Review the Structure and Performance of Swift in International Business Law

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**ABSTRACT**

Present era is the time of development of all sorts of sciences and technologies and the banking industry is not excluded of the development. Wondrous developments in banking industry by applying telecommunication and computer technology is a movement that has been made towards the development of sciences and technologies of banking; and due to day-by-day-growing of international business, one of the involving tools of development is banks that have to use new and developed equipment to provide services and better facilities to merchants and to draw up a remedial plan to accelerate trade exchanges. As a result Swift was founded to answer the need of banking network as a useful and accountable tool comparing with other telecommunication tools. 1950s was the time of the development and growth of trade exchanges in the worldwide and the emergence of new problems in international payments; some of these problems can be noted as sanctions, money laundering, high cost of transactions and being slow in settlements. In such condition 60 European and American financial institutions gathered together with the idea of interbank automatic payments to find a way to accelerate payments and reduce costs; these claims led to establish Swift Society. In the article it is going to discuss the status and performance of Swift in International Trade law, sanctions and the effects of them and money laundering on the performance of Swift and finding new and legal solutions to rationalize and facilitate the functioning of letters of credits.

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**INTRODUCTION**

All of the countries in the world use an international banking network to have better and clearer communication in the worldwide which provides the possibility of exchanging specific and standard codes for banking systems.

Being one of the members of Swift enables the banks worldwide to do risk-free interbank telecommunications; while the actions is feasible with high security and data in the network such as opening LC, various guarantees, financial receipts and payments.

If the number of messages required setting up the website of Swift in the country applying for membership, Swift designs a website in the country. Otherwise, it conveys the messages of the applicant country to the neighboring Swift’s website.

Each of Swift’s website is under one of two Swift operational centers in Holland and America. Countries according to their geographical situation are under support of one of the two sites, in America or Holland. Operational centers in Holland and America are back together as well. In other words, if one of them gets out of orbit due to a malfunction, it is immediately replaced. Users are responsible to send and deliver their messages to the site. Since then to Swift’s website of the country of message destination, it is Swift's duty to deliver it. Sending messages from Swift's website in the country of origin is possible via lines of data transmission or conventional telephone line with installing Modem and the members are responsible to introduce a support line to Swift that in case of emergency when the main line is out of circuit, it can be possible for Swift to deliver messages.

Swift's unilateral breaking off means disconnecting the communication channel, therefore banks cannot continue their activities without a communication channel; so with sanctions, services as credit cards, master...
visa, and the transaction costs soared and in addition to the security and the speed of exchanges went down as well.

For example, Iran was separated from the financial virtual common language with banking sanctions, and due to increasing restrictions against Iran Swift network placed sanction on our country's banking system. Then it made banks of Iran use other tools to exchange with other banks which had lost of costs; meanwhile disabling our banking system to use Swift caused the increase of risk in business exchanges.

Although that made the targeted countries sanctioned use the old and substituted methods in banking and business interactions with other countries, it should not be ignored that none of these substituted methods has the capacity of easy access and high security of Swift's business exchanges.

Accordingly, lifting Swift's sanction and returning back of targeted countries sanctioned to the large network of banking both reduces business risk and costs to a minimum. The agreement of Swift with sanctions against some countries had political reasons and have been imposed by authorities, and also the economy activities of the Central Bank and financial institutions in the framework of global business is so that it would be considered as the kind of money laundering and this causes lack of Swift's cooperation with banking network of the targeted countries sanctioned.

This study investigates the status and performance of Swift in International Business Law and focuses on the effects of sanctions and money laundering on Swift's performance. And it refers to new legal approaches to deal with sanctions and money laundering and to rationalize and facilitate the functioning of letters of credits.

1950s was the time of development and growth of trade exchanges in the worldwide and the emergence of new problems in international payments. Some of these problems can be noted as sanctions, high cost of transactions and slow process of payments. In these conditions sixty European and American financial institutions gathered together with the idea of interbank automatic payments to find a way to accelerate payments and reduce costs. In 1967, seven European and American banks launched the study on automation and in 1971 seventy-three American and European banks agreed to cover the cost of these studies. The results of studies were announced in 1972 and accepted favorably by the aforesaid banks. These demands and claims caused the foundation of Swift Society. Swift is an international society that was founded in 1973 under the domestic laws of Belgium. It began its practical activity in 1977 with 239 members from 15 countries. Swift continued its activity at the end of 1995 with about 5229 members in 134 countries (almost 27-fold growth since 1977). In 2007, Swift society had 8,332 members in 208 countries.

Swift Society is managed in a cooperative way and it is legally "limited liability". Its duty is to study, create, and apply all affairs to make connection between financial institutions and exchange confidential messages of them in the worldwide fast and with high assurance.

