In The Name Of Allah The Most Beneficent And Merciful

Title : **Legal Analysis Of The Implications Of Money Laundering & Suspicious Financial Transactions On Corporate Sector Of Pakistan**

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For

My Mother, who always prays for my success

ACKNOWLEDGEMENT

All praise goes to Allah – the most Beneficent & Merciful Who gave me the courage to lay hand in this research work.

The task of accomplishment of this thesis could not have been materialized without the help of a number of individuals and organizations and it would be ingratitude not to acknowledge their services.

First of all I am highly indebted to my supervisor Mr. Ali Asghar who put his recommending note on the proposal of this research thesis, resulting which the University approved the same and I embarked upon this task. His encouragement and guidance remained with me throughout the process.

Then thanks goes to the concerned Law Enforcing Agencies including FIA, ANF and NAB which gave know how about their setup concerning the Anti Money Laundering activities and the tasks undertaken by them in that regard.

I am also grateful to the regulatory bodies i.e. SBP & SECP which provided their Rules, Prudential Regulations and Guidelines issued to address the problem. It helped a great deal to understand and analyze the Money Laundering problem in its true perspectives and to assess its different dimensions. On the basis of statistics, published by SBP, on different aspects of the economy, I could be able to ascertain present position of the financial sector and finally to draw logical conclusions.

It would be an injustice not to recognize the cooperation extended by the different banks i.e. UBL, BOP, Askari Bank and Meezan Bank etc. which provided material of their internal instructions and policies, enabling me to assess practical implications / problems in the process of adopting the compliance measures.

I am also especially thankful to my friend Mr. M. Nadir Ishaq, Complaince Manager, Meezan Bank Limited Islamabad who extended his co-operation in collecting relevant material from the different banks and the financial institutions.

I must also acknowledge the help of steno-graphers / typists of my office namely M. Tariq, M. Bilal & M. Shahzad and my Assistant Syed Mazhar Hussain who did typing work of this thesis.

Moreover, I also wish to express my thanks to my friend Mr. Muhammad Aslam Butt, Manager, of PCP who did proof reading of the manuscript and did final layout work.

In the end, I am highly thankful to my family that allowed me time of their share to complete this job.

PREFACE

This thesis on the *"Legal Analysis of the implication of money laundering and suspicious financial transactions"* is intended to serve as a useful reference guide to the financial institutions, law enforcing agencies and the general public to understand the meaning of money laundering and suspicious financial transactions, the scale of problem and its bad impacts on the Corporate Sector of Pakistan

In this study, an effort has been made to trace out the origin of money laundering and the related financial transactions. In order to understand its true meanings different definitions of money laundering were considered necessary to be given. Such transactions have specific characteristics, elements and reasons to flourish in the financial sector. There are different classifications of these transactions and a variety of vehicles are adopted by the money launderers. The process of money laundering activities has three stages i.e. placement, layering and integration. The money launderers resort to multifarious channels to complete the process. Then the money laundering and suspicious financial transactions have got specific influence and effects on economic, political and legal sectors. Despite of different measures taken, such activities are difficult to be checked and there are specific reasons of failure in that regard. Efforts have been made to give comprehensive understanding on all the above aspects.

As the Money Laundering is an international phenomenon, it was utmost necessary to discuss global and regional scenario of the problem. The description of international bodies and forums like Basel Committee, Vienna Convention, Stratus Berg Convention, GPML, UNDP, FATF etc. and the instruments of their recommendations and guidelines have been included therein. In that regard the importance of 40+9 Recommendations of FATF can not be ignored. Then there are certain regional bodies like CFATF, APGML etc. that were also considered to be discussed in some length. Different countries have also adopted legislations against money laundering keeping in view their specific needs. In that regard the legislations of some important countries have been detailed therein.

As the focus of this thesis is Pakistan, it was necessary to review the existing legislations / regulations of this country to address with the problem. Different law enforcing authorities are presently dealing with the problem and in that regard, their jurisdictions and relevant provisions of the concerned legislations have been reviewed. The regulatory bodies i.e. SBP & SECP have issued different regulations & guidelines which have been mentioned therein. In line with the guidelines / instructions of financial regulatory bodies, the policies of various banks have also been examined.

Lastly the present position of Pakistan, limitations & hurdles in the implementation of Anti Money Laundering Policies have been discussed in details. And finally, for future strategy, certain recommendations / suggestions have been proposed based on the logical conclusions keeping in view the facts and figures drawn therein.

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Rawalpindi

January 2007

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CHAPTER – 1 INTRODUCTION

1.1 INTRODUCTION

The present era of globalization is shrinking the world and giving new shape to domestic politics and international relations. Globalization involves the integration of capital, technology, and information in a manner that results in a single global market and, to some degree, is rightly called a "global village". This integration enables individuals and corporations to reach around the world farther, faster, deeper, and cheaper than ever before. However, where the scenario of globalization has expanded opportunities for free-market capitalism, it has also resulted in new risks. Globalization has turned the international financial system into a money launderer's dream, siphoning off billions of dollars a year from economies around the world and extending the reach of organized crime. This unintended consequence of globalization presents a serious challenge to the law enforcing agencies and financial regulators.

The international community recognizes the money laundering as a serious challenge and an international threat as it can have devastating effects on the soundness of financial institutions and undermine the political stability of the nations. The United Nations (UN)[1] and the Organization of American States (OAS)[2] have determined that the laundering of money derived from serious crime represents a threat to the integrity, reliability and stability of financial as well as government structures around the world. In October 1995, the UN General Assembly identified money laundering along with drug trafficking and terrorism as a threat to global peace and freedom[3].

Money laundering is generally concerned with the recycling of criminally derived funds through normal financial system operations with a view to making the funds available for future legitimate or illegitimate use, while at the same time disguising their

[1] UN – The United Nations - An organization of independent states formed in 1945 to promote international peace and security.
[2] OAS - The Organization of American States is an international organization, headquartered in Washington, D.C., United States of America. Its members are the 35 independent states of the Americas.
[3] William R. Schroeder, (2001) The FBI Law Enforcement Bulletin [Online] Available: http://findarticles.com/p/articles/mi_m2194/is_5_70/ai_76880856/pg_3 [accessed on 2nd January, 2007]

true source to protect them from seizure or forfeiture and from criminal or civil prosecutions.

Combating money laundering is a dynamic process because the criminals to launder money are continuously seeking new ways to achieve their illegal ends. Moreover, as many countries strengthened their financial system to combat money laundering and terrorist financing, criminals may exploit weaknesses in other jurisdictions to continue their laundering and terrorist activities.

Globalization represents an overarching international phenomenon. The international community's response to the challenge posed by money laundering has to address the financial, legal, and enforcement issues in a universal manner, through harmonization of remedies. Understanding the global threat of money laundering the international community's response will assist investigators pursuing the evidentiary trail of a launderer by identifying the enforcement tools and techniques developed to overcome obstacles encountered when crossing international boundaries.

In response to the threats posed to the financial systems and national security by money laundering (particularly when these illegal funds are used for terrorist financing), an international money laundering effort has been underway to ensure that criminal misuse of the financial system is detected and defeated. This effort has taken on new urgency, since the terrorist attacks on the United States in 2001. As law enforcement agencies and legislators alike learn about evolving methods available to money launderers, terrorists, drug dealers and other criminals for "cleaning" their ill-gotten cash, they respond by enacting new and tougher legislations. Since much laundering activity now takes place across international boarders, the effort is necessarily global, involving offshore as well as onshore jurisdictions.

Efforts undertaken by the nations independent of the international community often result in significant variations from the accepted standard and have the effect of facilitating laundering activity rather than combating it. For example, the Government of Antigua and Barbuda weakened its laws relating to money laundering, resulting in the U.S. Department of the Treasury had to issue an advisory warning to the banks and other financial institutions to be wary of all financial transactions routed into, or out of,

that jurisdiction[1]. Legislations in different countries have strengthened bank secrecy, inhibited the scope of laundering investigations, and impeded international cooperation.

A common, harmonized approach will prevent money launderers from using the different laws and practices among the jurisdictions to their advantage both at the expense and disadvantage of countries interested in pursuing them. The law enforcing agencies working together with financial institutions can only combat this ever-increasing problem with the support of substantive primary and secondary legislation in the filed of Anti Money Laundering.

[1] William R. Schroeder, (2001) The FBI Law Enforcement Bulletin [Online] Available: http://findarticles.com/p/articles/mi_m2194/is_5_70/ai_76880856/pg_3 [accessed on 2nd January, 2007]

1.2 RESEARCH OBJECTIVE OF THE THESIS

In Pakistan the word "Money Laundering" was hitherto unknown and stranger till the late 90s and soon became a cause of concern to the law enforcing agencies and the financial institutions after the occurrence of 9/11.

In aftermath of war against terrorism launched by the United States (US) & the West, the main focus, unfortunately, became Pakistan and the regions surrounding her. Consequently, the Government of Pakistan had to take steps to incorporate in different legislations legal provisions against money laundering activities. The State Bank Of Pakistan (SBP) also became concerned about money laundering activities and issued different regulations / instructions to the banks and other financial institutions to be wary of money laundering practices. Despite the incorporation of legal provisions in the legislations particularly dealing with white-collar crime and narco business as well as SBP Rules & Regulations, the personnel of the law enforcing agencies and the financial institutions have very little knowledge about the nature and implication of such practices. The common man is still quite ignorant to the nomenclature of "Money Laundering". Now it is no secret that apart from law enforcing agencies and the financial institutions, the people belonging to all the strata of the society are prone to directly affected by the money laundering practices.

Hence, this thesis aims at:

i. to impart know how, back ground, magnitude, world scenario, steps taken, and future course of action to the personnel of law enforcing agencies which are meant to detect, investigate and then to bring the offenders responsible before the courts of law;
ii. to give knowledge about the crime of Money Laundering, its implications, severity and seriousness to the judges who ultimately have to try and decide such cases;
iii. to equip the concerned personnel of the financial institutions to be cautious of the suspicious financial transactions by different clandestine manners and to know the techniques to combat the same;
iv. to motivate the law making bodies to recognize the severity of the problem which may ultimately force to promulgate stern and effective legislations in the sphere of anti money laundering;

v. to put on watch the stakeholders in Corporate Sector and other business concerns so that they may not fall prey to the nefarious activities of the Money Launderers;

In addition to above, this study is also beneficial to my self being concerned with Law Enforcing Agency which is responsible to control, detect and investigate the money laundering practices and to make the offenders to face the legal action.

1.3 ORIGIN OF MONEY LAUNDERING AND RELATED FINANCIAL TRANSACTIONS

Money laundering is not a new thing. It has very rich history. People involved in illegal businesses always used it as their tool to convert their black money into legal money.

1.3.1 The Evolution of Money Laundering

Jews suffered persecution[1] in Christian Austria, Czechoslovakia, France, Germany, Italy, Hungry and Poland during the past 300 years. Majority of them was engaged in money lending. They always had fear that their wealth could be confiscated by their states at any time. They were in deep problem and finally they found the way. To get secure their wealth they used to deposit their wealth in banks in secular Switzerland. All this was less to do with religion than with the bad business practices of Jews, especially in lending money. At that time Switzerland was not a resource-rich country. They found this cost-free and voluntary flow of wealth a God-given opportunity. They not only welcomed the Jews wealth but also introduced *Number Accounts* to protect their wealth. It was the beginning of *Money Laundering.* Once it was started, then this facility was offered to shady characters all over the world including the criminals[2].

In last three decades smuggling, drug trafficking, terrorist activities and such other activities gave heavy losses to almost whole of the world. The affectees are both developed and third world countries. As money laundering is necessary consequence of almost all profit generating crimes, it can occur practically anywhere in the world. Money laundering activities may also be concentrated geographically according to the stage the launderer's funds have reached.

[1] Persecution - The act of persecuting (especially on the basis of race or religion)
[2] Syed Azhar Hussain Shah, (2006) Money Laundering vs. International Financial Regime [Online] Available: http://www.pide.org.pk/pdf/Seminar/Seminar_Pre20-09-2006.pdf [accessed on 7th February, 2007]

1.3.2 The Present Scope and Scale of Money Laundering

The degree upto, which the Money laundering prevails in a country or region, depends on the absence of banking secrecy provision, government attitude, level of corruption, regional conflicts and geographical issues. By its very nature, money laundering occurs outside of the normal range of economic statistics. Nevertheless, as with other aspects of underground economic activity, rough estimates have been put forward to give some sense of scale to the problem.

The International Monetary Fund (IMF)[1], for example, has stated that the aggregate size of *"money laundering in the world could be somewhere between two and five percent of the world's gross domestic product"*. Using 1996 statistics, these percentages would indicate that *"money laundering ranged between US Dollar 590 billion and USD 1.5 trillion"*.[2]

The lower figure is roughly equivalent to the value of the total output of an economy with the size of Spain.

Some estimates suggest that the amount of money laundered each year is approximately $2.8 trillion, an amount more than four times greater than the figure generally accepted. The IMF has undertaken its own estimates and has concluded that money laundering worldwide is equal to approximately 2.5% of global Gross Domestic Product (GDP)[3]. The inability to determine the amount of money laundered impedes an adequate understanding of the magnitude of the crime, its macro-economic effect, and the effectiveness of current counter laundering efforts.

In 1997, the Office of National Drug Control Policy (ONDCP) held that drug trafficking yielded $350–450 Billion annually. In 1998, the FATF proposed a lower estimate of $125 Billion and deduced that $85 Billion of that was laundered annually. IMF President Camdessus, for his part, stated during an address delivered in 1989, without identifying its resources, that around 5-10 % of international GDP was

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[1] IMF - International Monetary Fund - A United Nations agency to promote trade by increasing the exchange stability of the major currencies

[2] M. M. Malik, Secretary Institute of Banker Pakistan, (2002) Anti Money Laundering Measures – A Guide For Bankers. Karachi: Institute of Banker Pakistan.

[3] GDP - the total market values of goods and services produced by workers and capital within the country during a given period (usually 1 year)

laundered, or between $590 and $1500 Billion. The press, moreover, cites a figure set to come from United Nations, according to which $200 Billion is laundered each year[1].

1.3.3 Bank of Credit and Commercial International Scam (BCCI SCAM)

BCCI became the focus in 1991 of the World's worst financial scandal, which was called "$20-billion-plus heist" (beaty and Gwynne 1993). It was found by regulators in the United States and the United Kingdom to be involved in money laundering, bribery, support of terrorism, arms trafficking, the sale of nuclear technologies, the commission and facilitation of tax evasion, smuggling, illegal immigration, and the illicit purchases of banks and real estate. The bank was found to have a least $ 13 billion unaccounted for.[2]

BCCI was a major International Bank founded by Agha Hassan Abedi in Pakistan in 1972. Mr. Abedi had previously set up UBL in 1959 and following its nationalization in 1971 he sought to create a new supranational banking entity. At its peak BCCI operated in 78 countries and over 400 branches and claimed assets of $25 billion.[3]

BCCI was created with capital from Sheikh Zaid Bin Sultan Al Nahyan, Amir of Abu Dhabi (UAE), Bank of America (25%) and allegedly the CIA. It is claimed that the CIA were seeking a funding route for the Afghan Mujahideen, similar to the Investors Overseas Service and the Nugan Hand Bank in the 1970s. However, the vast majority of BCCI's assets were initially from Abu Dhabi.[4]

BCCI expanded rapidly in the 1970s from 19 Branches in five countries in 1973 to 27 Branches in 1974, to 108 Branches in 1976 with assets growing from $ 200 million to $1.6 billion. By 1980s, BCCI was reported to have assets of over $ 4 billion with over 150 Branches in 46 countries. This growth caused extensive underline capital problems.[5]

In 1988 BCCI was implicated in a drug money laundering scheme based in Tampa, Florida, the C-Chase Case. The BCCI was called the CIA's money laundering facility. BCCI pleaded guilty in 1990 but only on the grounds of *respondeat superior*[6].[7]

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1 Pierre Kopp (2003), Political Economy of Illegal Drugs. New York: Routledge. pp. 156

[2] Wikipedia, the free encyclopedia (2007). *Bank of Credit and Commerce International* [Online] Available http://en.wikipedia.org/wiki/Bank_of_Credit_and_Commerce_International

[3] ibid

[4] ibid

[5] ibid

[6] Respondeat Superior - let the superior make answer ---------- the doctrine holding an employer or principle liable for the employee's or agent's wrongful acts committed within the scope of employment or agency.

[7] Wikipedia, the free encyclopedia (2007). *Bank of Credit and Commerce International* [Online] Available http://en.wikipedia.org/wiki/Bank_of_Credit_and_Commerce_International

In 1990, a Price Waterhouse audit of BCCI revealed an unaccountable loss of hundreds of millions of dollars. The bank approached Sheikh Zaid, who made good the loss in exchange for an increased shareholding of 78%. Much of BCCI's documentation was then also transferred to Abu Dhabi.[1]

In March 1991, the Bank of England asked Price Waterhouse to carryout an inquiry. On June 24, 1991, using the codename *"Sandstorm"* for BCCI, Price Waterhouse submitted the Sandstorm report showing that BCCI had engaged in "widespread fraud and manipulation".[2]

1.3.3.1 Support of Terrorism

The Sandstorm report, parts of which were leaked to The Sunday Times, included details of how the Abu Nidal terrorist group held accounts at BCCI's Sloane Street branch, near Harrods in London. Britain's internal security service, MI5, had signed up two sources inside the branch to hand over copies of all documents relating to Abu Nidal's accounts. One source was the Syrian-born branch Manager, Ghassan Qassem, the second a young British employee.

To facilitate smuggling operations within the Middle East and the Third World, a 'Special Services' department provided wholesale of facilities in the way of creative accountancy, over-invoicing, supplying money for bribes to corrupt officials; generalized money laundering; cross-border cash transactions; and the creation of the Cayman-based 'bank within a bank' which enabled both intelligence and terrorist organizations to transfer money around the world with consummate ease[3].

At the same time as the Sloane Square branch of BCCI was handling the accounts of Abu Nidal, the driving force behind the world's most wanted Arab terrorist Organization, the CIA were operating bank accounts through BCCI to fund covert operations elsewhere in the world. The American National Security Council is reported to have used BCCI accounts for nine years to provide financing to the Afghan Mujahideen, while BCCI accounts were used to transfer funds to pay for anti-tank missiles that were supplied to Iran, the evidence for which was later uncovered during the Iran-Contra hearings in Washington. BCCI accounts provided the means to move

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[1] ibid
[2] ibid
[3] Roven Basourth –Davis and Graham Saltmarsh (1994), *Money Laundering A Practical Guide To The New Legislation.* London UK: Chapman & Hall. pp. 103

the funds of the Peruvian Maoist terrorist organization 'Sendero Luminoso', or 'Shining Path'. The means and methods to provide the laundering facilities being outlined to them by BCCI agents in place in Peru[1].

1.3.4 Magnitude of Suspicious Transactions Reported in Several Countries

The SBP sources say that any financial institution in Pakistan has so far not reported any suspicious financial transaction and resulting money laundering practices. Similarly there are no statistics available on money laundering activities; therefore it is difficult to gauge the extent of the problem in Pakistan. However, the situation is not the same in other countries of the world.

The table below is an extract of some countries that have money laundering reporting requirements[2].

Table - 1

Numbers Of Suspicious Transactions Reported In Several Countries

Country	1994	1995	1996
Belgium	2183	3926	5771
Germany	3282	2935	3289
Italy	1034	2961	3218
Netherlands	3546	2994	2572
United Kingdom	15007	13125	16125
Sweden	429	391	502
Austria	346	310	301
Finland	223	190	232

1.3.4.1 Risk Wise Classification Of Countries

The US state Department has published the list of countries classifying them as high risk (primary concern), medium high and medium risk countries which is given in the figure below[1]:

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[1] Roven Basourth –Davis and Graham Saltmarsh (1994), *Money Laundering A Practical Guide To The New Legislation.* London UK: Chapman & Hall pp 103

2 John Chemonges, ACIB, (2002) The Dangers Of Money Laundering And How To Minimize Them [Online] Available: http://www.bou.or.ug/NPSS/Money%20Laundering.pdf [accessed on 7th February, 2007]

Table - 2		
High Risk Countries	**Medium High risk Countries**	**Medium Risk Countries**
Nigeria	India	Bulgaria
Russia	Israel	Czech Republic
Turkey	Pakistan and	Hungry
	UAE	Bahrain
		Kuwait
		Lebanon
		Poland and
		South Africa

[1] M. M. Malik, Secretary Institute of Banker Pakistan, (2002) Anti Money Laundering Measures – A Guide For Bankers. Karachi: Institute of Banker Pakistan.

