding operational AML duties, their omission may properly be evaluated as omission-based aiding with direct intent.

2. High-Risk Awareness May Constitute Indirect Intentional Aiding. — In contrast to the near-consensus that 'cognition of virtual certainty plus a resolve to act' warrants a normative evaluation as direct intent, the attribution of indirect intent — typically captured by 'indulgence' — is more contestable and therefore requires a more explicit justificatory route.

67 *See* Li Chun, *Controversies over the Application of Money-Laundering Law in Corruption-Related Cases and Proposed Solutions*, 4 Journal of Zhejiang Police College 72 (2018).

68 Vgl. Gerson, Neuaufstellung der Vorsatzdogmatik — 'Vertrauen' statt 'Wollen', ZSTW 137 (2025), S. 287.

69 ZHANG MINGKAI, *supra* note 17, 400.

70 Xia Lang, *On the Strict Intent Theory and Criminal Policy: From Opposition to Unity — Taking the Will of Illegality as the Approach*, 11 Political Science and Law 120 (2023).

Even setting aside whether competing glosses such as ‘acquiescence’, ‘indifference’, ‘nonchalance’, or ‘reckless disregard’ can faithfully convey the substantive content of ‘indulgence’ in article 14 of *China’s Criminal Law*, these formulations, from the standpoint of ‘ease of determination’ alone, are not necessarily superior to ‘indulgence’.

Against this backdrop, to prevent ‘indulgence’ from degenerating into an abstract and empty label,[71] this article proposes that ‘indulgence’ may be normatively grounded in — and evidenced by — cognition of high risk. This proposal rests on the normative orientation of criminal law, which treats the actor as a rational and autonomous agent capable of exercising agency and participating in the communicative practice through which legal norms are sustained. Accordingly, the question of intent is not to be settled by the actor’s psychological feelings, but by whether the actor formed a resolve that stands in conflict with the demands of legal norms. At the same time, as risk awareness increases, so does the actor’s capacity to influence the causal course; failing to use that capacity to prevent the legally disvalued result correspondingly heightens culpability.[72] Once cognition of risks reaches a level at which the actor may normatively be regarded as having determinative control over the relevant causal process, the resolve to proceed (or to omit a duty whose performance is the expected mode of control) is properly evaluated as acceptance of the result. A citizen endowed with a law-abiding orientation and the capacity for rational judgment would, under such cognition, be expected to resolve to refrain from acting, rather than to persist on the basis of ‘taking chances’.[73] If the actor nevertheless proceeds, the legal order may treat that persistence as acceptance of the result; otherwise, criminal law would become self-contradictory.

Two objections may be raised against treating ‘indulgence’ as underpinned by cognition of high risk. The first objection is that if actors must desist from conduct, or defer it until the risk abates, whenever they recognize risk — on pain of being deemed ‘intentional’ — social activity would become impossible, especially in a contemporary ‘risk society’, and individual freedom would be unduly restricted.[74] The reply is that the present argument is not that criminal law prohibits risk as such; rather, it rejects

71 *See* Zhou Guangquan, *On Indulgence*, 5 Tribune of Political Science and Law 78 (2005).

72 *See* XU YUXIU, AN OBJECTIVE CONCEPT OF INTENT? — A COMMENT ON GERMANY’S THEORY OF INDIRECT INTENT, *in* BETWEEN THE SUBJECTIVE AND THE OBJECTIVE: SUBJECTIVE THEORY AND OBJECTIVE IMPUTATION, at 84 (Xu Yuxiu ed., Law Press · China, 2008); Li Shiyang, *Redefining the Concept of Intent — On Basis of the ‘Probability Theory’ in Chinese Context*, 10 Political Science and Law 127 (2018).

73 Vgl. Kindhäuser, Objective und subjective Zurechnung beim Vorsatzdelikt, JRE 13 (2005), S. 528.

74 *See* Zhuang Jin, *Objective Imputation or Subjective Imputation?*, 3 The Jurist 68 (2015).

high risk. In criminal law discourse, moreover, 'risk' does not function as a purely factual description of probability;[75] it also carries a negative normative appraisal.[76] If '(cognition of) high risk' is understood as reaching a threshold at which, in light of the ordinary requirement of respect for legal interests, one ought to stop — i.e., a degree of risk sufficiently grave to (and that ought to) generate an avoidance motive and thus bears decisional significance[77] — then the framework can preserve a workable balance between protection of legal interests and protection of liberty.