Swift advantages inasmuch as a large number of banks and financial institutions are its members, Swift network provides the possibility of communication and exchange of messages among a lot of institutions. Messages are exchanged via telecommunication lines and high-speed data among financial institutions. Swift advantages comparing to other modes of communication can be stated as follows:
1. High-speed
2. Automation
3. Accessibility
4. High reliability
5. Standard
6. Sureness of receiving messages

Swift's performance in international business is of two kinds, positive and negative performance. The positive Swift's performance is when the Swift connects its communication's services to a country. And the negative performance is when the Swift disconnects its communication's services to a country or better to say places sanctions on it. Does this sanction of Swift's services have a reason?

Swift's accomplice with sanctions placed on some countries has had political reasons and been imposed by authorities, also it is necessary to mention that the economic activities of Central Bank and financial institutions in the context of international business is so that it could be considered somewhat of money laundering. And this leads to a lack of cooperation of Swift with banking network of countries sanctioned.

**MATERIALS AND METHODS**

Initial studies of the research are based on a review of library sources and electronic publishing and are derived from the required data of existing sources. The way of getting to conclusion is like other humane researches, that is, focusing on data taken and comparing them to argumentations and information of other data. Inductive way is the method of solving problems using scientific methods and criteria in order to link science and society to achieve solutions for the problem. Analytical – descriptive method: in this method everything will be explained regarding the current conditions and our goal is to achieve new facts. In this type of research the subject examines out of different dimensions. Needless to mention, proper description of a phenomenon would
give people a clear vision to analyze. After identifying description, it will be substituted for analysis, and the purpose of research could be the identification of phenomena. Analytic method: it is a method of study with the aim of finding reasons and analyzing relationships between different phenomena. Legal researches: the analysis of legal rules and legal phenomena in general constitute a large part of the Legal Research. In analysis, researcher usually seeks to criticize the subject researched. The research in this paper is descriptive-analytic and also the method of normative sciences, that is, deductive reasoning. It has been referred to books, legal rulings, opinions and views of legal experts and scholars in this field, dictionaries, scientific articles and websites and Internet to collect resources and data; also the library method (taking notes) and study of relevant books and journals is used to collect data.

Results taken from the performance of Swift in International Business:

Swift indeed is a global interbank network. It is an interbank international financial network that transfers financial messages via electronic tools, on the one hand this method is faster, more precise and safer way of currency transmission among all forms of transmission of currency in currency transfer; on the other hand it takes measures to give international financial services among the banks of its members during the year, non-stop and round-the-clock. Worthy to attention that Swift in not just hardware, but it is a process of software that gives services to the worldwide regularly. Currently, 6500 members of the SWIFT use its global interbank financial services in more than 178 countries of the world and send about 4 million messages during the day via it.

Results taken from the performance of Swift in International Business are as the following:

• Speeding up payments and reduce costs
• Linking among banking and financial institutions - exchanging financial messages
• Using advanced technology to communicate all over the world

Swift Performance in International Business:

Purpose of addressing Swift's performance and position with respect to the original question and the subject of this study is a cursory examination of the features of the functioning of this global banking network that are linked to questions and subject of this study and can be effective in better explaining and describing of Swift's performance and dealing with the causes of the disorder (sanctions and money laundering) in the smooth operation of the network.

In the early years of the membership of countries in Swift, the countries' banking system, despite the growth in the use of Swift messaging system during those years, unfortunately had not taken advantage of it and the number of messages sent by some countries through it and benefiting of side advantages had not been within the global optimum. However, the banking network of countries by optimal use of Swift could send many messages via the global system and have more and more market share, while the risk of messaging costs and commission of agents at the Swift are by far lower than telex; and one of the factors of countries' dependence on the system and Swift's worldwide network is the connecting of most foreign branches of public and private banks to the Swift and the root programming for the automation of the network in international operations of banks. So that currently the settlement of all amounts and currency handling of domestic and international commercial transactions between banks are done by the Swift system; and based on this each and every one of private individuals and public bodies takes their code and or Swift's address to transfer currency from the relevant bank while opening a foreign exchange account in domestic and abroad banks [4]. In other words the dependence of individuals and banks on Swift is so much that the fastness, ease and security of transferring foreign amounts are impossible without using this network. In case of disconnecting of the Swift's network the only way for countries is to purchase, pay and receive in cash which is impossible in big transactions; and on the other hand the party dealing with the countries sanctioned will be worried due to lack of transparency in their banking transactions because receiving the amounts in cash for contracts in the framework of international money transfers means a big question mark.

Most persons in charge do not take the sanctions serious in spite of intensifying them against countries; while it is essential to take it serious because of unity, very close collaboration, and the quickness of actions of the persons responsible for and the institutions concerned which are the most fundamental factors to confront and lift sanctions.