1.4 DEFINITION OF MONEY LAUNDERING

Generally, money laundering is defined as under:

"A process by which illegal cash assets or black money generated by whatsoever criminal activities are manipulated in such a way as to make them look as if they were derived from very clean, immaculate, licit and legitimate sources[1]*."*

Under United Sates Law;

"Money Laundering means moving illigimately obtained funds through people or accounts to hide the source of those funds."[2]

FATF has defined Money Laundering as under;

"The conversion or transfer of property, the concealment or disguise of its true nature or source or the acquisition, possession or use of property knowing it to be criminally derived[3]*."*

Another way to express money laundering is:

"The process by which one conceals the existence of illegal source, or illegal acquisition of income and then disguises that income to make it appear legitimate". In other words, the processes used by criminals through which they make "dirty" money appear "clean".[4]

Though initially considered as an aspect integral to only drug trafficking, laundering represents a necessary step in almost every criminal activity that yields profits. Now it is recognized a criminal offence all over the world.

Criminals engage in money laundering for the following three reasons.

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[1] Syed Azhar Hussain Shah, (2006) Money Laundering vs. International Financial Regime [Online] Available: http://www.pide.org.pk/pdf/Seminar/Seminar_Pre20-09-2006.pdf [accessed on 7th February, 2007]
[2] (US.C) 1956 (2000)
[3] Financial Action Task Force, (2003) Basic Facts about Money Laundering [Online] Available: http://www1.oecd.org/fatf/MLaundering_en.htm [accessed on 18th September, 2005]
[4] J. Orlin Grabbe, (1995) The End of Ordinary Money, Part II: Money Laundering, Electronic Cash, and Cryptological Anonymity [Online] Available: http://www.aci.net/kalliste/money2.htm [accessed on 7th September, 2005]

First, money represents the lifeblood of the organization that engages in criminal activities for financial gain because it covers operating expenses, replenishes inventories, purchases the services of corrupt officials to escape detection and further the interests of the illegal enterprise, and pays for an extravagant lifestyle. To spend money in these ways, criminals must make the money, they derived illegally, appear legitimate.

Second, a trail of money from an offence to the criminals can become incriminating evidence. Criminals must obscure or hide the source of their wealth or alternately disguise ownership or control to ensure that illicit proceeds are not used to prosecute them.

Third, the proceeds from crime often become the target of investigation and seizure. To shield ill-gotten gains from suspicion and protect them from seizure, the criminals must conceal their existence or, alternately, make them look legitimate.

When a criminal activity generates substantial profits, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the persons involved. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention. Hence,

> *"Money laundering is the concealment, conversion, transfer or disguise of any property that represents proceeds from criminal activity*[1].

The people launder money in an attempt to explain that they acquired their wealth legitimately. In some countries it is now considered a criminal activity and therefore the people engage in the laundering activity in an attempt to evade the legal systems.

In the first Interim Report of the US President's Commission on Organized Crimes defined Money Laundering as the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate. The term refers to several different but interrelated processes, all of

[1] John Chemonges, ACIB, (2002) The Dangers Of Money Laundering And How To Minimize Them [Online] Available: http://www.bou.or.ug/NPSS/Money%20Laundering.pdf [accessed on 7th February, 2007]

which meet the basic definition of transforming criminally tainted cash illegally earned into a form that disguises its origins so that it can be used in legitimate commerce as a legally appearing instrument or asset and thus become "clean". Recently the term's meaning has broaden to refer not only to the individual act of laundering but to numerous complex steps used in the illegal asset conversion process, beyond the basic exchange of cash, for less conspicuous and more socially acceptable methods of payment.[1]

[1] Robert J. Kelly, Rufus Schatzberg, and Ko Lin Chin (1994), *Hand Book of Organized Crime in the United States.* Westport, CT: Greenwood Press. pp. 311

1.5 CHARACTERISTICS, ELEMENTS & REASONS

The problem of money laundering has got specific characteristics, elements and reasons, which are discussed as under:

1.5.1 Characteristics

a) ***Group activity:*** The process of money laundering involves different persons who cooperate with each other in the process of deliberate dispersing of the illegal money and then managing to accumulate the same in one head from where it is diverted to a particular destination. All this process cannot be completed singly and must be a deliberate group activity.

a) ***Criminal activity:*** The activity of money laundering, as it is clear form it nomenclature is a process to present the ill-gotten (dirty) money as legal and clean, hence it must be a criminal activity. The money earned from dirty activities such as drug trafficking, terrorist activities, illegal arms sales, smuggling, embezzlement, kick backs, bribery, commission, computer fraud, official corruption, gambling, tax / duty evasion, and the money earned from the activities of organized crime is laundered through the process

b) ***Large scale Activity:*** The process of money laundering must have involved very heavy amounts. The activity is needed only for laundering large-scale funds. As the dirty activities, which have already been mentioned supra, involve heavy amounts intended to be utilized for large-scale purposes and dirty stakes, hence, it must be a large-scale activity.

c) ***Continuous Activity without any End:*** The funds generated through illegal activities are continuously multiplied and have to be laundered to look as clean; hence the activity of money laundering continues to be kept in operational form. There is no end to the illegal activities; hence there is no end to the process of money laundering.

d) ***Chain Transactions:*** The process of cleaning the dirty money is not completed in any single transaction; rather it is a combination of multiple chain transactions to avoid detection, which ultimately converge at some destination.

e) ***Sophisticated and complex process:*** Due to the complexity of the transactions, it is very difficult for the law enforcing agencies and financial institutions to detect the same. For the purpose very trained and vigilant personals are required by the agencies.

f) ***Boundary-less Activities:*** It has no regional, ethical and religious bounds because it is not particular with any region, ethic and religion. The criminals belonging to different countries, ethnicity and religious beliefs may unite to accomplish their common goals i.e. to wash the dirty money.

1.5.2 Elements

a) ***Financial transaction:*** Money laundering always involves financial transactions. As currency is a legal tender and acceptable everywhere, for the convenience of conversions financial transactions are involved in the process.

b) ***Unlawful Activities:***The activity of money laundering is always adopted in respect of un-lawful practices. As the people engaged in criminal and un-lawful activities desire to keep themselves out of the gaze of society and law enforcing authorities, so they adopt the process of laundering their ill-gotten money.

c) ***Obscurity Precautions:*** The persons involved in the process of money laundering want to avoid detection and coming to lime light and as such act behind the scene. Some time they don't even know each other and may identify a particular man involved in the process by code number. This all is done to disguise the illegal source or origin of the proceeds.

1.5.3 Reasons

Criminal activities which emanated the problem of money laundering flourished rapidly during the last three decades due to different reasons which are summarized as under: -

a) ***Corruption by PEP[1] / public figures:*** Politicians and public figures, especially of third world countries, indulged in mass scale corruption; that may be due to

[1] PEP - Politically Exposed Persons is the term used for individuals who are or have been in the past entrusted with prominent public functions in a particular country. This category includes, for example, heads of State or

insecurity, which they feel about their future. During their tenure of power they accumulated huge wealth which certainly they wanted to disguise and for the purpose resorted to money laundering practices.

b) ***Discontentment of high-ranking Government officers:*** The government officers lacked contentment and they indulged in corrupt practices like taking bribes, commissions and kickbacks. The wealth so acquired needed laundering practices to show the same as genuinely acquired.

c) ***Poverty, Illiteracy and unemployment:*** During the last decades, in the third world countries the social evils like poverty, illiteracy and unemployment showed a surging trend which promoted the criminal activities like gambling, drug trafficking, counterfeiting and prostitution etc. The ill-gotten wealth so acquired eventually necessitated money laundering practices.

d) ***Regional conflicts and instabilities:*** Internal and bilateral conflicts in different regions of the world promoted subversive and terrorist activities. Terrorist groups needed large-scale funds to carry on their activities, which promoted the terrorist financing aspect of money laundering.

e) ***Economic inequalities & trade barriers:*** Economic inequalities between different communities and regions promoted the evil of money laundering. Trade barriers imposed by the developed countries are also one of the reasons of resorting to money laundering practices by the deprived communities/regions.

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government; senior politicians and government, judicial or military officials; senior executives of State-owned corporations and important political party officials.

[1] Kickback - A commercial bribe paid by a seller to a purchasing agent in order to induce the agent to enter into the transaction

1.6 CLASSIFICATION & VEHICLES

The classification of money laundering transactions and different vehicles adopted for the purpose are summarized as under:

1.6.1 Classification

1.6.1.1 Use of Cash Transactions

The persons involved in money laundering while using cash transactions for their activities adopt the following methods:

- Exchanging of small-denomination notes for those of higher denomination.
- Purchasing / selling of foreign currencies in substantial amounts by cash settlement.
- Frequent withdrawals of large amounts even from previously dormant/inactive account by means of cheques/traveller's cheques or an unexpected large credit from abroad that do not appear to be justified by the customer's business activity.
- Deposits / withdrawals of large amounts of cash associated with the normal commercial operations in company's account, rather than by way of debits cheques, letters of credit, bills of exchange, etc.
- Depositing cash by means of numerous credit slips, the total of which is substantial.
- The deposit of unusually large amounts of cash along with request for bankers' drafts, money transfers or other negotiable / readily marketable money instruments.
- Customers whose deposits contain counterfeit notes or forged instruments.
- Large cash deposits using lockers facilities and avoiding direct contact with the bank.
- Cheques issued in favour of persons not associated with drawer's business.

1.6.1.2 Use of Bank Accounts Through Financial Institution

The second mode adopted by money launderers is the use of bank accounts through financial institutions. In that respect following methods may be adopted.

- Paying in large third party cheques endorsed in favour of the customer.
- Substantial increases in deposits of cash / negotiable instruments[1] by a professional company, using client accounts / in-house company / trust accounts.

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[1] *Negotiable Instrument* - A promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order or to the order of a specified person or to the bearer thereof (Section 13 of the Negotiable Instrument Act 1881). Presumption as to negotiable instruments: until the contrary is proved (a) every negotiable instrument was made or drawn for consideration: and every such instrument when it has been accepted, endorsed,

- Multiple depositors using a single bank account.
- Account in the name of a moneychanger / offshore company that receives structured deposits.

1.6.1.3 Use of Investment Related Transactions

The third mode may be adopted through trading in securities or making / maturing an investment in cash, where this does not match with customer's apparent standing.

1.6.1.4 Use of Transactions Involving Transfers Abroad

Under this mode, the launders usually derive the benefits from following transactions:

- Transfer of money abroad by an interim customer without any legitimate reason.
- A customer who appears to have accounts with several banks in the same locality, frequently requests for transfers of large amounts of money abroad accompanied by the instruction to pay the beneficiary in cash.
- Large and regular payments from and to countries associated with illegal business that cannot be clearly identified as bonafide transactions.
- Cash payments remitted to a single account by a large number of different persons without an adequate explanation.

1.6.1.5 Use of Transactions Involving Unidentified Parties

Some times, the persons involved in illegal financial transactions use un-identified parties for their nefarious activities and methods through the following modes:

- Provision of collateral[1] without any understandable reason by third party having no close relationship with the customer and also unknown to the bank.
- Transfer of money to another bank with inaccurate information about applicant and without indication of the beneficiary.
- Use of numbered accounts for effecting commercial transactions by enterprises.
- Holding share in trust / unlisted company whose activities cannot be ascertained.

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negotiated or transferred for considerations; (b) every negotiable instrument bearing a date was made or drawn on such date; (c) every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; (d) every transfer of a negotiable instrument was made before its maturity; (e) the endorsement appearing upon it were made in the order in which they appear thereon; (f) a lost promissory note, bill of exchange or cheque was duly stamped; (g) the holder is a holder in due course.

[1] Collateral - A security, which is only in aid of an obligation, generally an additional security in reinforcement of the main security. Thus, one may give a bill of exchange, or a mortgage, as a security for a debt at the same time depositing share certificates as collateral security.

1.6.1.6 Miscellaneous Transactions

- Trading of large amounts of precious metals by an interim customer.
- Purchase of bank cheques on a large scale by an interim customer.
- Extensive use of safe deposit facilities that do not appear to be justified.

1.6.2 Methods used for Money Laundering

Money launderers use various methods for achieving their objectives regarding money laundering e.g.

a) ***Smurffing:*** It involves breaking larger amounts into smaller amounts that requires not to be reported to regulators through use of bank accounts of dozen of front men.

b) ***Under and Over Invoicing:*** This includes trading of goods / property stating a lower / higher price on the document of sale to reduce tax impact.

c) ***Back-to-Back Transactions:*** Remit black money outwardly using the hundi[1] mechanism, and then bring it back as an inward remittance.

d) ***Tax Rebate / Incentives:*** All activities that include taking undue advantage of incentives offered by Government such as evade duties and taxes.

e) ***Retiring of other peoples liability:*** Premium taken over amounts paid out on behalf of distressed borrowers

f) ***Bogus Trade Transactions:*** It involves usually false import / export invoices without genuine underlying trade transactions.

g) ***Bartering Goods***: It includes exchange of legal goods for illegal or contraband goods.

h) ***Use of Technology for Perpetrating Frauds:*** Misuse of computers, Internet and e-commerce is also one of the methods used by criminals to make their dirty money clean.

i) ***Use of Shady Or Offshore Banking Units:*** Shady offshore[2] banks are used to launder ill-gotten funds. In 1996, it is estimated that over US$ 5 trillion were parked in offshore banking units.

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[1] Hundi - Also known as Hawala - an underground banking system based on trust whereby money can be made available internationally without actually moving it or leaving a record of the transaction

[2] offshore - companies / corporations that are formed on domestic level but have (offshore) branches in other countries.

1.6.3 Vehicles of Money Laundering

1.6.3.1 Forming a Company to Launder Money

The persons involved in Money Laundering usually form a company (with fake nomenclature, purpose and business) and some time a series of such companies. These are formed to launder money obtained through illegal means.

1.6.3.2 Forming Domestic Corporations / use of Offshore Corporations/Banking Units

Some time companies / corporations are formed on domestic level having offshore branches in other countries. The purpose is not to generate economic activity rather these are used to transfer ill-gotten money from one place to an other.

1.6.3.3 Forming a Bank to Launder Money

On mass level activity of money laundering, the money launderers do not trust on the existing banking system and for the purpose they form their own banks and such like financial institutions so that the ill-gotten money may be safely transacted and transferred to the dubious destination. BCCI is one of the examples of such activities.

1.6.3.4 International *Tendering*

In the mega projects, as heavy investments are involved, the International companies are invited through tendering process for award of different contracts. In the process of International tendering and investments, mass scale movement of funds is involved and the money launderers taking undue benefit funnel the ill-gotten funds by way of involving in the International tendering and investment process, so that they may safely transfer and invest the dirty money without any fear of detection.

1.6.3.5 Casinos And Internet Gambling

Gambling is a popular pastime in many jurisdictions of the world, and as such many casinos and other gambling institutions have been exploited by money launderers for their purpose. A recent development of Internet gambling now generates nearly $1.5 million a month

1.6.3.6 *Brothel Houses*

In some jurisdictions bothell houses having organized chains and being very popular for sex-services are exploited by the money launderers for their own motives. The mass scale illegal funds to be laundered are transferred in the garb of money earned from these brothel houses.

1.6.3.7 Real-Estate Investments

Now a day, real estate is a flourishing business and in many jurisdictions is considered well rewarding especially in the emerging middle-eastern states, where it is progressing at a rapid pace. The money launderers may utilize the real-estate investments as vehicle to launder ill-gotten money without the danger of being suspicioned and detected.

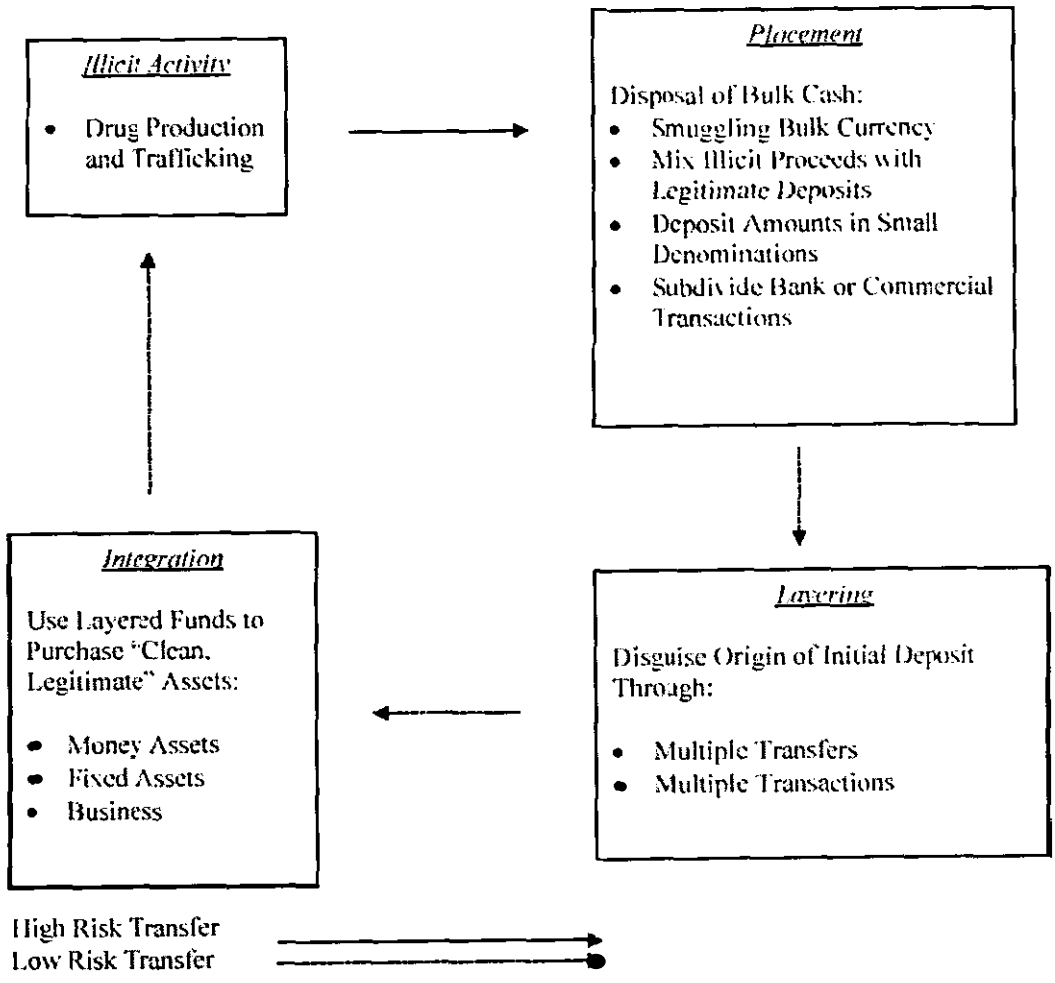
1.7 STAGES OF THE PROCESS

One of the most common means of money laundering that institutions encounter on a day-to-day basis takes the form of accumulated cash transaction which is deposited in the banking system or exchanged for value items. These simple transactions may be just one part of the sophisticated web of complex transactions, which are set out and illustrated below. Nevertheless, the basic fact remains that the key stage for the detection of money laundering operation is where the cash first enters the financial system.