The second objection is that inferring volition from risk cognition presupposes that offenders are rational calculators, whereas 'purely rational crime' and the 'criminal economic man' are fictions; even apparently deliberative offending can be shaped by affect and other non-rational influences.[78] However, the response is that this article does not posit perfect rationality as a psychological fact, but treats rational agency as a normative baseline for imputation. Indeed, the cases in which actors 'lose rationality' are precisely those in which they surrender to passion and become indifferent to the consequences of their conduct; the normative requirement for a qualified citizen is therefore 'not infallible rationality but the restraint of irresponsible, passion-driven conduct — intervening earlier so that emerging passion does not turn into action, overcoming it, and reforming a personality prone to emotional impulsivity.'[79]

In short, intent is not a mere 'sum' of cognitive and volitional elements; it arises from their interaction.[80] This is especially clear where an actor's cognition of risk reaches the level of decisional significance, a subsequent resolve to proceed (including a resolve to omit legally expected duties) reflects more than a bare choice between action and inaction. Rather, it amounts, in normative terms, to a 'daring' volitional stance toward the legally disvalued result — one that warrants imputation of intent. After all, 'the required degree of knowledge is a matter of policy choice.'[81] In this sense, the term used in article 14 of *China's Criminal Law* carries a strongly condemnatory nuance: it suggests not merely 'knowing', but 'knowing full well'. That is, having such knowledge, the actor nonetheless 'knowingly

75 *See* OuYang Benqi, *On Dangerous Intention*, 1 The Jurist 48 (2013).

76 *See* Ma Le, *In Defense of Subjectivism in Criminal Law*, 2 Global Law Review 81 (2014).

77 Vgl. Jakobs, Strafrecht Allgemeiner Teil, 2. Aufl. 1993, S. 30 f.

78 *See* Zhu Junqiang, *On the Classification of Degrees of Criminal Intent and Its Legal Value*, 6 Hebei Law Science 108 (2012).

79 LEKSCHAS J. & RÖNNEBERG J., SEVERAL ISSUES IN THE CRIMINAL LAW THEORY OF THE GERMAN DEMOCRATIC REPUBLIC, at 65 (Tian Yanqun trans., Editorial Office of Shenzhen University Journal, 1988).

80 Vgl. Gerson, *supra* note 68, 277.

81 Gao Lei, *On the Criminal Liability of P2P Sharing Service Providers: From the Perspective of the Kuaibo Case*, 5 Global Law Review 91 (2017).

commits' the offense. Accordingly, the adversative force (even so/yet) is apt: it marks such conduct as frustrating ordinary normative expectations.[82] This linguistic point reinforces the normative one: 'knowing full well' is deployed to censure a choice to proceed in the face of an expectation to refrain.

On this basis, where financial institution employees — without 'bilateral coordination in intent' with the launderer — recognize that the relevant customer or transaction presents a high risk of money laundering and nonetheless decide not to discharge corresponding operational AML duties, their omission may, at a minimum, be normatively evaluated as omission-based aiding with indirect intent. Admittedly, as a matter of psychological fact, 'an actor who foresees a probability of harm may still rely on luck or wishful thinking and believe the result will not occur.'[83] Likewise, as a matter of psychological fact, financial institutions or their employees may not positively desire money laundering or its outcomes. However, as argued above, volition here is a conclusion of normative evaluation rather than a report of inner psychological states. From a normative standpoint, where an actor recognizes high money-laundering risk yet fails to take reasonable preventive measures, the actor should at least be evaluated as 'indulging' the laundering outcome — even if he hopes it will 'accidentally' not occur. Because such 'hope' is not grounded in responsible self-governance of conduct within the actor's control; it is instead an irresponsible reliance on external contingencies beyond the actor's mastery — an unrealistic 'vain wish'. For this very reason, in recent years the German Federal Court of Justice has increasingly tended to characterize such cases as indirect intent rather than gross negligence.

As for what constitutes '(cognition of) high money-laundering risk' in AML practice, relevant indicators may include: (i) customer-risk factors, such as unverifiable identity (anonymous/pseudonymous/impersonated accounts), repeated suspicious-transaction reports, frequent AML alerts, regulatory or law enforcement flags, prior records of crime or financial fraud, refusal to cooperate with reasonable CDD measures, short-term large inflows/outflows inconsistent with the customer's profile, sudden activation of dormant accounts with frequent large-value transactions, or deliberate use of complex transaction structures to conceal fund flows or evade AML controls;[84] (ii) country/region-risk factors, such as transacting with entities or

82 *See* Cai Guisheng, *The 'Knowledge' Element in International Criminal Law: Article 30 of the Rome Statute of the International Criminal Court as a Case Study*, 5 Journal of Shanghai University of Political Science and Law (The Rule of Law Forum) 65 (2007).