The United States in its recent actions against countries sanctioned as Iran has tried to deprive the banks of the EU and Swift International Financial Institution of Swift's services by putting pressure on them; that is to say, cutting off one of the last avenues of financial interbank transactions of countries and the world. America has asked the EU and the global system of electronic banking to boycott the money transmission network against the banks of targeted countries sanctioned. The US action is another step to put pressure on the targeted countries sanctioned and have less opportunity to develop their international activities; so to speak, somehow to tie the authorities' hands of the targeted countries sanctioned more than before.

Excluding the banks of the targeted countries sanctioned from Swift or the very Society for Worldwide Interbank Financial Telecommunication that the US have been following insistently will lead to block one of the
most sensible avenues of the country in financial interactions with most of banks and monetary and credit and valid institutions of the world.

In Swift's notice, it has been mentioned that the Society's decision to disconnect its services to financial institutions under sanctioned has been taken "by a lot of consulting of the Society's persons in charge with the board of director and also negotiating with the authorities of relevant observer institutions in the world". But in meetings with officials from America and the EU Swift's lawyers had raised the issue that "excluding the countries from Swift is done due to lack of transparency of the banking system of these countries".

**Conclusion:**

Swift is Society for Worldwide Interbank Financial Telecommunication and its headquarters in Belgium, which serves as the institution.

Having many advantages for using this system in the settlement of international transactions, Swift's dramatic role is more specific which its main function and advantages is as follows:

- Standardization, so we can name the benefits of "to be standard" as the following:
  - A. Prevention of acting tastefully in setting the texts of bank messages.
  - B. Quick-identifying of messages.
  - C. Avoiding of wasting time in setting the texts of bank messages.
  - D. Accelerating the setting of the texts of bank messages.
  - E. Reliability, security, speed, transmitting cost, easy accessibility and being full time.

The researcher has reached to this result that Swift agrees with placing sanctions on its services against some countries and it is obvious that this has political reasons and it has been imposed to fulfill their political benefits by authorities. Also economy activities of the Central Bank and financial institutions in the framework of World Trade is such that it can be considered a form of money laundering and this leads to a lack of cooperation of Swift with banking network of targeted countries sanctioned.

The US government has requested the EU and the Electronic Banking Global System to exclude the sanctioned countries from transferring money through network. America's action is another step to push them and have less possibility to expand their international activities, that is, to tie the officials' hands of the countries more than before.

In all, excluding the banks of sanctioned countries from Swift or the very Society for Worldwide Interbank Financial Telecommunication that the US follows it insistently will block the country one of the most sensitive ways of financial transactions with most banks and worldwide reliable credit and monetary institutions.

On the one hand, being dependent on people and banks to Swift is so much that without using the network, the speed, ease and safety of transmitting of foreign currency amounts are completely destroyed. In case of exerting such limits the only way for targeted countries sanctioned is to pay in cash while purchasing and receive in cash while selling which is indeed impossible in big transactions, on the other hand the other party of the contract will be worried due to lack of lucidity in banking transactions because the amount of cash received and paid for contracts in the framework of international money transfers means a big question mark.

It is notable that Swift Society has placed sanctions on some countries under pressure of the west, but definitely they cannot make the society stop giving services to them according to the international regulations and rules of the US and the EU.

That is to say, no country can force this international society to forbid from activity of banking network, the persons in charge Society for Worldwide Interbank Financial Telecommunication (Swift) has announced that they are ready to come to a rupture with the banking network of targeted countries sanctioned at the same time of placing new sanctions of the EU against them and in this regard it would place an embargo on the banks of targeted countries sanctioned and deprive them of accessing to its universal services. Yet in meetings of Swift's lawyers with the officials from America and the EU, it had been brought up that "the removal of some countries off the Swift is done in the frame of lack of transparency of their banking system." According to expressing Swift's persons in charge's views "to be in league with sanctions against some countries is not political by no means and it has not been imposed on them, but the economy activities of the Central Bank and financial institutions of them in the framework of the worldwide business is such that it could be considered as money laundering" and it makes the Society have lack of cooperation with that countries' banking network.