As discussed earlier that Money Laundering is not a single transaction. In fact it is a process that is accomplished in three basic steps i.e. placement, layering and integration. These steps can be taken at the same time in the course of a simple transaction, but they can also appear one by one in separate as well.

PROCESS OF MONEY LAUNDERING

Fig – 1



[1] Scott Sultzer, (1995) Money laundering, The Scope of the Problem and Attempts to Combat it. 63 Tenn: Law Review. pp. 143

1.7.1 Placement

This stage involves the placement of proceeds derived from illegal activities. It is the movement of proceeds, usually in cash, from the scene of the crime to a place, or into a form, less suspicious and more convenient for the criminals. For example, a government official may take bribe in the form of cash and place it in a safe deposit box or bank account opened under the name of another individual to hide its existence or conceal the ownership.

Further, a number of shell companies[1] are set up in countries known for lenient bank secrecy laws or for lax enforcement of money laundering statutes. Then the money is circulated within these shell companies until they appear clean.

For circulating this money, two age old methods of "loan back system" and "double invoicing" are in used[2].

- **Loan Back System** - The criminal puts the funds in an offshore entity that he owns and then loans them back to himself. According to researchers, this technique works because it is hard to determine who actually controls offshore accounts in some countries.
- **Double Invoicing** - A method for moving funds into or out of a country, an offshore entity keeps the proverbial two sets of books. To move 'clean' funds into say, Pakistan, a Pakistani exporter overcharges for goods or service. To move funds out of Pakistan, a Pakistani importer is overcharged.

1.7.2 Layering

It involves the circulation of proceeds obtained from the illegal source through the use of complex transactions designed to obscure the audit trail and hide the proceeds. This phase of the laundering process can include the transfer of money from one bank account to another, from one country to another or any combination thereof. Criminals layer transactions to increase the difficulty of tracing the proceeds back to its illegal

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[1] Shell Company refers to "a little known or failing company which has no significant assets or operations but through which a major company conduct business clandestinely. They may also be known as International Business Corporations (IBCs); Personal Investment Companies (PICs), front companies, or "mailbox" companies.

[2] Saleem Tariq Lone, Director ANF, (1995), Article: Contemporary Issues Concerning Criminal Justice. Rawalpindi: Seminar jointly sponsored by UNAFEI, NPA & JICA (12-16 March 1995)

source. They frequently use "shell corporations" and "offshore banks" at this stage because of the difficulty in obtaining information to identify ownership interests and acquiring necessary accounts information from them.

The funds might be channeled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not co-operate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services; thus giving them a legitimate appearance.

Over invoicing for goods transshipped from another country is an attractive method of layering, enabling sums of money to be transferred abroad upon proof of documents. Most international trade payments are made by electronic inter-banking transfers, which are virtually untraceable once completed. Using high-value credit cards to pay for goods and services and accounting for the credit card invoices with sums held in offshore banking secrecy heavens is another easy facility adopted many tax evaders and money launderers.[1]

The purpose of these complex transactions is to make it difficult for law enforcing agencies to trace illegal proceeds via[2]:

- purchase of assets (often real estate) in the names of launderer's front men;
- a series of quick purchases/sales of investment paper in the names of launderer's front men;
- a series of telegraphic transfers through accounts at various banks across the globe;
- use of scattered bank accounts for money laundering which is prevalent in jurisdictions that don't help anti-money laundering investigations;
- disguising fund transfers as payments to goods or services, giving them a legitimate appearance;
- purchase of luxury cars and travel tickets.

[1] Rowan Bosworth-Davies and Graham Saltmarsh (1994), *Money Laundering – A Practical Guide to the New Legislation.* London. Chapman & Hall, pp 87

[2] Syed Azhar Hussain Shah, (2006) Money Laundering vs. International Financial Regime [Online] Available: http://www.pide.org.pk/pdf/Seminar/Seminar_Pre20-09-2006.pdf [accessed on 7th February, 2007]

1.7.3 Integration

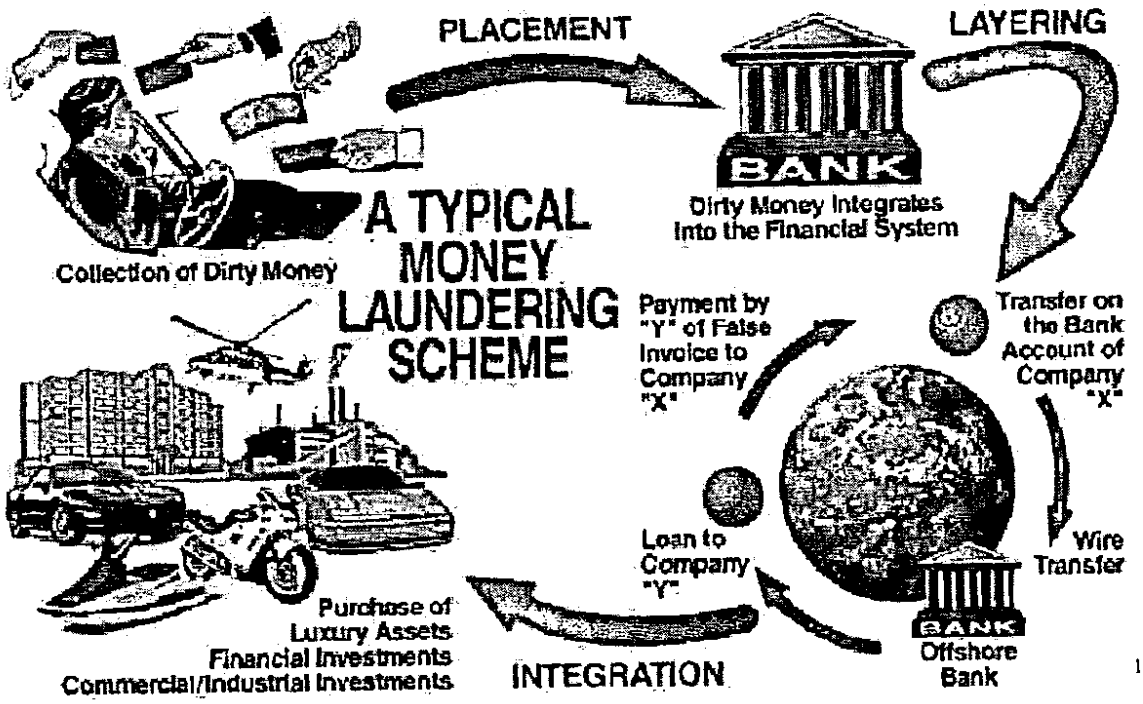
Having successfully processed his criminal profits through the first two phases of the money laundering process, the launderer then moves them to the third stage – integration – in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

Common techniques include producing false invoices for goods purportedly sold by a firm in one country to a firm in another country, using funds held in a foreign bank as security for a domestic loan, and purchasing property to create the illusion of legal proceeds upon disposal. The successful money launderer closely approximates legal transactions employed routinely by legitimate businesses. In the hands of a skillful launderer, the payment for goods that appear to have been delivered by one company based upon an invoice of sale prepared by another company covers the laundering of the purchase price when the goods never existed, and the companies are owned by the same party; the sale of real estate for an amount far below market value, with an exchange of the difference in an under-the-table cash transaction, launders what appears to be capital gain when the property is sold again; and a variety of lateral transfer schemes among three or more parties or companies covers the trail of monetary transactions between any two of them.

Integration of the "Cleaned" money into the economy is accomplished by the launderer making it appear to have been legally earned. By this stage, it is exceedingly difficult to distinguish legal and illegal wealth.

Through integration, the money is brought back into the legal economy to benefit the criminals who created this wealth by providing an apparently legitimate explanation for the money launderers' wealth. Integration schemes place the money back into the economy in such a way that it is very difficult to detect. Typical examples of such transactions would be business investments, real estate investments and purchase of luxury goods.

Figure - 2



[1]

[1] United Nations Office On Drugs and Crime, (2006) Global Programme Against Money Laundering [Online] Available: http://www.unodc.org/unodc/money_laundering_cycle.html [accessed on 7th February, 2007]

1.8 CHANNELS INVOLVED IN THE PROCESS

Different channels are adopted for the process of money laundering of which the most commonly used are discussed here in:

1.8.1 Alternative Remittance Systems (ARS) – Hawala / Hundi

Experience over the last decade has shown that Alternative Remittance System (ARS) can be misused for illegal purposes, including for both Money Laundering and Terrorist Financing (Financial Action Task Force, 2004-2005).

In the use of ARS, the criminals are continuing to develop new and more sophisticated methods to avoid detection and to achieve their objectives more effectively. Every remittance operation is initiated by a sender. There are a number of factors or perceived incentives that play a role in the sender's choice of ARS. That is why; this system is much popular and used by criminals as well as people serving abroad.

1.8.2 Cross-Border Transportation Of Cash By Terrorists And Other Criminals

The use of cash couriers is now recognized as a major method for terrorists to move funds. To address this issue, the Financial Action Task Force issued Special Recommendation IX which was developed with the objective of preventing terrorists and other criminals from using cash couriers to finance their activities or launder their funds.

Reporting by intelligence and law enforcing agencies indicates that cash smuggling is one of the major methods used by terrorist financiers, money launderers and organized criminal figures to move money in support of their activities. Over many years, FATF typology[1] exercises have repeatedly highlighted the key role that cash couriers often play in money laundering operations. However, in recent years, evidence has shown that cash couriers also play a significant role in the international financing of terrorism[2].

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[1] Typology - Classification according to general type

[2] Financial Action Task Force, (2005a) Detecting And Preventing The Cross-Border Transportation Of Cash By Terrorists And Other Criminals [Online] Available: http://www.fatf-gafi.org/dataoecd/50/63/34424128.pdf [accessed on 7th February, 2007]

1.8.3 Cyber Money Laundering

The challenges that are faced by those involved in the fight against money laundering are constantly changing. New challenges are often associated with technological developments that significantly alter the way in which funds are handled. The advent of cyber payments[1] has dramatically changed the landscape in this regard. Activities that fall into this category include payments made via the Internet and the use of stored value cards. General on-line banking also falls into this category. Using this technology bank customers can now access their accounts and transfer funds from remote locations. Companies can provide their customers with software, which allows value to be stored in various locations, and this value can then be transmitted via the Internet from one location to the others.

The changing capabilities of cyber-payment products are cause of concern. Increasingly there are products that have either very high value limits or no limits at all. Some Stored Value & Products (SVPs) can be used outside of the banking system allowing transactions to be undertaken without any direct intervention by the banking institutions. Cards can be loaded at Auto Teller Machines (ATMs)[2], telephones, personal computers and other SVPs[3].

The Internet, with its ability to immediately connect individuals in remote places, has spurred the development of new sources of electronic payments and innovation in financial transactions. Unfortunately these innovations and benefits also appeal to money launderers. The Internet, through its identity-masking features, has posed new problems for law enforcement agencies. The availability of electronic transactions to money launderers is perhaps the most troubling. Cyber money laundering is now a massive criminal enterprise[4].

TH. 4906

[1] Cyber Payment - the electronic movement of funds using high speed communication links related to information technology, computers or the Internet

[2] ATM – Automated Teller Machine - an unattended machine (outside some banks) that dispenses money when a personal coded card is used

[3] Ian Carrington, (2000) Countering Abuses of the Banking System - Where Do We Stand [Online] Available: http://www.unodc.org/palermo/carrington.doc [accessed on 7th February, 2007]

[4] Stephen Jeffrey, (2005) Modern Day Money laundering, 24 Annual Review of Banking & Finance Law. pp. 444

Utilizing the seamless transacting capabilities of the Internet, as well as the anonymity of the emerging electronic payment methods, these criminals can store and retain easy access to the money from their criminal business[1].

1.8.4 Politically Exposed Persons

Politically exposed person is the term used for individuals who are or have been in the past entrusted with prominent public functions in a particular country. This category includes, for example, heads of State or government; senior politicians and government, judicial or military officials; senior executives of State-owned corporations and important political party officials. Because of the special status of Politically Exposed Persons (PEPs) – politically within their country of origin or perhaps diplomatically when they are acting abroad – there is often a certain amount of discretion afforded by financial institutions to the financial activities carried out by these persons or on their behalf. If a PEP becomes involved in some sort of criminal activity, this traditional discretion given to them for their financial activities often becomes an obstacle to detect or investigate crimes in which they may be involved.

PEP may try to launder not only bribes, illegal kickbacks and other directly corruption-related proceeds but also launder the heavy amounts of embezzlement or outright theft of State assets or funds from political parties and unions, as well as tax fraud. Indeed in certain cases, a PEP may be directly implicated in other types of illegal activities such as organized crime or narcotics trafficking. PEPs that come from countries or regions where corruption is endemic, organized and systematic process seem to present the greatest potential risk; however, it should be noted that corrupt or dishonest PEPs can be found in almost every country[2].

1.8.5 Money Laundering Vulnerabilities In The Insurance Sector

The worldwide insurance industry, according to some sources, generates premiums in the range of US$ 2.400 to 2.600 trillions[3]. The industry provides risk transfer, savings and investment products to a variety of consumers, from individuals to

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[1] Christopher D Hoffman, (1998) Encrypted Digital Cash Transfers, 21 Fordham International Law Journal pp. 799 Caribbean Financial Action Task Force, (2005) CFATF: An Overview [Online] Available: www.cfatf.org/default.asp [accessed on 13th September, 2005]

[2] Financial Action Task Force, (1990) 40 Recommendations Glossary [Online] Available: http://www.fatf-gafi.org/glossary/0,2586,en_32250379_32236889_35433764_1_1_1_1,00.html [accessed on 7th February, 2007]

[3] Financial Action Task Force, (2004-05) Money Laundering & Terrorist Financing Typologies 2004-2005 [Online] Available: http://www.fatf-gafi.org/dataoecd/16/8/35003256.pdf [accessed on 7th February, 2007]

multi-national corporations and governments. The insurance industry is moreover diverse; there are three major areas of the industry (according to the types of insurance product) which include:

i. General Insurance,
ii. Life Insurance, and
iii. Re-Insurance

These products, like any other financial service, are exposed to threat of money laundering, and FATF typologies have identified cases in which certain insurance products have been used to launder money[1]. Financial institutions view payments originating from insurance companies as common place. The money is assumed to be clean and the payments do not attract attention. If money launderers can place funds into an insurance policy, then they will have made significant steps in layering and integrating the funds into the international financial system. Insurance sector is potentially vulnerable to money laundering because of the size of the industry, the easy availability and diversity of its products and the structure of its business. In regard to this last point, it is important to note that insurance is, in some jurisdictions, often a cross-border business and more frequently than not involves the distribution of its products through brokers or other intermediaries who are not necessarily affiliated with or under the control or supervision of the company that issues the product. Moreover, because the beneficiary of an insurance product is often different from the policyholder, it is sometimes difficult to determine when and for whom it is necessary to perform "customer due diligence"[2] (for the policyholder only or also for the beneficiary).

[1] Financial Action Task Force, (2004-05) Money Laundering & Terrorist Financing Typologies 2004-2005 [Online] Available: http://www.fatf-gafi.org/dataoecd/16/8/35003256.pdf [accessed on 7th February, 2007]
[2] Customer Due Diligence - make all reasonable efforts in respect of every prospective customer including necessary requirements ensuring true identity of prospective account holders, ascertaining nature of the business, determining beneficial ownership of accounts. Further it is also a continuous process by giving the degree of care so required.

1.9 INFLUENCE & EFFECTS ON ECONOMIC, POLITICAL, LEGAL & SOCIAL SECTORS

Money laundering is a crime that adversely affects economic, political, legal and social sectors. It creates serious concern because, if unchecked, it has the potential of fuelling crime and ultimately erodes the individual rights of citizens and affects national and international economic performance.

Launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centers, but having inadequate controls, are particularly vulnerable as compared to countries with established financial sectors, which implement comprehensive anti-money laundering laws. The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organized crime[1] can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments.

As with the damaged integrity of financial sector, there is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organized crime. On the other hand developing economies cannot afford to be too selective about the sources of capital they attract. But postponing Anti Money Laundering policy is dangerous as the more it is deferred, this illegal activity can more entrenched become.

The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society. In countries transitioning to democratic systems, this criminal influence can undermine the transition.

Evidence suggests that the presence of proceeds of illicit activity can eventually lead to wider scale corruption and the presence of this activity is usually to the general detriment of a country's entire financial and social systems. One clear risk in circumstances in which bad money is introduced into a system that was previously

[1] Organized crime - Underworld organizations - The people and the groups involved in criminal activities that occur within a centrally controlled formal structure on international or national level in order to get monetary benefits.

clean, is that the good money will very often seek other domiciles leaving the system in question with only the bad money, a bad reputation that will keep out new bonafide investors and a regulatory system that is inadequate to cope with the challenges with which it is now faced.

1.9.1 Effects on Business & Financial Sector

The integrity of the banking and financial sector depends heavily on the perception that it functions within a framework of legal, professional and ethical standards. The reputation for integrity is the one of the most valuable assets of a financial institution.

If funds from criminal activity can be easily processed through a particular institution either because its employees or directors have been bribed or because the institution turns a blind eye to the criminal nature of such funds, the institution could be drawn into active complicity with criminals and become part of the criminal network itself. Evidence of such complicity will have a damaging effect on the attitudes of other financial intermediaries and of regulatory authorities, as well as ordinary customers.

In view of above analysis, it can be concluded that strong developing-country financial institutions such as banks, NBFIs[1], and equity markets are critical to economic growth. Such institutions allow for the concentration of capital resources from domestic savings and perhaps even funds from abroad and the efficient allocation of such resources to investment projects that generate sustained economic development. Money laundering impairs the development of these important financial institutions for the following two reasons.

First, money laundering erodes financial institutions themselves. Within these institutions, there is often a correlation between money laundering and fraudulent activities undertaken by employees. At higher volumes of money-laundering activity, entire financial institutions in developing countries are vulnerable to corruption by criminal elements seeking to gain further influence over their money-laundering channels.

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[1] NBFIs - Non-Bank Financial Institutions - Any institution which is not a bank as defined by legislation but is involved in finance, such as investment banks, merchant banks, finance companies, building societies, credit unions and life offices.

Second, particularly in developing countries, customer trust is fundamental to the growth of sound financial institutions, and the perceived risk to depositors and investors from institutional fraud and corruption is an obstacle to such trust.

By contrast, beyond protecting such institutions from the negative effects of money laundering itself, the adoption of anti-money-laundering policies by government financial supervisors and regulators, as well as by banks, NBFIs, and equity markets themselves, reinforce the other good-governance practices that are important to the development of these economically critical institutions.

1.9.2 Macro-economic Impact

Potential macro-economic consequences are related to the fact that dirty money has proven to be less productive. As a result it can be said to contribute less to general economic growth. It can be associated with, among other things, greater volatility in international financial flows as funds move across international borders in more erratic patterns. This can of course have negative macro economic consequences including the development of an unstable exchange rate[1].

An important factor to be considered in this regard is the impact of potential for money laundering activity on overall economic stability. To the extent that stable and sustained economic growth is very intricately linked to the efficiency of the financial sector, any activity that threatens the soundness of that sector must be of concern to macroeconomic policy makers. In a situation in which the banking sector is catering to a significant level of transactions linked to illicit activity, it is likely that it will be less efficient in performing its principal role of facilitating bonafide economic transactions. In an extreme case scenario, the failure or closure of a significant institution due to involvement in illicit activity can lead to the classic contagion effect if confidence in the overall banking system is sufficiently undermined.

These trends indicate a casual institutional approach to controlling organized crime and money laundering.

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[1] Michel Camdessus, (1998) Money Laundering: the Importance of International Countermeasures [Online] Available: http://www.imf.org/external/index.htm [accessed on 2nd October, 2005]

Suspicious integrity of the financial system slows down foreign direct investment flow if financial/commercial sectors are perceived to be in control or under influence of organized crime.