83 ZHANG MINGKAI, *supra* note 17, 383-384.

84 *See* INTERPRETATION OF THE ANTI-MONEY LAUNDERING LAW OF THE PEOPLE'S REPUBLIC OF CHINA, at 130 (Xu Yongan ed., Law Press・China, 2025).

persons connected to jurisdictions on the FATF blacklist;[85] and (iii) product/business/channel-risk factors, such as multi-layered nested structures or non-face-to-face business/transactions.[86]

3. Low-Risk Awareness Points to Negligent Rather Than Intentional Aiding. — Where financial institution employees — without 'bilateral coordination in intent' with the launderer — fail to discharge operational AML duties under a cognition of a low level of money-laundering risk, the omission is better evaluated not as intentional aiding, but as negligent aiding. In assessing what counts as '(cognition of) low money-laundering risk', at least the following factors may be relevant. (i) Customer-risk factors. For example, party and government organs; public institutions subject to budgetary management; military units and armed police units at the regimental level (inclusive) or above (including dispersed duty sub-units); companies listed on well-regulated securities markets; and financial institutions established in China or in other jurisdictions with effective AML regimes. (ii) Product/business/transaction-channel risk factors. For example, limited financial products and services offered to specific customer groups for the purpose of promoting financial inclusion; accounts used exclusively for social security or housing provident funds; policy-based or mandatory insurance products; and transactions conducted with central counterparties, governments, or other public-sector entities in professional markets (e.g., the money market, the interbank bond market, or the bill-trading market).[87]

Taken together, the tripartite structure — virtual certainty, high risk, low risk — functions as a calibrated ladder for mapping cognition to the normative attribution of direct intent, indirect intent, or negligence.

85 The competent administrative authority for AML under the State Council will place on a list (i) countries or regions presenting serious money-laundering risks and (ii) organizations and individuals presenting significant money-laundering risks. At present, the People's Bank of China regularly publishes, on its official website under the 'Anti-Money Laundering' section and the 'Risk Alerts and Financial Sanctions' page, the jurisdictions classified as high-risk and those subject to enhanced monitoring. These publications draw on the lists released on the official website of the Financial Action Task Force (FATF), namely the list of high-risk jurisdictions (the 'black list') and the list of jurisdictions under increased monitoring (the 'grey list'). *Supra* note 18, 13, 74. Pursuant to article 12 of the *Measures for the Administration of Special Anti-Money Laundering Preventive Measures* jointly issued by the People's Bank of China, the Ministry of Foreign Affairs, the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice, the Ministry of Finance, the Ministry of Housing and Urban-Rural Development, and the State Administration for Market Regulation, financial institutions shall keep such lists under continuous review and obtain updates in a timely manner.

86 *Supra* note 84, 129, 131.

87 *See* article 29(4) of the *Measures for the Administration of Customer Due Diligence by Financial Institutions and the Preservation of Customer Identification Information and Transaction Records*. Taking two such risk factors as illustrations — (i) 'companies listed on regulated securities markets' and (ii) 'the provision, for the purpose of advancing financial inclusion, of limited financial products and services to specified categories of customers' — the former is associated with relatively lower money-laundering risk because disclosure obligations and stringent auditing requirements typically ensure adequate transparency of beneficial ownership; the latter is associated with relatively lower risk because its risk characteristics are more controllable and the applicable regulatory framework is more targeted.

IV. CONCLUSION

As financial security has been elevated to a strategic component of overall national security, AML has been incorporated into China's broader agenda of modernizing its governance system and governance capacity.[88] At present, a dual-track administrative-criminal liability framework — addressing money-laundering conduct and AML violations as two interrelated and counterbalancing aspects — has begun to take shape. First, the administrative normative cluster commonly referred to as the 'One Law and Four Decrees', led by *China's Anti-Money Laundering Law*, imposes administrative penalties for relatively minor breaches of AML obligations, thereby enabling *ex ante* risk control and the interruption of laundering risks in the course of financial activities. Second, the system of money laundering offenses centered on the crime of money laundering imposes criminal sanctions on laundering conduct, thereby providing *ex post* punishment once laundering risks have materialized into concrete harm. Third, article 62(1) of *China's Anti-Money Laundering Law* provides a normative basis for the administrative-to-criminal transfer of liability in the AML context. Within this dual-track framework, omission-based failures to discharge operational AML duties that result in a money laundering outcome — conduct that bears both administrative wrongfulness and criminal wrongfulness — should be addressed through accomplice liability for the crime of money laundering, thereby 'achieving a mapping between types of illegality and types of culpability'.[89]

(Edited by Li Jiesi)

88 *See* Wang Xin, *Anti-Money Laundering Criminal Legal Regulations in China from the Perspective of the Overall National Security Concept*, 3 The Jurist 93-99 (2021).

89 Yang Meng, *The Legislative Reconstruction for 'Connection Between Criminal Justice and Administrative Law Enforcement' on Recovery of Ill-Gotten Gains Through Anti-Money Laundering — Research and Analysis Based on Protective Purpose of Norms*, 12 Political Science and Law 68 (2020).