About taking up some strategies to deal with this situation and ongoing sanctions it is essential to point out:

According to the necessity of having active diplomacy, countries must do their best to prevent the issuance of resolutions causing sanctions against them via active diplomacy based on interaction and negotiation, and the next step is that through consulting and effective negotiation with countries' official and authorities in all over the world, Minister of Foreign Affairs must make them understand that the issuance of these resolutions is a cruel act in nation rights. In addition, countries should immunize their assets anywhere in the world on the banks and find a solution of the harm that may be inserted. In short, their assets should be immunized due to some conditions they may be obstructionist against the assets abroad. We should also ask them by using the capabilities of the international community to recognize the right of states and put the tough countries and the
countries pushing illegal sanctions on target countries under pressure. In this regard, representatives of countries in the international communities and meetings can be helpful. Also inside the country the public opinion should be constantly aware of the course of events happened to support their persons in charge and find a way out of the problem. Although the sanctions are the matter of economic, the solution is political. Therefore countries should do their best to activate their regional treaties on reducing the economic pressure and search appropriate solutions that can be validated in the form of regional treaties to provide their vital needs which must be supplied from overseas. Indeed, the regional conventions is one of the strategies of overcoming the traces of sanctions and their markets are just affected via it, so it would be the pressure on the firms and financial companies of the countries which have put sanctions on our shoulder not a threat to us. Sanctions put the public at risks and cover many staple commodities and because the sanctions will negatively affect the economy, we should try to reduce their impact with self-sufficiency. For example, being self-sufficient in staple commodities such as rice and wheat could reduce the effects of sanctions, but about the industrial products and goods it would take a long-term strategic plan. Unfortunately our foreign policy had been like that our friends as a matter of fact were not our real friends; that is, they were not our strategic allies and voted against us in United Nations Security Council, therefore to confront the economic sanctions and to manage them the foreign policy should be revised. Another way of management the sanction is to let people know about it in order to get their support and help. Another strategy of managing the sanction and crossing it is to support local goods and products; actually our country had been faced with sanction during eight years of the holy defiance. It would be feasible to achieve self-sufficiency in other commodities via supporting local products such as guaranteed purchase of wheat. Of industrial goods such as automobile components, etc. that Iran imports some of its parts, it is essential to think of autarky and verify related solutions.

Countries that their most important source of income is exporting of oil and petroleum products are attracted by the banking and international system and most of payments and expenses with these countries are paid via international banks; if all these sanctions stretched to reliable banks of country, it would make some problems for them. Hence, as the first solution, in such conditions it is must to interact with countries having sub banking system like Swiss and open the gate of opportunity of international big banks to these countries and let them establish a bank in there which can be helpful in their currency exchanges. The second solution is that the targeted countries sanctioned must stop banking sanctions as much as they can; for whatever these countries do, it will increase the cost of transaction. Suppose our companies would purchase machineries, but they would stay long in customs. We should try to avoid these problems. The greater scope and range of sanctions of banks are, the more vulnerable are industries and economies. The best way is that the political management of these countries so change that the sanctions never happen and if it happened it would cause less harm and the foreign policy of the country should be able to prevent sanctions through its activity; because if it happened, the practical strategy would be very difficult and costly. Confronting sanctions needs to be planned properly. Should it be able to manage economic sanctions in the country, it will be necessary to have some beliefs and plans; the first belief is that the US has planned to be hostile with the oil-rich countries and the plan is different in long-time, short-time and part-time but its outcome and result is just one and that is to make the world stand against these countries. The second belief, the sanctions are different from the elementary one. For example, the countries knows at first about the US’s sanctions but they were not worldwide and no resolution to persuade them not to sell their goods to the targeted countries sanctioned and should you do, you will be banned.

The third belief is that the countries should accept the people’s look to economy has been changed from ten or twenty years ago; because parties have acted so that intensifies the economy needs and poverty feeling. Thus in the current circumstances if the economy is not the first priority of people’s life, it will be the most important one in their lives.

Countries should expand their diplomatic friends based on the strategies of confronting economy sanction and how to dealing with it, and it is not feasible just by saying hello and traveling or sending a letter; but it should be brought up in the form of making contracts and the second step is that the prudence should be taken at the end, it should be at the beginning or in the middle; that is, we should not put ourselves in a status that make us pay the costs, but it is wise to prevent costly measures by taking prudence. Countries are whether exporter or importer regarding to sanctions of economy goods, so it means that markets need them. In that case economy issues cannot be solved regardless of political diplomatic relations. The countries have to be aware of enemies, and they should know today’s world of economy and its situations in the country, and they should know the economy dependency and integration, and the political and diplomatic tact of getting rid of it first via reinforcing their ministry of foreign affairs and making fundamental changes and development in all aspects. Countries in their foreign policy need personnel who have tact, knowledge, information and be loyal to the revolution and solve problems with wisdom. They should prioritize conditions and differentiate between small and big industries and also industries that have high dependency to high import or the need of large investment and prioritize performing of plans regarding to various looks about localization of plans. The easiest way that the government can do in this regard is to turn into welfare government and get rid of many public firms and
change them to private ones, so billions of money involving these companies will be released and it could be cost for people's life.

Also the new methods of transportation with new currencies or regional banking networks and email, phone, System for Electronic Payments Messaging (SEPM), money laundering fighting, and warranties are legal solutions of going out of the crisis.

REFERENCES