1.9.3 Socio-Political Impact

There are certain Socio political impacts of money laundering which are summarized as under:-

a) ***Damage to ethics and social fabric:*** Money laundering practices mar the ethical and social fabric of the society. Organized crimes infiltrate into the very roots of different segments of the population and ultimately the whole society losses its moral foundations. The evil practices like smuggling, drug trafficking, counterfeiting and prostitution etc severely damage the social fabric of the society.

b) ***Corrupt business practices and stoppage of capital flow:*** As a result of money laundering practices, business sector is very adversely influenced. Criminal use of business organizations results in the loss of their financial credibility and the genuine business organizations avoid to have business dealings with them, which result in stoppage of capital flow and eventually the irreparable economic set back.

c) ***Influence on democratic process:*** In the third world countries mostly there are non-democratic regimes and they are in the process of democratization. Money laundering practices, which may be due to corruption, smuggling, drug dealing, tax evasions and gun running, impede the democratic process in the victim countries.

d) ***De-stabilization of the Government:*** The money laundering practices, especially relating to terrorist financing, de-stabilize the governments which are already in shaky condition due to regional strifes and subversive activities. Furthermore corrupt practices of political figures and high-ranking officers also impoverish the state exchequer that causes financial difficulties to the government in its national security and defense needs.

e) ***Impairment of National Image:*** The countries, where the money-laundering practices get flourished due to any reasons, loose their national image in the comity of the nations, which ultimately deprive them from international co-operation in different fields.

1.9.4 Legal Effects

Despite the enactment of laws designed to curb crime and acts of crime, these evils still take place and are in most cases on the increase. The law enforcing agencies, world over, are overwhelmed by the sheer size and sophistication that criminals are now employing to perpetrate their illegal deeds. The efforts of crime prevention are now compounded by globalization that has created what one may say a global economy in which organized criminal groups and individuals can and do generate huge sums of money by drug trafficking, financial crime, corruption, intellectual property crime, terrorism and human trafficking etc.

Since the beginning of the criminalization of money laundering and the enforcement of anti money laundering legislation in the 1970s and more vigorously in the 1980s and 1990s, evidence from court cases and reported suspect transactions has given an indication that the most common money laundering typologies have been in the realm of drug trafficking, organized crime, corruption, illicit dealing in weapons, human trafficking, fraud and theft. The act of successful money laundering fuels the perpetration of the above crimes by providing the criminals with avenues to conceal their deeds from law enforcing agencies and ultimately provides them with the rewards for their criminality in the form of money which would then appear to be legitimate.

The recent phenomenon, after the incidence of 9/11, is the terrorist financing aspect of money laundering activities. The terrorist activities from inception to culmination span over different jurisdictions and as such create a confusing situation with respect to legal issues of jurisdiction, acceptability of evidence and the legitimacy of the actions taken against the offenders.

The utilization of modern gadgets and novel techniques by the money launderers has further confounded the legal position of the actions taken and the evidence available in the matter.

1.10 THE PROBLEMS ASSOCIATED WITH SUSPICIOUS FINANCIAL TRANSACTIONS

The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and, ultimately, the democratic institutions of society. This criminal influence can undermine countries undergoing the transition to democratic systems.

Money laundering has become a global problem as a result of confluence of several remarkable changes in world markets (i.e., the globalization of markets). The growth in international trade, the expansion of the global financial system, the lowering of barriers to international travel, and the surge in the internationalization of organized crime have combined to provide the source, opportunity, and means for converting illegal proceeds into what appears to be legitimate funds.

Money laundering can have devastating effects on the soundness of financial institutions and undermine the political stability of Socratic[1] nations. Criminals quickly transfer large sums of money to and from countries through financial systems by wire and personal computers. Such transfers can distort the demand of money on a macro-economic level and produce an unhealthy volatility in international capital flows and exchange rates.

Emerging market countries are particularly vulnerable to laundering as they begin to open their financial sectors, sell government owned assets, and establish fledgling security's markets. The economic changes taking place in the former Soviet States in Eastern Europe create opportunities for unscrupulous individuals where money laundering detection, investigation, and prosecution tools slowly take shape. Indeed, as most emerging markets began the process of privatizing public monopolies, the scope of money laundering increased dramatically.

The international community of governments and organizations that have studied money laundering recognize it as a serious international threat. The UN and the

[1] Socratic Method is most important contribution of Socrates to Western thought. It was first described by Plato in the Socratic Dialogues. Under this method, to solve a problem you would ask a question and when finding the answer you would also have an answer to your problem.

Organization of American States (OAS) have determined that the laundering of money derived from serious crime represents a threat to the integrity, reliability, and stability of financial, as well as government, structures around the world. In October 1995, the President of the United States, in an address to the UN General Assembly, identified money laundering, along with drug trafficking and terrorism, as a threat to global peace and freedom. Immediately thereafter, he signed Presidential Directive 42, ordering U.S. law enforcing agencies and the intelligence community to increase and integrate their efforts against international crime syndicates in general and against money laundering in particular[1].

Money laundering threatens jurisdictions from three related perspectives. Firstly, on the enforcement level, laundering increases the threat posed by serious crime, such as drug trafficking, racketeering[2], and smuggling, by facilitating the underlying crime and providing funds for reinvestment that allow the criminal enterprise to continue its operations. Secondly, laundering poses a threat from an economic perspective by reducing tax revenues and establishing substantial underground economies, which often stifle legitimate businesses and destabilize financial sectors and institutions. Finally, money laundering undermines democratic institutions and threatens good governance by promoting public corruption through kickbacks, bribery, illegal campaign contributions, collection of referral fees, and misappropriation of corporate taxes and license fees.

In most of the countries, suspicious financial transactions / money laundering is prohibited by law and it is a punishable offence. The people who launder money through business compete unfairly with the legitimate businesses. This is because they will go to any length to make sure that their business survives. Hence strategies like cutting prices below market levels are common. This can eventually put honest people out of business.

The people involved often either buy off or threaten to kill any body that comes their way to hinder their business. Bankers, lawyers and accountants who in one way or another may have to see this malpractice, in the ordinary course of their work are very

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[1] William R. Schroeder, (2001) The FBI Law Enforcement Bulletin [Online] Available: http://findarticles.com/p/articles/mi_m2194/is_5_70/ai_76880856/pg_3 [accessed on 2nd January, 2007]

[2]Racketeering – Carrying on illegal business activities involving crime for profit (especially an act of obtaining money by fraud or extortion)

susceptible. Such crime only leads to more crime and corruption. A spiral of crime and corruption develops and the regulators and law enforcing agencies become compromised. If ignored, the money launderers soon gain respectability within the society and in so doing even commit more crimes. For instance in Uganda, the people who donate a lot of money to charitable causes are often held in very high esteem. If a business or company is involved in money laundering and it is eventually unearthed, they can loose reputation and eventually profits because people will be reluctant to do business with them.

There is increasing international pressure, and some countries have enacted laws that have extra-territorial dimension. Powerful countries like the US, Germany and Britain often exert a lot of pressure on the countries concerned and could even threaten them with sanctions.

10.1.1 Money Laundering And Terrorist Financing

After the September 11 terrorist attacks, the government, financial institutions and also the international organizations started developing the concept of a coordinative fight against terrorism. Going back in time to the mid 1980s, when money laundering became a house-hold word through out the world, the aim at that time and subsequently focused mainly only impeding the financing and re-financing of illicit drugs-trafficking. As early as 1980, the first document in Europe conceptualizing the term money laundering did not focus on drug trafficking, rather it sought a means of tracking the ill-gotten gains of hijacking and robbery by left-wing, especially in Italy and Germany (Red brigade and Red Army Faction). Further more the UN had already negotiated a series of instruments against terrorism before 11th September, some of which were only ratified by the majority of member states after the attack of last fall. In fact one might ask why existing policies had not been more rigorously implemented before that date and why the anti money laundering concept was not applied to terrorist groups such as the IRA, ETA and others, that have long been in existence. After 11th September, every thing seems quite different: the UN, the FATF and others are now focusing their efforts on controlling the financing of the terrorism and have immediately attempted to apply the concept commonly used for the control of money laundering for the purpose.[1]

[1] Mark Pieth (2002), *Financing of Terrorism: Following the Money.* European Journal of Law Reform [Vol. 4 No. 2] pp. 365-366

In the wake of September 11, 2001, terrorist attacks, Congress has demonstrated an increased interest in issues related to homeland security, including money laundering and terrorist financing. Among the major legislative responses was the Uniting and Strengthening America by Providing Appropriate Tools Required to intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act" or "Act").[1]

What is the importance of tracking and preventing the finance of terrorism? The National Commission on Terrorist Attacks upon the United States, commonly referred to as the 9-11 Commission, addressed this question directly in the report it produced at the end of its investigation into the terrorist attacks on September 11, 2001 ("9-11"). Specially, the 9-11 Commission recommended that vigorous efforts to track terrorist financing must remain front and center in US counter terrorism efforts2. The Commission explained that the primary value of tracking terrorist financing was not necessarily the deprivation of funds available to the terrorists, but rather the information that could be obtained through investigations of the terrorists' financial networks[3]. Often, tracking financial networks may prove more effective than traditional operational law enforcement at shutting down terrorist networks preemptively, particularly when there is an ongoing or long-term investigation[4]. However this recommendation of the 9-11 Commission Report could be considered preaching to the choir, considering that most of the post 9-11 legislation regarding terrorist financing has been designed with this purpose in mind. It has been argued that even with the exhaustive anti-money laundering controls in effect today, the series of transactions that were carried out and the total number of similar transactions that occur around the world in a day, attempting to identify well-disguised transactions benefiting terrorism would appear to be similar to looking for needle in a very large haystack. The primary anti-money laundering legislation enacted after 9-11 was Title III of the Patriot Act, titled the International Money Laundering Abatement and Anti Terrorist Financing Act of 2001[5].

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[1] David E. Teitebaum and Karl F. Koafmann (2003), *Current Developments in Anti Money laundering Laws.* The Business Lawyer [Vol 58], pp. 1149

[2] Paul Fagyal (2006), *The Anti Money Laundering Provisions of the Patriot Ac: Should they be allowed to Sunset.* Saint Louis University Law Journal [Vol. 50:1361] pp. 1361

[3] ibid

[4] Statement of Earl Anthony Wayne, Assistant Secretary, Bureau of Economics and Business Affairs, U.S. Department of State (2004), *Diplomacy in the age of Terrorism: What is the State Department's* Strategy? Hearing Before Commission on International Relations H.R., 108th Cong. 67 (2004)

[5] See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. L. No.107-56, 302(b), 115 State. 272, 297 (2001) (defining the purposes of Title III of the Patriot Act).

No discussion of terrorist financing would be complete without addressing the issue of money laundering. Money laundering is "an indispensable element of organized criminal activities".

It is "the process by which one conceals the existence, illegal source, or illegal application of income, and disguise that income to make it appear legitimate." Experts sometimes refers to money laundering process involved in financing terrorism as "reverse money laundering", because the money sought to be laundered is often obtained from legitimate sources and then funneled to illegal purpose. However, the process is substantially similar to traditional money laundering, where the source is illegal but the use legitimate[1].

Since 9-11, money laundering has received substantially more attention as it was generally accepted that the attacks were partially funded by laundered money. Prior to 9-11, money laundering legislation was primarily backward looking. The authorities were interested in using money laundering legislation to prosecute crimes that had already occurred. Prosecutors could charge criminals with violations of anti-money laundering laws that may be easier to prove than the substantive underlying crime, or they could simply tack on money laundering crimes to other charges in order to extend the defendant's sentence[2].

The harm was already done and, at worst, the criminals could reinvest the money in criminal activities. However, in the context of terrorism, failure to prevent money laundering results in more severe consequences. Terrorists may use the money to plan for an attack, or to obtain the materials and supplies needed to carry out an attack. In the case of terrorism, money laundering is a predicate offense, and it becomes more important to stop the process before it is completed. This makes it important to establish legislation that is forward looking.

Of all forms of organizational crime, terrorism is probably one of the least cost intensive. Nevertheless, the use of financial institutions is crucial to these types of crime.

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[1] Paul Fagyal (2006), *The Anti Money Laundering Provisions of the Patriot Act: Should they be allowed to Sunset.* Saint Louis University Law Journal [Vol. 50:1361] pp. 1363

[2] ibid

1.11 FAILURES OF LEGAL AND FINANCIAL SECTOR TO CHECK THE SUSPICIOUS TRANSACTIONS AND MONEY LAUNDERING

1.11.1 Failure of Legal Sector

Offence of money laundering involving complex financial transactions has made it very difficult for the law enforcing agencies to check such transactions. The failure of legal sector in detecting and checking the suspicious financial transactions and money laundering has got specific reasons which are summarized are as under:-

a) The globalization of economic system and the introduction of latest modern technology have made the job of the offenders very easy and now they can safely and swiftly transmit illegal assets from one corner of the world to the other. The trail of offence being complex and lengthy is difficult to detect for the law enforcing agencies.
b) The financial cost to detect, investigate and prosecute the offences relating to money laundering is a major obstacle in the way of victim countries that are already impoverished by the looting of their national assets by the offenders. Hence the lack of financial resources is one of the major cause of failure of legal sector to check this evil.
c) The trail of money-laundering transactions spreads over different jurisdictions having conflicting legal systems to deal with such like matters. In some jurisdictions, these are considered civil nature of matters while in the others that of criminal nature. This discrepancy in the legal systems is availed by the offenders to their benefit and they try to confound the legal proceedings taken against them by the different jurisdictions.
d) Investigation and prosecution of money-laundering cases requires a special expertise, which may not be available to the law enforcing agencies of the victim countries, which mostly belong to the third world. Therefore, such offences even if detected do not reach to the logical conclusion and ultimate punishment to the offenders.
e) The money-laundering offences being spread over more then one jurisdictions, the witnesses who are mostly bank officials or investigators must often has to travel

personally to distant countries for giving testimony which some times becomes very difficult in view of travel barriers between the jurisdictions. The offenders take benefit of this handicap to their advantage. Some times linguistic obstacles relating to testimony by the witnesses of different regions also become a cause of the failure of legal sector dealing with such offences.

f) Between the countries, there are different standards and procedures regarding the confiscation of the illegal assets relating to money-laundering offences. Conflicting legal rules may impede the co-operation of the people and organizations operating under the laws of different countries.

g) Then there may be conflicting judgments relating to proceedings brought in more than one jurisdiction and there may be a serious problem in the implementation of such judgments and the determination of final fate of the assets involved therein.

1.11.2 Failure of Financial Sector in Combating Money laundering

There are many reasons of failure of financial sector to combat money laundering, but the most important are the following: -

a) **Misconception About Bankers' Liability Under Trade Transactions:** Besides remittances, the means through which enormous amount of Money Laundering takes place is trade, both domestic and international. For decades, bankers have felt safe under the illusion that they deal only in documents underlying trade transactions and, as such, are not liable for the goods that are actually traded there-under, so long as the goods declared in documents submitted to them are not contraband. The underlying assumption, quite rightly, is that verifying that the goods being shipped are the same as declared in the shipping documents, is the responsibility of the Customs Authorities.

This logic holds as far an individual transaction is concerned, however bankers are expected to merely handle the trade transactions of their customers. More importantly, they are expected to know whether their customers have legitimate means to engage in the trade they claim to be engaging in, and whether based on the scale of their business operations, they can sell or buy the volume of goods they are selling or buying.

b) **Emerging Economies And Insufficient Legal Checks And Balances:** During the past decade, most of the developing countries have recognized the severity of the menace of Money Laundering, forcing them to initiate a process of containing the activity. However, the economies of emerging countries[1] being poorly regulated markets remain vulnerable to being targeted by Money Launderers. This is largely due to strict action being taken by developed countries to check this activity forcing money launderers to shift their activities to emerging markets.

Money Laundering is a problem not only for the world's major financial markets and offshore financial sector; any country integrated into the international financial system is at risk. Since trading activities between nations and the banking transactions relating to them have integrated all financial markets and as emerging markets by opening their economies they become increasingly lucrative targets for Money Laundering.

There is evidence of increasing cross-border cash shipments to markets with loose arrangements for detecting and recording the movement of cash through the financial system, and of growing investment by criminal groups in real estate businesses in the emerging markets.

c) **Lack Of Anti Money Laundering Legislations:** until late 1970s not much attention was paid to this vital subject. However, in early 80s, most of countries, particularly the US and UK, began focusing on these activities, and initiated legislations to discourage Money laundering. International organizations and governments began taking measures to check the menace of the same very recently. There are still so many jurisdictions where there is no exclusive legislation to effectively fight against this evil. Then there are certain non-cooperating countries, which are not ready to cooperate in the fight against this problem.

d) **Weak Regulatory Arrangements For Banks And Money Changers, Customs And Others:** Weak regulatory arrangements for supervising banks and money-changers provide incentives to criminals to benefit there from, and expand their

[1] Emerging Country - Newly industrialized country - a handful of countries in Central Europe, Latin America and Asia have experienced rapid economic growth throughout most of the past decades. These countries including china, India, Indonesia, South Korea, Brazil, Mexico, Argentina, South Africa, Poland and turkey are generally recognized as emerging countries.

illegal businesses. It is important that governments bring together law enforcing agencies and regulatory authorities to monitor the private sector, thereby enabling financial institutions to play their role effectively in dealing with Money Laundering.

The system should provide for flexibility in quickly adjusting, modifying, and re-focusing counter-measures to plug the loopholes that may develop in the monitoring system over the time, launderers constantly change their Money Laundering techniques to defeat the counter-measures. We also need to take legal and regulatory initiatives to rectify weaknesses in the financial system that obstruct or prevent bankers and financial managers from enforcing anti-Money Laundering measures.

e) **Loopholes in Bank Policies, Procedures and Systems:** Loopholes in bank policies, procedures, and systems have made it possible for money launderers to move tainted funds anywhere in the world. These loopholes exist in the opening of accounts, which may be enumerated as under:-

i) not requiring customer introduction by credible and verifiable sources;
ii) acceptance of inadequate or un-verifiable identification papers;
iii) failure to establish a system whereby suspicious nature of transactions could be singled out immediately;
iv) complete disregard for, or inadequate monitoring of activity in customer accounts;
v) absence of periodic review of account activity to check its compatibility with the profile of the customer or the customer's business;
vi) inadequacy of bank regulations that require banks to compulsorily institute anti-Money Laundering measures in their operations.

CHAPTER – 2 GLOBAL & REGIONAL SCENARIO

2.1 GLOBAL AND REGIONAL INITIATIVES

Criminals are now taking advantage of the globalization of the world economy by transferring funds quickly across the international borders. Rapid developments in information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money laundering more urgent than ever.

The deeper "dirty money" gets into the international banking system, the more difficult it is to identify its origin. Because of the clandestine nature of money laundering, it is difficult to estimate the total amount of money that goes through the laundering cycle. Estimates of the amount of money laundered globally in one year have ranged between $590 billion and $1.5 trillion. Though the margin between those figures is huge, even the lower estimate underlines the seriousness of the problem governments have pledged to address[1].

There have been a number of developments in the international financial system during recent decades that have made the freezing and forfeiting of criminally derived income and assets all the more difficult. These are the "dollarization"[2] of black markets, the general trend towards financial deregulation, the progress of the Euromarket and the proliferation of financial secrecy havens.

Due to advancement in technology and means of communications, the financial infrastructure has developed into a perpetually operating global system in which "megabyte money"[3] can move anywhere in the world with speed and ease.

Keeping in view all this, the international community and national agencies have indeed recognized the need to combat money laundering and suspicious financial

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[1] M. M. Malik, Secretary Institute of Banker Pakistan, (2002) Anti Money Laundering Measures – A Guide For Bankers. Karachi: Institute of Banker Pakistan.
[2] Dollarization - the use of the US dollar in transactions
[3] Megabyte Money - money in the form of symbols on computer screens

transactions. The first pre-requisite for combating money laundering is to have in place appropriate national legislations, which have to be crafted with local circumstances in mind and taking into account the international nature of the problem.

The 1988 Vienna Convention on Money Laundering was the first international treaty to criminalize money laundering activities. While the scope of the 1988 Convention does not extend beyond drug related offences, it established a legal framework that has served as the basis for the development of policy in that area. Subsequently, international standards and frameworks developed under the 1988 Convention have been extended to apply to all serious crimes[1].

In 1988, the Basel Committee on Banking Supervision (then called the Basel Committee on Banking Regulations and Supervisory Practices) issued a statement on the prevention of criminal use of the banking system for the purpose of money laundering, in which it recognized the risks of misuse of financial institutions for criminal purposes and issued guidelines to banks regarding customer identification, the need to comply with laws against money-laundering and to cooperate with law enforcement authorities in that area.

The 40 recommendations adopted in 1990 by the Financial Action Task Force continue to serve as a blueprint for action needed to combat the issue. Following the terrorist attacks of 11 September 2001, the Financial Action Task Force added eight special recommendations to address issues specifically concerned with the financing of terrorism.

Council of the European Communities Directive No. 91/308/EEC of 10 June 1991, on prevention of the use of the financial system for the purpose of money laundering, which took into account the relevant provisions of the 1988 Convention, gave the member States a discretion to extend the provisions of the directive to include any other criminal activity. The 1988 Convention made it necessary for the directive to be amended so that member States would have been obliged to have in place legislation covering all serious crimes[2].

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[1] United Nations Office On Drugs and Crime, (2006) Global Programme Against Money Laundering [Online] Available: http://www.unodc.org/unodc/money_laundering_cycle.html [accessed on 7th February, 2007]
[2] ibid

The UN Convention against Transnational Organized Crime, adopted by the General Assembly in its resolution 55/25 of 15 November 2000, builds on the foundations set by the 1988 Convention.

In October 2001, the Basel Committee on Banking Supervision issued "Customer Due Diligence" for Banks, in which it recommended, in particular, enhanced vigilance in handling the financial affairs of so-called "politically exposed persons", i.e. government leaders and public sector officials, in order to prevent corruption and the abuse of public funds.

After the events of September 11, 2001, the Security Council adopted resolution # 1373 (2001). In that resolution, the Council, acting under Chapter VII of the Charter of the UN, decided that all States should, inter alia, prevent and suppress the financing of terrorist acts and decided to establish a committee of the Security Council, consisting of all the members of the Council, to monitor the implementation of the resolution.

According to the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly in its resolution No. 54/109 of 9 December 1999 and entered into force on 10 April 2002, each State party to the International Convention must take appropriate measures to identify, detect and freeze or seize any funds used or allocated for the purpose of committing a terrorist act (article 8). In its resolution No. 1456 of January 20, 2003, the Security Council decided to adopt a declaration on the issue of combating terrorism. In that declaration, the Council reaffirmed that terrorists must be prevented from making use of other criminal activities such as transnational organized crime, illicit drug trafficking, money-laundering and illicit arms trafficking.

As a reflection of its political will to combat money laundering, the international community has launched several multilateral initiatives to serve as legislative and policy frameworks to be used by States in defining and adopting measures against money laundering. Many States have engaged in a series of self-evaluation exercises, and "mutual evaluations", undertaken through regional bodies for countering money-laundering that are similar to that of the Financial Action Task Force. A key function of those bodies is to coordinate the mutual evaluations and peer evaluations that are intended to monitor the compliance of States with international treaty obligations and to enhance the consistency of measures taken to counter money-laundering.

The regional approach has been particularly useful because neighbouring States often have a common language, legal system and culture and are frequently at a similar level of policy development and implementation. Moreover, States from the same region need to undertake international cooperation with each other to combat transnational crime, so contacts are essential at the political and operational levels to ensure the effectiveness of such cooperation. In addition, regional bodies assist requesting States in targeting and coordinating technical assistance to be provided to requesting states for development of their regimes to counter money-laundering.

International organizations, including the Financial Action Task Force, the World Bank and the International Monetary Fund, have developed a common methodology of evaluation covering the legal and institutional framework and preventive measures for the financial sector to assess State's compliance with international standards for countering money-laundering and combating the financing of terrorism. It draws on the standards issued by, among others, the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors and the International Organization of Securities Commissions. Regional inter-governmental organizations have also been engaged in activities aimed at countering money-laundering activities. Such organizations include the Intergovernmental Task Force against Money Laundering in Africa (GIABA), the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures of the Council of Europe with its mutual evaluation programmes and onsite visits, the Commonwealth Secretariat and Inter-American Drug Abuse Control Commission (CICAD), which promoted action against money-laundering and introduced peer review by its member States on progress in the implementation of national programmes against money-laundering and revised its model regulations on control of the same.

States and territories within the framework of the above-mentioned regional and international initiatives designed to promote and strengthen effective measures against money laundering are making significant progress.

2.2 BASEL COMMITTEE ON BANKING SUPERVISION 1974

The Basel Committee, established by the central bank Governors of the Group of Ten countries at the end of 1974, meets regularly four times a year. It has about twenty-five technical working groups and task forces, which also meet regularly.

Its founder members are Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, Netherlands, Spain, Sweden, Switzerland, United Kingdom and The United States. Countries are represented by their central banks and also by the authority with formal responsibility for the prudential supervision of banking business where there is no central bank.

The Committee formulates broad supervisory standards and guidelines and recommends statements of best practice in the expectation that individual authorities will take steps to implement them through detailed arrangements, statutory or others, which are best suited to their own national systems. This committee has provided guidelines on Cross-Border Banking, which are described as under[1]:

2.2.1 Section VI: Cross-Border Banking

The Principles set out in this section are consistent with the so-called Basle Concordat and its successors. The Concordat establishes understandings relating to contact and collaboration between home and host country authorities in the supervision of bank's cross-border establishments. The most recent of these documents, *"The supervision of cross border banking"*, was developed by the Basle Committee in collaboration with the Offshore Group of Banking Supervisors and subsequently endorsed by 130 countries attending the International Conference of Banking Supervisors in June 1996. This document contains twenty-nine recommendations aimed at removing obstacles to the implementation of effective consolidated supervision.

A. Obligations of Home Country Supervisors

- **Principle 23:** Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by

[1] Basel Committee on Banking Supervision (Bank for International Settlement), (1997) Core Principles for Effective Banking Supervision [Online] Available: http://www.bis.org/publ/bcbs30.pdf [accessed on 7th July, 2006]

these banking organizations worldwide; primarily at their foreign branches, joint ventures and subsidiaries.

- **Principle 24:** A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved; primarily host country supervisory authorities.

B. Obligations of Host Country Supervisors

- **Principle 25:** Banking supervisors must require the local operations of foreign banks to be conducted to the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.

2.3 THE VIENNA CONVENTION 1988 ON MONEY LAUNDERING

The Vienna Convention, entered into force on November 13 1990, was the first international legal instrument to provide a legal definition of Money Laundering. Till November 1, 2000 a total of 157 states and the European Union[1] had become parties to the Convention[2]. While looking at the issue from the perspective of narcotic drugs and psychotropic substances, the Convention specifically identified the offences of conversion, transfer, concealment, acquisition and possession of property, knowing that such was derived from the proceeds of an offence. In dealing with the issue of confiscation, the convention also touches on issues directly related to financial institutions.

Article 5 requires that the competent authorities should be empowered to seize bank records and states explicitly that bank secrecy should not be used as a defense against compliance with this provision. Banks and other financial institutions should also be aware that where a party that has jurisdiction over an offence makes a request for confiscation, then the party receiving the request has an obligation to take the measures necessary to identify, trace and freeze or seize the property in question.

Banks' attention is also drawn to the provisions of ***Article 7*** of the Convention, which requires countries to afford each other the widest measure of mutual legal assistance in relation to offences. This assistance includes co-operation in the areas of identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes and the provision of certified copies of relevant documents including bank records. Further banks are required to ensure that their Anti Money laundering (AML) mechanisms meet internationally accepted standards irrespective of the location of their operations.

The Vienna Convention is a benchmark in identifying counter-laundering measures on an international level but it does not criminalize laundering. Rather, it obligates the parties to adopt domestic legislation that makes laundering drug proceeds a crime.

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[1] European Union - An international organization of European countries formed after World War II to reduce trade barriers and increase cooperation among its members

[2] Ian Carrington, (2000) Countering Abuses of the Banking System - Where Do We Stand [Online] Available: http://www.unodc.org/palermo/carrington.doc [accessed on 7th February, 2007]

2.4 FinCEN – US DEPARTMENT OF THE TREASURY (Financial Crimes Enforcement Network)

As reflected in its name, the FinCEN is a means of bringing people and information together to fight the complex problem of money laundering. Since its creation in 1990, it has been working to maximize information sharing among law enforcing agencies and its other partners in the regulatory and financial communities. Working together is critical in succeeding against today's criminals. No organization, no agency, no financial institution can do it alone. Through cooperation and partnerships, FinCEN's network approach encourages cost-effective and efficient measures to combat money laundering domestically and internationally. Today, it is one of Treasury's primary agencies to oversee and implement policies to prevent and detect money laundering.

The mission of the FinCEN is to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity. It uses counter-money laundering laws (such as the Bank Secrecy Act-"BSA"[1]) to require reporting and record keeping by banks and other financial institutions. FinCEN also provides intelligence and analytical support to law enforcement.

FinCEN serves the interests of the financial, law enforcement, and regulatory communities. FinCEN's analysts provide case support to more than 165 federal, state, and local agencies, issuing approximately 6,500 intelligence reports each year. It supports the Financial Action Task Force, which came under the presidency of the United States for the seventh round (1995-96). In addition, FinCEN coordinates with financial intelligence units (FIUs) in scores of countries, including Britain, France, Belgium and Australia. FinCEN is also using its expertise to help establish FIUs worldwide[2].

FinCEN has also provided legal and technical assistance to a number of jurisdictions in drafting and revising their AML legislation. These jurisdictions included Antigua and Barbuda, Bermuda, Canada, Costa Rica, El Salvador, India, Mauritius, Moldova, Mozambique, **Pakistan**, Panama, Peru, Romania, Russia, and Thailand.

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[1] Bank Secrecy Act-"BSA" - The Bank Secrecy Act (or BSA, or otherwise known as the Currency and Foreign Transactions Reporting Act) requires U.S.A. financial institutions to assist U.S. government agencies to detect and prevent money laundering.

[2] FinCEN, (2006) About FinCEN Overview [Online] Available: http://www.fincen.gov/af_overview.html [accessed on 7th February, 2007]

2.5 THE STRASBOURG CONVENTION OF 1990 ADOPTED BY COUNCIL OF EUROPE

The Council of Europe is a regional organization established to strengthen democracy, human rights, and the rule of law in its member states, in part, by harmonizing its policies and encouraging the adoption of common practices and standards. It adopted the Strasbourg Convention in November 1990, which, like the Vienna Convention, requires each party to adopt legislation that criminalizes money laundering. Till December 1999, 27 out of 41 member states and one non-member (Australia) have ratified the Strasbourg Convention[1].

Unlike the Vienna Convention, this treaty does not limit the underlying predicate offence to drug trafficking. The Strasbourg Convention requires members to adopt laws criminalizing the laundering of the proceeds from any "serious crime." The treaty also requires signatories to adopt laws authorizing the forfeiture of the proceeds of serious offences, as well as any instrumentalities of the crime, or in the alternative, the value of such property.

Members must also provide investigative assistance to foreign jurisdictions regarding forfeiture cases and take appropriate measures to prevent disposal of subject property prior to confiscation.

[1] Ian Carrington, (2000) Countering Abuses of the Banking System - Where Do We Stand [Online] Available: http://www.unodc.org/palermo/carrington.doc [accessed on 7th February, 2007]

2.6 THE GENERAL ASSEMBLY SPECIAL SESSION – JUNE 1998

The UN General Assembly convened its 20th Special Session in June 1998, to address the world drugs problem. One of the five key themes of that session was international action against money laundering. It approved unanimously a Political Declaration and Action Plan in which member states undertook to make special efforts against money laundering.

2.6.1 UN Recommendations on Money Laundering[1]

i. Establishment of a comprehensive legislative framework to criminalize money laundering relating to serious crimes and to prevent, detect, investigate and prosecute the same by:
   a) identifying, seizing and confiscating the proceeds of crime; and
   b) including money laundering in mutual legal assistance agreements to ensure assistance in investigations, court cases or judicial proceedings.

ii. Establishment of an effective financial/regulatory regime to deny access to national and international financial systems by the criminals and their illicit funds through:
   a) customer identification and verification requirements, in order to have available for competent authorities the necessary information on the identity of clients and the types of financial movements they carry out;
   b) financial record-keeping;
   c) mandatory reporting of suspicious activity; and
   d) removal of bank secrecy impediments to anti-money laundering efforts.

iii. Implementation of enforcement measures to provide for:
   a) effective detection, investigation, prosecution and conviction of the criminals engaging in money laundering activity;
   b) extradition procedures; and
   c) information sharing mechanisms.

The Assembly also requested the UN Office for Drug Control and Crime Prevention, to continue to provide training, advice and technical assistance in the above areas to countries that request it.

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[1] Ian Carrington, (2000) Countering Abuses of the Banking System - Where Do We Stand [Online] Available: http://www.unodc.org/palermo/carrington.doc [accessed on 7th February, 2007]

2.7 GLOBAL PROGRAMME AGAINST MONEY LAUNDERING (GPAML)

In 1997, the Office for Drug Control and Crime Prevention (now called the UN Office on Drugs and Crime) established the Global Programme against Money-Laundering to address United Nations mandates against money laundering based on the 1988 Convention and the UN Convention against Transnational Organized Crime. The UN Office on Drugs and Crime provides technical assistance to states to develop the infrastructure necessary for fighting money laundering, thus enabling them to implement treaty provisions in that regard.

The main objective in providing technical cooperation is to assist legal, financial and law enforcement authorities in developing legal frameworks, institutional capacity, training in financial investigations & intelligence gathering, research and awareness raising.

Specific initiatives are built around institution building, training, research and awareness-raising. In the field of developing legal frameworks, the UN Office on Drugs and Crime assists in the drafting of legislation against money laundering. Assistance in the development of legislation against money laundering has recently been provided to Andorra, Georgia, Indonesia, Israel, Kazakhstan, Lebanon and the Russian Federation. The UN Office on Drugs and Crime has prepared model legislation that states have used it as guidance in enacting or updating their laws against money laundering[1].

In particular, the Global Programme against Money-Laundering provides long-term assistance to States by providing mentors, who assist in building the capacity of financial investigations and prosecution services for jurisdictions handling major cases involving money-laundering and the seizure of assets. Training is also provided to legal, judicial, law enforcement and financial regulatory authorities to enhance their capacity to undertake their respective roles in the fight against money laundering. Efforts are also under way to extend training to relevant private sector officials. Activities are also being conducted to raise awareness in government and the financial sector about money laundering, its negative impact and the measures necessary to combat it.

[1] Ian Carrington, (2000) Countering Abuses of the Banking System - Where Do We Stand [Online] Available: http://www.unodc.org/palermo/carrington.doc [accessed on 7th February, 2007]

2.8 FINANCIAL ACTION TASK FORCE - FATF

In response to mounting concern over money laundering, the Financial Action Task Force on Money Laundering was established by the G -7 Summit that was held in Paris in 1989. Recognizing the threat posed to the banking system and to financial institutions, the G-7 Heads of State or Government and President of the European Commission convened the Task Force from the G -7 member States, the European Commission, and eight other countries.

The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action, which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering. Thus, the FATF is a policy-making body and has no investigative authority.

In April 1990, less than one year after its creation, the FATF issued a report containing a set of Forty Recommendations, which provide a comprehensive plan of action needed to fight against money laundering.

The FATF is an inter-governmental body whose purpose is to establish international standards, and develop and promote policies, both at national and international levels, to combat money laundering and the financing of terrorism. it is a "policymaking body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. The FATF also regularly examines methods and techniques of money laundering and terrorist financing to ensure the continued relevance of its policies and standards. The mandate of FATF was renewed in 2004 for an eight-year period[1].

2.8.1 FATF Members

Originally FATF comprised of G-7 States, the European Commission and eight other countries. During 1991 and 1992, the FATF expanded its membership from the original 16 to 28 members. It currently has 33 members (31 countries and governments

[1] M. M. Malik, Secretary Institute of Banker Pakistan, (2002) Anti Money Laundering Measures – A Guide For Bankers. Karachi: Institute of Banker Pakistan.

and two international organizations) and more than 20 observers, along with five FATF-style regional bodies and more than 15 other international organizations / bodies.

Presently the list of the courtiers, territories, and organizations that make up the membership of the FATF is as follows[1]:

Argentina
Australia
Austria
Belgium
Brazil
Canada
Denmark
Finland
France
Germany
Greece
Gulf Co-operation Council (6 Countries)
Hong Kong, China
Iceland
Ireland
Italy
Japan
Luxembourg
Mexico
Kingdom of the Netherlands
New Zealand
Norway
Portugal
Russian Federation
Singapore
South Africa
European Commission (25 countries)
Spain
Sweden
Switzerland
Turkey
United Kingdom
United States

2.8.1.1 Criteria To Become A Member Of FATF

To qualify for membership, a country must[2]:

a) be strategically important;
b) be a full and active member of a relevant FATF-style Regional Body;

[1] Financial Action Task Force, (2005b) FATF Members [Online] Available: http://www1.oecd.org/fatf/Members_en.htm [accessed on 18th September, 2005]
[2] Financial Action Task Force, (2005b) FATF Members [Online] Available: http://www1.oecd.org/fatf/Members_en.htm [accessed on 18th September, 2005]

c) provide a letter from an appropriate Minister or person of equivalent political level making a political commitment to implement the FATF Recommendations within a reasonable time frame and to undergo the mutual evaluation process; and

d) make it mandatory for financial institutions to identify their customers, to keep customer records and to report suspicious transactions and establish an effective FIU[1], so that the country may be assessed fully or largely compliant with Recommendations 1, 5, 10 & 13, and Special Recommendations II and IV.

2.8.2 Tasks Performed By FATF

The FATF is probably best known for its 40+9 recommendations, which establish an anti-money laundering framework for its member countries. In addition to that it performs the following tasks[2]:

a) Setting international AML / CFT[3] standards and Monitoring its Compliance
b) Promoting worldwide application of the FATF standards
c) Encouraging compliance of non-FATF members with FATF standards
d) Studying the methods and trends of Money Laundering and Terrorist Financing.

2.8.3 FATF 40 Recommendations

The FATF was mandated to examine money Laundering techniques and trends, review existing national and international legislation to enforce, and define further measures needed to combat money laundering. In April 1990, less than one year after its creation, the FATF issued Forty Recommendations, which provide a comprehensive plan of action needed to fight against money laundering.

In 1996, the Forty Recommendations were revised to strengthen AML measures. In October 2001, in response to the September 11 attacks in the United States, the FATF's mandate was expanded to include measures to combat terrorist financing, and the FATF immediately issued Eight Special Recommendations on Terrorist Financing. The continued evolution of money laundering techniques, along with the increasing experience of its member countries, led the FATF to undertake the review of the FATF

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[1] FIUs - Financial Investigation Units
[2] M. M. Malik, Secretary Institute of Banker Pakistan, (2002) Anti Money Laundering Measures – A Guide For Bankers. Karachi: Institute of Banker Pakistan.
[3] CFT - Countering Financing of Terrorism

40 Recommendations, which resulted in June 2003 in a thorough updating of these Recommendations to their present form. In October 2004, the FATF issued a new Special Recommendation, making its overall standard – the forty plus nine Recommendations – a comprehensive framework for governments to use in developing their own efforts against money laundering and terrorist financing[1].

The main focus of the recommendations issued by FATF is on following issues:

2.8.3.1 Requirement of Legal System

(Recommendations 1 to 3)

Recommendations 1 to 3 requires from each member country to establish a complete legal system in order to combat money laundering. For this purpose following issues are addressed.

Scope of the Criminal Offence of Money Laundering

It is desired in ***Recommendation 1 & 2*** that countries should criminalize money laundering on the basis of the *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention)* and the *UN Convention against Transnational Organized Crime, 2000 (the Palermo Convention)*. Further they should ensure that:

a) The intent and knowledge required to prove the offence of money laundering is consistent with the standards set forth in the Vienna and Palermo Conventions, including the concept that such mental state may be inferred from objective factual circumstances; and

b) Criminal liability, and, where that is not possible, civil or administrative liability, should apply to legal persons.

Provisional Measures and Confiscation

As per ***Recommendation 3***, countries should adopt measures similar to those set forth in the Vienna and Palermo Conventions, including legislative measures, to enable their competent authorities to confiscate property laundered, proceeds from

[1] Financial Action Task Force, (2005d) FATF 40 Recommendations [Online] Available: http://www1.oecd.org/fatf/40Recs_en.htm [accessed on 18th September, 2005]

money laundering or predicate offences[1], instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, without prejudicing the rights of bona fide 3rd parties.

2.8.3.2 Measures Required to be taken to Prevent Money Laundering and Terrorist Financing

(Recommendations 4 to 25)

Recommendation 4 says that countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.

Customer Due Diligence and Record-Keeping

Recommendation 5 to 12 emphasizes on financial institutions, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals and accountants; and trust and company service providers that they should:

- not keep anonymous accounts or accounts in obviously fictitious names
- undertake customer due diligence measures, including identifying and verifying the true identity of their customers and beneficial owner.
- Perform enhanced due diligence in case of Politically Exposed Persons (PEP) and cross border correspondent banking
- pay special attention to any Money Laundering threats that may arise from new or developing technologies
- maintain, for at least five years, all necessary records on transactions both domestic and international, to enable them to comply swiftly with information requests from the competent authorities.
- special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

Reporting of Suspicious Transactions and Compliance

According to ***Recommendation 13***, If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report

[1] Predicate Offence - means any criminal offence as a result of which proceeds are generated that may become the subject of an offence under the relevant law of the concerned state.

promptly its suspicions to the financial intelligence unit (FIU). In this regard complete legal protection should be provided to financial institutions, their directors, officers and employees under ***Recommendation 14***. Further ***Recommendation 15*** encourages financial institutions to develop programmes against Money laundering & Terrorist Financing. In this regard ***Recommendation 16*** demands that Recommendations 13 to 15, also apply to all designated non-financial businesses and professions such as lawyers, notaries, other independent legal professionals and accountants, dealers in precious metals / stones and trust and company service providers.

Other Measures to Deter Money Laundering and Terrorist Financing

Recommendation 17 desires from member countries that they should ensure effective, proportionate and dissuasive sanctions (criminal, civil or administrative) to deal with natural or legal persons that fail to comply with Anti Money Laundering and Terrorist Financing requirements. According to ***Recommendation 18***, countries should not approve the establishment or accept the continued operation of shell banks.

According to ***Recommendation 19***, Countries should consider the feasibility and utility of a system where banks / financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerized data base for use in Money Laundering and Terrorist Financing.

It is also required under ***Recommendation 20*** that Countries should also consider applying the FATF Recommendations to businesses and professions, other than designated non-financial businesses and professions that pose a Money Laundering and Terrorist Financing risk.

Measures to be taken with respect to Countries that do not or insufficiently comply with the FATF Recommendations

According to ***Recommendations 21 & 22***, financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries, which do not or insufficiently apply the FATF Recommendations. Further, same precaution should be observed while dealing with branches and majority owned subsidiaries located abroad, especially in countries, which do not or insufficiently apply the FATF Recommendations.

Regulation and Supervision

Recommendation 23 & 24 describes that countries should ensure that financial institutions and other categories of designated non-financial businesses and professions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. For this purpose, ***Recommendation 25*** requires that the competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.

2.8.3.3 Institutional and other Measures Necessary in Systems for Combating Money Laundering and Terrorist Financing

(Recommendations 26 to 34)

Competent Authorities, Their Powers and Resources

Recommendation 26 gives a complete picture regarding establishment of financial investigation Unit (FIU) that serves as a national center for analysis and dissemination of STR (suspicious transaction report) and other information regarding potential money laundering or terrorist financing.

Recommendation 27 to 29 demands that countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations. Further during investigations, these competent authorities should be able to obtain related documents and information. ***Recommendation 30*** highlighted that for implementation of Recommendations 26 to 29, countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources.

According to ***Recommendation 31,*** countries should ensure that policy makers, the FIU, law enforcement and supervisors must co-operate and coordinate with each other concerning the development and implementation of policies and activities to combat Money Laundering & Terrorist Financing. Under ***Recommendation 32,*** countries should ensure that their competent authorities can review the effectiveness of their systems to combat Money Laundering & Terrorist Financing.

Transparency Of Legal Persons And Arrangements

According to ***Recommendation 33 & 34*** , countries should take measures to prevent the unlawful use of legal persons and legal arrangement by money launderers.

2.8.3.4 International Co-Operation

(Recommendations 35 to 40)

Under ***Recommendation 35,*** countries are encouraged to ratify and implement other relevant international conventions, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism.

Mutual Legal Assistance And Extradition

Recommendation 36 & 37 clearly mention that countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to Money Laundering & Terrorist Financing investigations, prosecutions, and related proceedings even in absence of dual criminality. In this regard ***Recommendation 38*** says that there should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, or proceeds from money laundering. ***Recommendation 39*** expects that countries should recognize money laundering as an extraditable offence. Each country should either extradite its own nationals, or where a country does not do so solely on the grounds of nationality, that country should, at the request of the country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request.

Other Forms Of Co-Operation

Recommendation 40 desires that countries should ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts.

2.8.4 Special Recommendations

Recognizing the vital importance of taking action to combat the financing of terrorism, especially after the incidence of 09/11, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering set out the basic framework to detect, prevent and suppress the

financing of terrorism and terrorist acts. The main futures of these recommendations are as follows.

I. Ratification and implementation of UN instruments

II. Criminalizing the Financing of Terrorism and associated Money Laundering

III. Freezing and Confiscating Terrorist Assets without delay

IV. Reporting Suspicious Transactions Related to Terrorism promptly to the competent authorities.

V. International Co-Operation in a way that each country should have arrangements with other countries / territories for mutual legal assistance or information exchange.

VI. Alternative Remittance services should be licensed.

VII. accurate and meaningful originator information (name, address and account number) in case of Wire Transfers

VIII. misused of Non-profit Organizations should be checked and eliminated.

IX. To adopt wide measures and legal authority to detect, stop and restrain the physical cross-border transportation of currency and bearer negotiable instruments.

2.9 CARIBBEAN FINANCIAL ACTION TASK FORCE (CFATF)

The Caribbean Financial Action Task Force (CFATF) was established in 1992. Presently, it has 30 member countries in the Caribbean and Central American region. Its mandate is to assist member countries to develop and maintain anti- money laundering infrastructures that meet international standards.

Like FATF, the Caribbean Financial Action Task Force undertakes mutual evaluations of its members to assess levels of compliance with these standards. The first round of evaluations was completed in 2000 and the second round in next Year[1]. The mutual evaluations include assessments of compliance by banks and other financial institutions. The evaluations are therefore not only useful tools in assessing a country's overall level of compliance but also the extent to which financial institutions are making satisfactory progress.

The Caribbean Financial Action Task Force (CFATF) requires its member jurisdictions to implement the FATF 40 Recommendations as well as an additional 19 Recommendations specific to the region. The Secretariat of the Caribbean Financial Action Task Force is housed in Port of Spain, Trinidad and Tobago. The Secretariat has been established as a mechanism to monitor and encourage progress to ensure full implementation of the Kingston Ministerial Declaration.

[1] Caribbean Financial Action Task Force, (2005) CFATF: An Overview [Online] Available: www.cfatf.org/default.asp [accessed on 13th September, 2005]

2.10 THE ASIA PACIFIC GROUP ON MONEY LAUNDERING

The origin of the Asian Pacific Group (APG) goes back to "awareness raising" activities undertaken by the Financial Action Task Force in the early 1990s as part of its strategy to encourage adoption of money laundering counter-measures throughout the world. However, it was officially established in February 1997 as part of the FATF's global AML/CFT strategy. The first meeting was held in Tokyo in 1998 and then annually thereafter. Following the events of 11 September 2001, the APG expanded its scope to include the countering of terrorist financing.

In March 1998, the APG held its first official meeting in Tokyo, Japan. The meeting was attended by 25 jurisdictions and 7 international organizations and resulted in the adoption of several documents, reflecting progress towards the establishment of effective anti-money laundering policies in the Asia/Pacific region. The APG Terms of Reference were revised and adopted to include reference to three new members--Fiji, India and Korea. The Terms of Reference also reflect the APG's acceptance of the FATF 40 Recommendations as the guiding principles for action to check an effective anti-money laundering framework[1].

In October 1998, the Asian Pacific Group held its first typologies meeting in Wellington, New Zealand to consider practical ways of dealing with money laundering. This meeting provided a forum for knowledgeable law enforcement and regulatory experts from the Asia / Pacific region to discuss recent trends in the laundering of criminal proceeds, emerging threats, and effective countermeasures. The meeting focused on the vulnerability and problems of international financial centers (IFCs) and included experts from some South Pacific offshore centers (e.g., Vanuatu, and the Cook Islands).

The Asian Pacific Group conducted its next typologies exercise in Tokyo, Japan in March 1999. This meeting was focused on alternate remittance systems (e.g., Hawala, and underground banking).

The purpose of the Asia Pacific Group on Money Laundering is to ensure the adoption, implementation and enforcement of internationally accepted anti-money laundering and counter-terrorist financing standards as set out in the FATF Forty Recommendations and Nine Special Recommendations. The Asia Pacific Group has about 30 members and Pakistan is one of the members.

[1] www.apgml.org – accessed on March 3, 2006

2.11 UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (The Palermo Convention)

The UN Convention against Transnational Organized Crime (TOC) has effectively combined many of the anti-money laundering mechanisms explored in the convention into one international legal instrument. While a number of issues are addressed through several international initiatives, which in many instances were not legally binding, they now have the full force of an international legal instrument. The Convention recognizes that a considerable amount of valuable work related to the fight against money laundering has been undertaken by a number of organizations. It specifically alludes to this work by recommending that parties should seek guidance from such initiatives. In adopting this approach the Convention is careful not to impose an additional set of compliance criteria on member states, and implicitly recognizes the work already undertaken by these organizations as constituting international best practice[1].

The Convention borrows from the 1998 General Assembly Political Declaration and extends the definition of money laundering to include money derived from all serious crimes. Serious crimes are defined as offences punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. The offence has been very widely defined and include many other offences which are summarized below:

a) the conversion or transfer of property for the purpose of concealing or disguising its illicit origin;
b) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property;
c) the acquisition, possession or use of property; and
d) participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences

In its focus on issues more directly related to financial institutions, the Convention requires member countries to establish comprehensive regulatory and supervisory regimes for banks and non-bank financial institutions. It requires that such regimes should specifically address the issues of customer identification, record keeping and

[1] Ian Carrington, (2000) Countering Abuses of the Banking System - Where Do We Stand [Online] Available: http://www.unodc.org/palermo/carrington.doc [accessed on 7th February, 2007]

suspicious transaction reporting. It stresses the importance of the exchange of information at the national and international levels and in that context highlights the important role of FIUs for the purpose of collecting, analyzing and disseminating information. It also highlights the need for cooperation amongst judicial, law enforcement and financial regulatory authorities.

2.11.1 Measures Adopted By UN Development Programme

In July 1998, the Executive Committee of the UN Development Programme (UNDP)[1] approved the corporate position paper, titled "Fighting corruption to improve governance", to guide its work in this important area. At the heart of this is the UNDP holistic approach of tackling corruption as a problem of poor governance. Fighting corruption is a critical component of establishing democratic governance, a key priority in the commitment of UNDP to eradicate poverty.

Although a major portion of the work of UN Development Programme deals with improving efficiency and accountability of public administration systems and strengthening independent government oversight capacity, UNDP is increasingly engaging the business community in the fight to prevent corruption, bribery, money-laundering and the illegal transfer of funds.

At the country level, UN Development Programme has been critical in brokering dialogue among private sector (particularly local chambers of commerce), government and civil society representatives, as part of policy consultations to develop national anti-corruption strategies.

United Nations Development Programme – UNDP is the UN's global development network (Headquartered in New York City), an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. . The organization has country offices in 166 countries, working with them on their own solutions to global and national development challenges.

[1] United Nations Development Programme – UNDP is the UN's global development network (Headquartered in New York City), an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. . The organization has country offices in 166 countries, working with them on their own solutions to global and national development challenges.

2.12 UN CONFERENCE ON TRADE AND DEVELOPMENT

From 1979 to 1981, the Division on Investment, Technology and Enterprise Development of the *"UN Conference on Trade and Development (UNCTAD)"*[1] secretariat, in its previous incarnation as the UN Center on Transnational Corporations, negotiated an International Convention on Illicit Payments in International Business Transactions under the aegis of the Economic and Social Council. The Council to the General Assembly for adoption submitted an almost complete draft of the Convention, with very few outstanding issues to be resolved. The Assembly took no action at that time. The text of the draft Convention later inspired other initiatives, such as the recent OECD[2] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Since then, the topic of corruption in international business transactions has been dealt with as an integral part of the work on international investment agreements, standards and codes of conduct for transnational corporations[3].

The Center on Transnational Corporations provided substantive advice and technical support to the design of Transparency International, one of the leading international organizations solely dedicated to the fight against corruption. Recently the Division on Investment, Technology and Enterprise Development launched a technical cooperation project entitled "Building capacity on good governance in investment promotion and facilitation". The project aims at addressing the negative effects of corrupt practices on investment location decisions by transnational corporations.

The Globalization and Development Strategies Division of UNCTAD derives its interest in money laundering from the growing importance attributed to it in the context of policy issues included in its mandate on global interdependence and development. One such issue is the formulation and implementation of financial codes and standards as part of international financial reform. This subject was covered in part two, chapter IV,

[1] UNCTAD - Established in 1964, UNCTAD promotes the development-friendly integration of developing countries into the world economy. it has progressively evolved into an authoritative knowledge-based institution whose work aims to help shape current policy debates and thinking on development, with a particular focus on ensuring that domestic policies and international action are mutually supportive in bringing about sustainable development.

2 OECD - The Organization for Economic Co-operation and Development is an international organization of those developed countries that accept the principles of representative democracy and a free market economy. It originated in 1948 as the Organization for European Economic Co-operation (OEEC) for the reconstruction of Europe after World War II. Later its membership was extended to non-European states, and in 1961 it was reformed into the Organization for Economic Co-operation and Development.

[3] UN General Assembly – 56th Session, (2001) Prevention of corrupt practices and illegal transfer of funds – Report to General Assembly [Online] Available: (http://www.unodc.org/pdf/crime/a_res_56/403e.pdf [accessed on 7th February, 2007]

of the Trade and Development Report, 2001, section B.9 of which was a summary of the theme of market integrity and money-laundering. Complete consensus does not yet exist on the way in which money-laundering should be handled. The concerns of many developing countries in this area are evident.

2.13 THE INTERNATIONAL COOPERATION

Efforts by governments to address money laundering have been under way for over 10 years. The international response to laundering has taken a number of forms, including multilateral treaties, regional agreements, international organizations, and the identification of universal counter laundering measures.

Countries should take immediate steps to become party to and implement fully the Vienna Convention, the Palermo Convention, and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Countries are also encouraged to ratify and implement other relevant international conventions, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism.

The anti money laundering legislations that are being promulgated by most jurisdictions have and are criminalizing the act of money laundering as defined above. This in essence means that these laws make the act of money laundering a criminal offence and that to launder money derived from criminal acts constitutes committing a crime punishable by law. In addition, the anti money laundering laws place a requirement for financial institutions to report suspicious transactions, failure of which constitutes an offence by both the institution and/or officers of that institution.

The general objective of international cooperation in criminal matters are in principal is same as those of domestic criminal justice. The primary purpose is to immobilize the criminal, which requires the tracing and arrest of the suspect as well as the gathering of evidence with a view to his prosecution. The fight against money laundering and the new profit-oriented perspective of the fight against crime has given criminal justice an important objective: the confiscation of the proceeds and instrumentalities from crime. These objectives not only govern the activities of law enforcement authorities in a domestic situation, but also in an international context. International cooperation is sometime indeed necessary to attain these goals given the transnational nature of the crime phenomenon, e.g. Money Laundering. From a strictly international law point of view, international cooperation is necessitated by the concept of sovereignty, which limits powers of a state to take investigatory, provisional and

enforcement measures to its own territory. It follows that conceptually; international cooperation in criminal matters is mostly intended to deal with a lack of enforcement jurisdiction on the side of the requested state. In the context of the international fight against money laundering the lack of enforcement jurisdiction may take two forms. First, information required to prove the money laundering offence and / or the predicate offence will often be located on the territory of an other state then the state, which intends to prosecute the money laundering offence. Second, criminally derived proceeds may be located on the territory of another state than the one, which intends to prosecute the money laundering offence or the predicate offence. International cooperation in criminal matters in the context of money laundering is therefore geared towards goals: the gathering of information which can be introduced as evidence in the requesting state and the tracing of criminally derived proceeds with a view to their seizer and confiscation. Taking into account these goals international cooperation in criminal matters in a proceeds oriented perspective can be divided into three phases; the investigation, the seizer and the enforcement of confiscation sanction.[1]

2.13.1 Anti Money Laundering Legislations in Various Countries – International Cooperation

Herein under, Anti money Laundering Legislations in some of the important jurisdictions are being discussed, especially in the context of international cooperation.

2.13.1.1 Bahrain

Anti Money Laundering laws in Bahrain impose a prison term of 7 years and fine of one million Bahraini Dinars (US$2.65 million). Over 100 banks including 46 offshore banking units are operating from Bahrain. These Off-shore Units had assets over $90 billion in 2001.[2]

Bahrain has promulgated decree law number (4) of 2001 containing provisions governing the prevention and prohibition of the laundering of money. Under article 2 of the law, which covers the offence of money laundering, any person who commits any of

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1 Guy Stessens (2000), Money Laundering: Pinochet, the Junta and a new International Law Enforcement Modal. London: Cambridge University Press. pp. 251-252

[2] UN General Assembly -- 56th Session, (2001) Prevention of corrupt practices and illegal transfer of funds – Report to General Assembly [Online] Available: (http://www.unodc.org/pdf/crime/a_res_56/403e.pdf [accessed on 7th February, 2007]

the following acts for the purpose of showing that the source of the property is lawful shall have committed the offence of money-laundering: (a) conducting of a transaction with the proceeds of crime; (b) the concealment or disguising of the nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of the proceeds of crime; (c) the acquisition or receipt or transfer of the proceeds of crime; and (d) the retention or possession of the proceeds of crime.[1]

According to article 9, the enforcement unit and the relevant entities in the state of Bahrain may exchange information of general nature regarding the offence of money laundering with competent authorities of foreign states. Article 11 of the decree foresees that the offence of money laundering shall be one of the extraditable offences in accordance with the applicable laws and the international territories ratified by the state of Bahrain and the principle of reciprocity.[2]

2.13.1.2 Brazil

The Brazilian Government has intensified actions to combat corrupt practices and the illegal transfer of funds with the promulgation, on 13 March 1998, of Law number 9.613, which criminalizes corruption as a prior offence to the crime of money-laundering. As regards international cooperation regarding the return of funds of illicit origin, the same Law establishes that, even in the absence of relevant treaties or international conventions, the Brazilian judicial system shall determine the seizure or freezing of any goods, assets or funds derived from the crime of corruption and money-laundering, as long as the Government of the requesting authority's country assures reciprocity. In addition, the Law created the Council for the Control of Financial Activities ("Conselho de Controle de Atividades Financeiras") as a central national agency with the function of receiving, analyzing and forwarding to the competent authorities complaints related to the above-mentioned crimes.[3]

2.13.1.3 Cayman Islands

These islands were a haven for tax evaders, but now laws have been introduced, which require mandatory identification of persons who wish to deposit funds in

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[1] UN General Assembly – 56th Session, (2001) Prevention of corrupt practices and illegal transfer of funds – Report to General Assembly [Online] Available: (http://www.unodc.org/pdf/crime/a_res_56/403e.pdf [accessed on 7th February, 2007]

[2] ibid

[3] ibid

numbered accounts. Strict anti-Money Laundering laws, with a 14-year jail sentence for Money Laundering offences, have also been introduced.[1]

2.13.1.4 France

Under French criminal law, it was an offence for any person exercising public authority or holding public or elected office to engage in bribery or to accept bribes (art. 433-1 and 432-AA of the Criminal Code). It provides for the confiscation of the funds derived from corruption in the form of instrumentalities or proceeds from the offence. At the procedural level, prior to the execution of a confiscation order, the proceeds from the offence, including those from corruption, may be seized.[2]

Law No. 2000-595 of 30 June 2000, amending the Criminal Code and Code of Criminal Procedure in matters of corruption control, which entered into force on 29 September 2000, establishes new offences under French law to punish acts of: (a) bribery of foreign public officials in international commercial transactions; and (b) bribery of European Community officials, national officials of another member State of the European Union or members of European Community institutions, or the acceptance of bribes by such officials.[3]

Law No. 2001-420 of 15 May 2001 on new economic regulations strengthened the criminal law provisions on laundering by making it a criminal offence for individuals associated with one or more persons engaged in laundering not to be able to account for the means enabling them to maintain their lifestyle. It also introduced, in the case of laundering, the penalty of confiscation of all or part of the assets of the offender upon conviction. These provisions also apply to the laundering of proceeds from corruption.[4]

2.13.1.5 India

India has very strong and comprehensive institutional mechanisms for combating corruption, which include a strong legislative framework and independent judiciary. A powerful statutory authority designated as Central Vigilance Commissioner has been

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[1] UN General Assembly – 56th Session, (2001) Prevention of corrupt practices and illegal transfer of funds – Report to General Assembly [Online] Available: (http://www.unodc.org/pdf/crime/a_res_56/403e.pdf [accessed on 7th February, 2007]
[2] ibid
[3] ibid
[4] ibid

created. The Prevention of Corruption Act, enacted in 1988, covers all categories of public servants, including members of parliament who may indulge in criminal misconduct and abetment thereof.[1]

The Indian Parliament has passed the prevention of Money Laundering Act 1999. This is an exhaustive law on the subject. Special courts have been established for the trial of the offences of money laundering. Regarding international cooperation chapter IX of the said Act provides that the central government may enter into an arrangement with a foreign government for exchange of information of the offences under this Act. Section 56 provides the detailed procedure of the letter of request of a contracting state in certain cases and section 57 & 58 gives the scope of the reciprocal assistance and arrangements. Section 59 of the said Act gives detailed provisions regarding the attachment, seizure, and confiscation etc. of the property in a contracting state of India.[2]

2.13.1.6 Israel

The G-8 "naming and sharing" list of 15 countries named Israel as one of those 15 countries, which lacked legal safeguards against Money Laundering. Israel has now passed laws plugging some of the loopholes in its financial system, but not all. It therefore remained in the second category of high-risk countries. Recently, several Israeli banks were named in a Money Laundering investigation conducted in France.[3]

In 2000, the Israeli parliament passed "Prohibition Of Money Laundering Law, 2760-2000. In chapter Two of the said Law, the offence of money laundering has been elaborately defined. Under Section 4 of the Law, a punishment of 7 years imprisonment has been provided for the offence. Chapter Four provides the provisions of obligation to report on monies at the time of entry into and exit from Israel, and in case of breach of the obligation prescribes a

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[1] UN General Assembly – 56th Session, (2001) Prevention of corrupt practices and illegal transfer of funds – Report to General Assembly [Online] Available: (http://www.unodc.org/pdf/crime/a_res_56/403e.pdf [accessed on 7th February, 2007]

[2] The Prevention Of Money Laundering Bill Act, 1999 (Bill No. 72 of 1999), [Online] Available: http://exim.indiamart.com/act-regulations/money-laundering-bill-cont1.html [Accessed on January 03, 2007]

[3] UN General Assembly – 56th Session, (2001) Prevention of corrupt practices and illegal transfer of funds – Report to General Assembly [Online] Available: (http://www.unodc.org/pdf/crime/a_res_56/403e.pdf [accessed on 7th February, 2007]

punishment of 6 months imprisonment. This chapter also provides the provisions regarding the seizure of the money. Chapter Five provides provisions regarding financial sanctions and the procedure of appeals against such sanctions. Chapter Six provides provisions regarding the forfeiture of property in criminal and civil proceedings. In chapter Eight regarding international cooperation, in Section 30 (f) it has been provided that in order to implement this law the competent authority may transmit information, provided the information relates to property originating in an offence, under the legal assistance between the States Law, 5758-1998.[1]

In the schedule of the Law the following offences are included[2]:

i) Offences under the Dangerous Drugs Ordinance.
ii) Offences of illegal trading in arms under section 144 of the Penal Law.
iii) Offences related to acts of prostitution under the relevant section of the Penal Law.
iv) Gambling offences under the Penal Law.
v) Offences of bribery under article two of chapter nine of part two of the Penal Law.
vi) Offences against property under the Penal Law.
vii) Offences of forgery of money and coins.
viii) Offences under sections 52C, 52D & 54 of the Securities Law 5728-1968.
ix) An offence under section 17(b) (3) of the Value Added Tax Law, 5735-1975.
x) Offences under the prevention of Terrorism Ordinance.

2.13.1.7 Japan

In Japan, when the Government receives a request for assistance from a foreign country against Money Laundering, it decides whether the case falls into the category of a criminal or a civil case. In civil cases, foreign Governments and foreigners can be parties to a lawsuit and can therefore bring civil actions to regain illegally transferred funds. In criminal cases, there is no independent or specific procedure. However, the

[1] Prohibition On Money Laundering Law, 5760-2000, [Online] available: http://www.jewishvirtuallibrary.org/jsource/Politics/MoneyLaundering.pdf [Accessed on January 3, 2007]
[2] ibid

Law for International Assistance in Investigation allows the law enforcement authority to request the possessor of an article of evidence necessary for the investigation of the case in question to voluntarily submit the article (tangible articles only), or may seize such article with a warrant and to transfer it to the requesting country. [1]

2.13.1.8 Switzerland

In Switzerland, the amendments to the criminal law provisions on corruption came into force on 1 May 2000. Criminal law prescribes the same sanctions for passive bribery as those that apply to active bribery and its scope was also extended to cover bribery of foreign public officials. In addition, guidelines on combating corruption were adopted by the Directorate for Development and Cooperation of the Department of Foreign Affairs (1998). At the international level, Switzerland ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in May 2000.[2]

As far as the fight against money laundering is concerned, Switzerland has undertaken a series of national and international measures. In order to combat misuse of the Swiss financial center for the purpose of money laundering, several amendments to the Swiss Penal Code that came into force in 1990 outlaw money laundering. Money laundering is punishable regardless of where the main offence is committed. The Swiss Penal Code also punishes the failure to exercise due diligence in conducting financial dealings, in particular, the failure to identify the beneficial owner. The Federal Act on Money Laundering came into force on 1 April 1998 covering both the banking and non-banking sectors. The Act obliges all financial intermediaries who know or have a justified suspicion that money-laundering is involved in a business relationship to report to the Money Laundering Reporting Office.[3]

The Banking Law established an independent banking supervisory authority known as the Swiss Federal Banking Commission. It is empowered to authorize an applicant to engage in banking activity if the conditions for granting a license are met. One of the conditions is that the applicant must be able to guarantee that their conduct

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[1] ibid
[2] UN General Assembly – 56th Session, (2001) Prevention of corrupt practices and illegal transfer of funds – Report to General Assembly [Online] Available: (http://www.unodc.org/pdf/crime/a_res_56/403e.pdf [accessed on 7th February, 2007]
[3] ibid

is beyond reproach. The Control Authority instituted by the Federal Act on Money Laundering has charged with direct supervision of the work conducted by the self-regulatory bodies of the financial organizations.[1]

At the international level, Switzerland has actively participated in the conclusion of the Declaration of the Basel Committee on Banking Supervision, which established the first international code of conduct for banks with the aim of preventing the misuse of the banking sector for the purpose of money-laundering. Switzerland has also participated in the work of the FATF on Money Laundering. In 1998, Switzerland was successful in passing its second Task Force mutual evaluation, which involves an assessment of a country's anti-money laundering measures. On 11 May 1993, Switzerland ratified Convention No. 141 on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of the Council of Europe. The Convention and the law on mutual assistance in criminal matters provide Switzerland with an effective base for cooperation in combating cross-border crime at the international level by primarily targeting the financial instruments used by the criminals.[2]

2.13.1.9 United Arab Emirates

The UAE realized at an early stage the possibility of utilizing banks and other financial institutions in the country in money laundering and terrorist financing. It was also fully aware of the international conventions, protocols and initiatives in this regard. The UAE through its various concerned authorities issued and implemented the following laws, regulations and procedures:

i. Anti money laundering articles in the Federal Law No. (3) of 1987 concerning the promulgation of the Penal Cod, which was inline with the then discussions to prepare for the 1988 Vienna Convention.
ii. The Central Bank of UAE issued Regulation # 14/93 of 20/6/1993 to all banks operating in the country regarding opening of accounts. The Regulation consisted of 11 Articles regarding account opening requirements where banks are not allowed to open secret or shadowy accounts.
iii. The Central Bank of UAE issued Regulation NO. 163/98 of 28/12/1993 requesting banks to detect any transactions whose size is not commensurate

[1] UN General Assembly – 56th Session, (2001) Prevention of corrupt practices and illegal transfer of funds – Report to General Assembly [Online] Available: (http://www.unodc.org/pdf/crime/a_res_56/403e.pdf [accessed on 7th February, 2007]
[2] ibid

with the income of the concerned individual or which does not have an economic cause or clear legal objectives

iv. The Central Bank of UAE in July 1998 established a special unit which was named in November 2000 as "Anti Money Laundering and Suspicious Cases Unit" (AMLSCU) with the task to investigate fraud and suspicious transactions.

v. On 19/07/2000, the UAE formed " The National Anti Money Laundering Committee" under the chairmanship of the Governor of Central Bank of UAE. The committee carries out the full responsibly of coordinating anti money laundering policies in the UAE

vi. The Central Bank of UAE issued Regulation No. 24/2000 to all banks, money changers, finance companies and other financial institutions operating in the UAE, which comprised 25 Articles clarifying the procedures for Anti Money laundering and their application.

vii. Federal Law No. (4) for 2002 regarding criminalization of money laundering was enacted on January 22, 2002, which comprises 25 Articles. It defines elements of money laundering crime, actions that fall under it and penalties imposed on violating of the said law.

As per Article (6), the Board of Directors of the Central Bank of UAE issued A Regulation on 12-01-2002 regarding declaration when importing cash into the UAE through travelers, shipments, postal parcels and parcels of postal companies.

viii. The Central Bank of UAE issued Regulation No. 1815/2001 to all money changers operating in the UAE requesting them to record details of persons or institutions that transfer AED 2,000/- or equivalent in other currencies or more.

ix. The Ministry of Economy and Planning has issued regulations to both insurance companies / brokers and accountants / auditors in the UAE, detailing the customers identifications and suspicious transactions reporting requirements.

x. The Securities and Commodities Authority of the UAE has issued a regulation concerning procedures for Anti Money laundering which apply to the securities markets licensed in the UAE and to their brokers. Further this regulation requires settlement of transactions amounting to AED 40,000/- to be duly documented and the investor's identity has to be verified with original identification documents.

2.13.1.10 United Kingdom of Great Britain and Northern Ireland

The UK has fulfilled its international obligations to create money laundering offences in several pieces of primary legislation – the Criminal Justice Act 1988 (as amended), the Drug trafficking Act 1994 and Terrorism Act 2000 (as amended). These legislations create two types of obligations to make suspicious transactions reports (STR) in the cases and STR can be made either to the law enforcement authorities or where the individual works for an employer who has a money laundering reporting officer to the said MLRO.

The first obligation to make STRs is that each of the statutes listed above requires that a person must make an STR if he knows or suspects that he or his organization is about to become involved in money laundering. The second obligation to make STRs is that the Drug Trafficking Act and the Terrorism Act contain offences of "Failure to Report". These are committed where a person knows or suspects (or, in the case of Terrorism Act, has reasonable grounds for knowing or suspecting) that an other person is engaged in laundering either the proceeds of drug trafficking or terrorism related property but does not make a report to the law enforcement authorities.

In 1993, Ant-Money Laundering Regulations were issued requiring banks to lay-down the procedures to identity the clients, record keeping for 5 years, training of dealing / reporting staff to identify suspicious transactions, punishment in case of failure in reporting transactions of Sterling Pounds 10,000 and over. Further more it obliges financial institutions to ensure that they have systems in place to make STRs to the National Criminal Intelligence Service (NCIS).

The Proceeds of Crime Bill (Bill 31 of 2001-2002) consolidates and reforms existing money laundering provisions to create a single regime of offences for all forms of money laundering which will apply to all UK jurisdictions.

British bank monitoring body - the Financial Services Authority (FSA) - has wide-ranging powers. It re-defined Money Laundering to include not only illegal drugs and terrorism related money but also proceeds of all crimes.

2.13.1.11 United States of America

The United States commenced one of the earliest responses to money laundering. The Bank Secrecy Act of 1970 authorized the Secretary of the U.S. Department of the Treasury to establish regulatory measures requiring the filing of currency transaction reports and served as a foundation for further measures to combat laundering.

In 1986, the US Government passed the world's first law explicitly addressing the problem of Money laundering named as *"The Money Laundering Control Act"* which makes it a crime for a person who knowingly engage in any financial transaction of a 'specific unlawful activity.

The Act requires all banks to maintain a log book, and record all transactions involving cash movement of US $3000 or more, and file a Currency Transaction Report (CTR) if the amount is US $10,000 or more, whether as a single transaction or as total of a series of transactions of smaller amounts by the same person on the same day. Smurffing (structuring transactions in a manner that reporting under the 1986 Act can be avoided) has specifically been criminalized by the Act.

The United States has recently taken a number of steps to improve both national and international cooperation involving official corruption. Pursuant to the 2000 National Money Laundering Strategy, the United States examined its national laws and procedures that permit the investigation and prosecution of such cases, and the mechanisms available to locate diverted assets and return them to their rightful owners. The United States also undertook to examine and improve inter-agency coordination at the national level in such cases. The United States Department of Treasury, again pursuant to the National Money Laundering Strategy, coordinated a Government-wide effort to issue guidelines on "Enhanced Scrutiny for Transactions that may involve the Proceeds of Foreign Official Corruption". At the international level, the United States worked with the member States of the Group of Seven major industrialized countries, all of whom prepared and shared inventories of their law and procedure in this area, then undertook a comparative review of that Group's national laws and capabilities in this area. On a practical level, the United States has responded swiftly to specific requests from other nations for help in combating foreign official corruption. Recently, the former Prime Minister of a foreign State, who is accused of laundering the proceeds of corrupt

activities in his homeland, was indicted; several offenders accused of large-scale corruption were extradited to the countries in which the offences took place; various requests for assistance in obtaining bank records and other evidence from nations seeking assistance in tracing unlawfully acquired assets were executed; and millions of dollars in connection with corrupt activities have been located and frozen.

Most recently, the Money Laundering and Financial Crimes Strategy Act of 1998 called for the development of a national strategy to combat money laundering and related financial crimes. In response, the Department of Justice and the Treasury developed a 5- year strategy that calls for designating high-risk money laundering zones to direct coordinated enforcement efforts, providing for greater scrutiny of suspicious transactions, creating new legislation, and intensifying pressure on nations that lack adequate counter money laundering controls. In addition to its domestic efforts, the United States has become a party to multilateral treaties and agreements, as well as numerous bilateral efforts, that support enhanced international cooperation. The United States participates in and promotes the efforts of international organizations that have developed universal standards and monitor current trends to address the laundering threat to the global community. In furtherance of international cooperation, the United States transfers funds to foreign jurisdictions (known as "international sharing") that have assisted in efforts that resulted in the forfeiture of property.

Prior to 9/11, little attention was given to anti money laundering legislation. Money launderers were rarely prosecuted successfully, for a variety of reasons. Also, there was a trend to shy away from requiring reporting from financial institutions due to privacy concerns. Since 9/11, these concerns have been overlooked in part because of the increased scrutiny of terrorism. While civil libertarians leveled significant criticism at much of the legislation in response to the increasingly invasive reporting requirements, others view the legislation as long overdue. The Patriot Act largely amended the Bank Secrecy Act (BSA) and by addressing the international nature of money laundering. The BSA provides the primary tools used to combat money laundering in the United States.[1]

The USA Patriot Act is a comprehensive piece of legislation passed in the wake of terrorist attacks of September 11, 2001. There are four main areas of the Law: an

[1] Paul Fagyal (2006), *The Anti Money Laundering Provisions of the Patriot Act.* Saint Louis University Law Journal [Vol. 50:1361. pp. 1369-1370

expansion of surveillance, measures for protection of the border and changes to immigration procedures, additional criminal sanctions against terrorism, and a comprehensive overhaul of the money laundering and currency transaction laws. Section 106 of the Act authorizes the President to seize property under certain circumstances. Section 411 defines engaging in terrorist activity as committing or inciting to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity preparing or planning a terrorist act, gathering information on potential targets for terrorist activity, or soliciting funds or other things of value. It is also considered engaging in terrorist activity for an individual to do any act which the actor knowingly provide material support for commission of terrorist activity or to a terrorist organization.[1]

[1] Elwood Earl Sanders, Jr., & George Edward Sanders (2004), *The Effect of the USA Patriot Act on the Money Laundering and Currency Transaction Laws.* Richmond Journal of Global Law & Business [Vol. 4:1]. pp. 47-486

CHAPTER – 3 REVIEW OF EXISTING LEGISLATION AND REGULATIONS IN PAKISTAN

3.1 AUTHORITIES IN PAKISTAN RESPONSIBLE TO HANDLE WITH MONEY LAUNDERING

After the incidence of 9/11, Pakistan has especially been focused in respect of Money Laundering & Terrorist Financing Activities. To overcome the situation AML law is under consideration. However following authorities have been given the mandate to fight against Money Laundering and Terrorist Financing.

- Anti Narcotics Tasks Force
- National Accountability Bureau (NAB)
- Federal Investigation Agency (FIA)
- Securities And Exchange Commission Of Pakistan (SECP)
- State Bank Of Pakistan (SBP)

3.1.1 Anti Narcotics Force

Anti Narcotics Force (ANF) is a premier Law Enforcing Agency of Pakistan in the field of narcotics control. It was established in 1995 by merging Pakistan Narcotics Control Board (PNCB) and Anti Narcotics Task Force (ANTF).

3.1.1.1 NARCO Business & Money Laundering

Drugs are the most profitable commodities in the world and drug money is the lifeblood of drug cartels for operation and growth of their vast black market. A significant portion of the drug proceeds is re-cycled. According to an estimate there is about 1 trillion US dollar turn over of global narco business[1]. Investment of drug trafficking proceeds in legitimate business has provided major traffickers with an opportunity to establish a

[1] Saleem Tariq Lone, Director ANF, (1995), Article: Contemporary Issues Concerning Criminal Justice. Rawalpindi: Seminar jointly sponsored by UNAFEI, NPA & JICA (12-16 March 1995)

respectable base in the community. In some cases the activities of legitimate business have also assisted in drug trafficking operations.

One of the aspects of the money laundering is relating to narco business. Drug barons wish to conceal proceeds earned through drug trafficking and in that regard endeavor to disguise its true origin and put it beyond the reach of authorities. Money laundering facilitates the legitimization of drug profits. It allows drug barons to maintain control over those proceeds and ultimately to provide a legitimate cover to their source of income. What makes money laundering evil is the profound subversive effect it has on democratic society, legitimate economics and political institutions.

3.1.1.2 Measures to Control Drug Money Laundering

After years of struggle, governments and law enforcing agencies concluded that the only way to combat drugs is to control drug-money laundering and to forfeit drug assets. As a result, the cost of money laundering went up from 6% to 26% in the U.S.[1]. Hence forfeiture of assets is the most effective component of anti drug strategy.

Narco-assets could be in the name of smugglers themselves or their associates, or relatives or any other person. Hence to plug all the avenues, the necessity of very stringent and comprehensive law was felt. Pakistan geographically being at the mouth of narco-hub i.e. Afghanistan, from where the drugs make there way to whole of the world, needed special measures to control drug activities on its soil. In Pakistan, surprisingly, the concept of forfeiture of assets dates back to 1997. Prevention of smuggling Act 1977 at length deals with the forfeiture of assets including property of all description acquired through proceed of smuggling of narcotics. During eighties when Pakistan was severely hit by pernicious consequences of drug menace and drug-money, the Dangerous Drug Act of 1930 was amended in 1987 to provide for mandatory confiscation of drug-assets. During 1994 for the first time in Pakistan, the Anti Narcotics Task Force initiated its first case against a major drug trafficker for forfeiture of his assets. In 1995 Control of Narcotics Substance Ordinance was promulgated which has now been replaced by the control of Narcotics substance Act 1997. A detailed discussion on the relevant provisions of this Act has been made in a separate sub-chapter.

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[1] Saleem Tariq Lone, Director ANF, (1995), Article: Contemporary Issues Concerning Criminal Justice. Rawalpindi: Seminar jointly sponsored by UNAFEI, NPA & JICA (12-16 March 1995)

3.1.1.3 Assets Investigation Directorate of ANF

At ANF HQs level, there is a special Directorate head by a Director to investigate about the assets of drug barons and the related money laundering activities. There are five regional directorates of ANF i.e. at Rawalpindi, Lahore, Karachi, Peshawar and Quetta. At the regional level, Assets Investigation Branches are functioning for the similar purpose headed either by a Deputy Director or an Assistant Director.

Assets Investigation Directorate and its branches at regional level keep watchful eye on the acquisition, possession, transfer and concealment of drug-related assets. Authorized members of ANF are empowered to freeze such assets immediately without intervention of Court but later on it will be subject to confirmation by the Court.

An officer authorized, during the course of inquiry, can call for any information from any bank or financial institution regarding such assets. Furthermore, the Managers or Directors of the banks and financial institutions are duty bound to report suspicious transactions to DG ANF and in case of failure are liable to be punished U/s 67 of the CNSA 1997.

The officers of Assets Investigation Directorate & its branches are specially trained and equipped to meet the challenge of drug-money laundering.

3.1.2 National Accountability Bureau (NAB)

The National Accountability Bureau is Pakistan's apex anti-corruption organization with its headquarters at Islamabad. It was established in pursuance of the promulgation of National Accountability Ordinance 1999. It has four regional offices in the provincial capitals and one at Rawalpindi.

The NAB is charged with the responsibility to eliminate corruption through a holistic approach of awareness, prevention and enforcement. It deals with Money laundering practices relating to the assets acquired through corruption and corrupt practices.

3.1.2.1 Financial Crimes Investigation Wing (FCIW)

For dealing with ordinary financial crime cases including Money Laundering, there is a Financial Crimes Investigation Wing (FCIW) at the Headquarters, which is headed by a Director General. At the regional levels, (Lahore, Karachi, Peshawar, Quetta and Rawalpindi) there are the similar FCIWs headed by Directors under whom there are Additional Directors, Dy. Directors, Assistant Directors and Investigating Officers. The FCIWs are mostly staffed by the experts taken from different national banks and other

financial institutions.

In order to keep watchful eye on the suspicious financial transactions and corruption relating Money laundering, the financial experts of FCIWs constantly remain in touch with the banks and financial institutions working in the country.

3.1.2.2 Contribution of NAB in Anti-Money Laundering Efforts

- ***International Cooperation to Detect Money Laundering:*** Efforts are being made to improve international cooperation in the detection and prosecution of corruption and money laundering.

  Overseas Operations Cell is responsible for liaison with international agencies for investigation, mutual legal assistance, recovery of proceeds of corruption, extraditions and issuance/execution of Red Warrants. The section is also responsible for tracing of international assets of accused persons. The Overseas Cell also actively participates in international efforts against corruption, money laundering and other related organized crimes.

- ***APG Mutual Evaluation of Pakistan in Collaboration with NAB:*** The Mutual Evaluation of Pakistan was conducted in November-December 2004. The purpose of the evaluation was to access the AML/ CFT measures adopted by Pakistan in the context of legal regime, law enforcement and Financial/ Regulatory measures[1].

- ***Ratification of UN Convention Against Corruption (UNCAC):*** NAB has undertaken a detailed evaluation of the Convention for ratification by Pakistan. An inter-ministerial committee was formed which has completed its deliberations and prepared the recommendations[2].

  First conference of the state parties to the UNCAC was held in Jordan in Dec 2006 to discuss the mechanisms for implementation and review of asset recovery and technical assistance, which was participated by the representative of NAB and Ministry of foreign Affairs.

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[1] National Accountability Bureau, (2006) *About Us* [Online] Available: http://www.nab.gov.pk/home/introduction.asp [accessed on 27th July, 2006]

[2] National Accountability Bureau, (2005) *Annual Report 2005* [Online] Available: http://www.nab.gov.pk/Downloads/Annual_Report_2005.pdf [accessed on 27th July, 2006]

3.1.3 Federal Investigation Agency - FIA

Federal Investigation Agency is one of the prime Law Enforcing Agency established under the FIA Act 1974, replacing the Pakistan special police establishment. FIA undertakes investigation of specialized and organized crimes including anti-human smuggling & trafficking, cyber crime, immigration offences and counter terrorism. As such it is committed to engage in a multi-pronged strategy to discourage criminal practices of nefarious elements in Pakistan and to make it a safer and law abiding society.

Recently the spheres of activities of this agency has been extended to counter terrorist activities in the country and the Anti-Terrorism Act 1997 has been included in the schedule of FIA Act. Hence FIA is dealing with terrorist financing aspect of money laundering (excluding Narcotics and Anti-corruption proceeds).

3.1.3.1 Relevant Provisions of Anti-Terrorism Act 1997 regarding fund raising and money laundering for terrorist financing

- ***Fund Raising***

U/S 11-H of the Act, a person commits an offence if he:

(a) invites another to provide money or other property; and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used; for the purpose of terrorism and for the purpose;

(a) he receives money or other property; and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used for the purpose of terrorism; and for the purpose;

(a) provides money or the property; and

(b) knows or has reasonable cause to suspect that it will or may be used for the purpose of terrorism.

- **Use or Possession**

U/S 11-I of the Act, a person commits an offence if he -

(a) uses money or other property for the purposes of terrorism; or

(b) (i) possesses money or other property; and

(ii) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism.

- **Funding Arrangements**

U/S 11-J of the Act, a person commits an offence if he :

(a) enters into or becomes concerned in an arrangement as a result of which money or other property is made available, and

(b) has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

- **Money-Laundering**

U/S 11-K of the Act, a person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, or terrorist property:

(a) by concealment; (b) by removal from the jurisdiction;

(c) by transfer to nominees; or (d) in any other way.

- **Disclosure of Information**

U/S 11-L of the Act, Where a person believes or suspect during the course of trade, profession, business or employment that another person has committed an offence under this Act and he commits an offence if he does not disclose to a police officer as soon as is reasonably practicable his belief.

- **Seizure and Detention**

U/S 11-O of the Act:-

An officer authorized may seize and detain any cash recovered, if he has reasonable grounds for suspecting that -

(a) it is intended to be used for the purposes of terrorism;

(b) it forms the whole or part of the resources of a proscribed organization, and includes any cash which is applied or made available, or is to be applied or made available, for use by organization whether being imported into, or exported from, Pakistan; or

(c) It is terrorist property within the meaning given in section 2 (aa):

Provided that any cash seized under this section shall be released not later than the end of the period of 48 hours beginning with the time when it is seized, unless an application has been made to the Court under section 11-P and an order has been obtained for its detention for a further specified period.

- **Forfeiture**

U/S 11-Q of the Act, where a person is convicted of an offence under any of the sections 11-H to 11-M of the Act, the court may make a forfeiture order in respect of the money or property in his possession or relating to the purposes of the terrorism.

U/S 11-R of the Act, any authorized officer may apply to the court for an order forfeiting the cash being detained u/s 11-P and 11-Q and the court may grant an application if satisfies on the balance of probabilities that the cash is relating to the purposes of terrorism as defined in section 11-Q and before doing so must give an opportunity to be heard to any person who is not party to the proceedings and claims to be the owner of or otherwise interested in the cash to be forfeited. Any order may be made under this section, whether or not proceedings are brought against any person for an offence with which the cash is connected.

3.1.3.2 Special Investigation Group (SIG)

FIA deals with terrorist financing aspect of money laundering. A special investigation group (SIG) has been established in FIA. Dy Commandant (Operations) being the incharge of "Terrorist Financing Detection Unit" is responsible for detection and investigation of terrorist financing cases. There are also fields units for the similar purposes at Rawalpindi, Lahore, Karachi, Quetta and Peshawar, which are headed either by Dy Directors or Assistant Directors or in some cases Inspectors. Then there are specialists at the Headquarters in the field of banking, computer, explosives, intelligence and legal who provide guidance in their respective fields to the investigating officers. The investigation work of the IO's of field units is evaluated by the specialists at the Head Quarters. Further recently a special project "NRC3 – National Response to Control Cyber Crime" has also been launched in FIA[1].

3.1.3.3 National Response Center for Cyber Crimes (NR3C)

National Response Center for Cyber Crimes is providing single point of contact for all local and foreign organizations for all matters related to cyber crimes. It is imparting trainings and related security education to persons of government/semi-government and private sector organizations. It has also conducted a number of seminars in different

[1] Federal Investigation Agency, (2007) About FIA [Online] Available: http://www.fia.gov.pk/abt_background.htm [accessed on 2nd January, 2007]

cities of the country to educate sensitive government organizations regarding cyber attacks on their information resources, information breech and to make their systems secure against all such threats[1].

3.1.3.4 International Cooperation

Pakistan being member of different international and regional bodies including UN, FIA maintains liaison with international investigating agencies in the field of terrorist financing. Such liaison and cooperation with international organizations is maintained through INTERPOL. After the incident of 9/11, UN special resolutions No 1373 and 1455 and FATF 9 special recommendations regarding terrorist financing are the basis of international cooperation and liaison with foreign law enforcing agencies.

3.1.4 State Bank Of Pakistan – SBP

State Bank of Pakistan was established in 1948 to regulate the financial sector in Pakistan. It has played a vital role before & after nationalization and privatization.

Being regulator of banks/DFIs, SBP is fully cognizant of its role in ensuring clean and transparent banking system in the country. To this end, requirement of determining true identify of prospective account holders was imposed by State Bank way back in 1992. This was in addition to, prudential regulation on prevention of criminal use of banking channels for the purpose of money laundering and other unlawful trade. The regulatory regime continued to strengthen with in the light of changes and developments in the financial market and international best practices. During the process, State Bank has taken various steps in this regard. The particular rules, Prudential Regulations and policies issued from time to time will be discussed in detail in Chapter 3.4.

3.1.5 Security & Exchange Commission of Pakistan (SECP)

The Securities and Exchange Commission of Pakistan (SECP) being a regulatory body of capital market has set up an Anti-Money Laundering Unit in January 2003. The Unit has been set up as part of The World Bank's technical assistance for combating money laundering and terrorist financing activities.

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[1] National Response Center for Cyber Crimes, (2007) *Introduction* [Online] Available: http://www.nr3c.gov.pk/[accessed on 2nd January, 2007]

Although State Bank of Pakistan is the implementing agency for banking sector reforms project; the SECP has been awarded a specialized project on Anti-Money Laundering. This project basically focuses on capacity building of the Commission, consulting assignments, networking with other markets and research and publications. The major objectives of the project are:

a) to review and harmonize existing laws/regulations for ensuring better documentation and reporting of transactions,
b) strengthening the capacity of SECP so that it is able to play a more proactive role in curbing money laundering activities and ensuring authentic capital flow within the financial system, and
c) through consultative process create awareness among stakeholders about the need for an anti-money laundering framework.

The Project is to carry out amendments in rules & regulations enforced by SECP and bring them in line with international anti-money laundering measures e.g., reporting of irregular financial transactions, customer identification, record keeping standards, internal policies and controls and verification of accounts through coordination with agencies.

Over the past three years, SECP has been actively involved in new initiative for improving transparency and governance of companies. In March 2002, the SECP introduced The Code of Corporate Governance to instill openness, transparency and accountability in the affairs of the companies. The Code seeks to ensure that appropriate internal control systems are in place so that inter alia the risk of misapplication or misappropriation of funds by special interest groups within an organization is reduced. It is generally recognized that sound internal controls tent to curb manipulative practices. Besides being applicable to all listed companies. The Code has also been endorsed by the SBP and is applicable to commercial banks, whether listed or otherwise. Additionally, the SECP is keen that the private and public sector companies, particularly those using public funds for their businesses should adhered to the code of corporate governance. It is, therefore, enlarging its scope of awareness among private sector companies as well as government owned enterprises[1].

[1] Dr. Tariq Hassan (2004), *Developing Anti Money Laundering Measures.* Lahore: Speech at the National Seminar on AML Measures, August 10, 2004.

3.1.5.1 Directives Issued by SECP to Check Money Laundering

The SECP has taken measures to strengthen the regulatory framework and minimize the possibility of money laundering in the non-banking financial sector. Based on recommendations made by the AML Unit, the Specialized Companies Division of the SECP has issued various directives, which are summarized as under:[1]

- **Directives issued for NBFIs and Mudarabah** - The directives were issued on February 21, 2003 to all non-bank financial institutions (NBFIs) and Mudarabah[2] companies. According to these directives, all NBFIs and Mudarabah shall accept deposits from an investor only after ensuring that an account has been opened in the investor's name using an Account Opening Form. Further, NBFIs and Mudarabah are also required to receive or make payments exceeding Rs 50,000 through crossed cheques effective July 1, 2003.
- **Directives issued for Brokers** - The SECP has also enforced rules for brokers to support commission's efforts to strengthen institutional framework for minimizing the potential of money laundering in the capital market.
- **Directives regarding Roles and Responsibilities of Compliance Officers** - In addition to the above, the Specialized Companies Division of the SECP has drafted a *"Terms of Reference"* for designating compliance officers within the Division. As per *"Term of Reference"* the Compliance Officer is required to coordinate in development and implementation of compliance program, establish and chair a compliance committee, and develop & maintain standards of conduct, policies, procedures and rules. He will also establish employee-reporting channels and audit controls and measurements to ensure correct practices are established.

[1] SECP, (2007). *Directives Issued by SECP to Check Money Laundering* [Online] Available: www.secp.gov.pk [accessed on January 3, 2007]

[2] Mudarabah - a kind of partnership where one partner gives money to another for investing in a commercial enterprise. The investment comes from the first partner who is called "Rab-ul-Maal" while the management and work is an exclusive responsibility of the other, who is called "Mudarib" and the profits generated are shared in a predetermined ratio.

3.2. RELEVANT PROVISIONS IN THE CONTROL OF NARCOTICS SUBSTANCE ACT (CNSA) 1997

The money laundering practices started from the Norco business as the Drugs were considered to be the most profitable commodity in the world. The drug money being lifeblood of drug cartels is necessary for the operation and growth of their vast black market. Money laundering facilitates the legitimization of drug profits. It allows drug barons to maintain control over those proceeds and ultimately to provide a legitimate cover for their source of income. Hence the drug barons mostly transfer and possess their ill-gotten assets in the names of their associates, front-men and relatives in order to conceal the real owners and beneficiaries. Before the promulgation of the Control of Narcotics Substance Act there was no concept of checking and tracking down the assets acquired through Norco business. Under the present Act, the acquisition and possession of assets by the persons dealing in Norco business has been made an offence and stringent punishment has been provided for it.

3.2.1. Prohibition Of Acquisition & Possession Of Assets Derived From Narcotic Offences & Punishment For Contravention

Under section 12 of the ACT, it has been provided that no one shall knowingly

a) posses, acquire, use, convert, assign or transfer any assets which have been derived, generated / obtained, directly or indirectly either in his own name or in the name of his associates, relatives or any other person through an act or omission relating to Narcotics substance which constitute an offence punishable under the Act or any other law for the time being enforced,

b) hold, posses, own for any other person any asset referred to in clause "a", and

c) conceal or disguise the true nature, source, location, disposition, title or ownership of such assets by making false declaration in relation thereto.

U/s 13 of the Act, it has been provided that whoever contravenes the provisions of section 12, shall be punishable with imprisonment which may extend to 14 years but shall not be less than 5 years and shall also be fined which shall not be less than the prevailing value of assets and such assets shall also be liable to forfeiture to the Federal Government.

3.2.4. Freezing Of Assets etc.

As soon as the drug dealers suspect the detection of the illegal assets obtained from Norco business they try to shift such assets so as to make them out of the reach of law enforcing agencies. Therefore, it is considered proper that when such assets are detected they must instantly be frozen to avoid further transfer. However, the ultimate fate of such assets has to be laid in the hands of Competent Court. Considering the freezing of such assets as necessary, ***U/s 37of the Act*** following provisions have been given:

a) Where the Special Court trying an offence punishable under the Act is satisfied that there are reasonable grounds for believing that the accused has committed such an offence, it may order the freezing of the assets of the accused, his relatives and his associates.

b) Where in the opinion of the Director General or an officer authorized, an offence is being or has been committed, he may freeze the assets of such accused and within seven days of the freezing shall place before the Court, the material on the basis of which freezing was made and further continuation of freezing or otherwise shall be decided by the Court.

c) The said officer shall trace, identify, and freeze the assets during the investigation or trial for the purpose of forfeiture by the Court.

Provided that the Director General or any other officer freezing any asset shall within three days inform the Special Court about such freezing and the Special Court shall after notice to the person whose asset shall be frozen, confirm or vary such freezing.

3.2.5. Tracing Of Assets

The net of Norco business spreads over different countries and regions and the assets acquired from such business may be found in different countries. Considering the need that the geographical limits of the countries and jurisdictions may not impede the legal process of detection and eventual forfeiture of such assets, a legal provision was considered essential for tracing out such assets in Pakistan owned and possessed by a person accused of such an offence before any other foreign Court. In the event of detection of such assets in Pakistan, these have to be laid before the competent Court, as provided ***U/s 38 of the Act,*** as below stated:

Provided that no order under this section shall be made without issuing a show cause notice and providing a reasonable opportunity, of being heard, to the persons affected by such order.

Provided further, that if such person fails to tender any explanation or defaults in making appearance before the special Court on any date fixed by it, the special Court may proceed to order ex-party on the basis of evidence available before it.

c) Where any shares in a company are forfeited to the Federal Government, notwithstanding anything contained in the companies ordinance, 1984 or any other law for the time being enforced or Articles of Association of the Company, such shares shall be forfeited in the name of Federal Government.

3.2.7. Forfeiture Of Assets Of A Person Convicted Abroad

As mentioned earlier that the drug trafficking is an international problem and its activities spread over different regions and countries. The drug dealers may hold and posses assets in different countries. A drug dealer who is caught in a foreign country on the charge of drug trafficking and is ultimately found guilty by the foreign Court and sentenced, his assets in Pakistan must have been forfeited. Feeling it necessary, a provision has incorporated **U/s 40 of the Act**, which reads as under:

a) Where a citizen of Pakistan is convicted by a foreign Court for an offence, which is also an offence punishable under the Act, court may on an application made by the Director General or any officer authorized by the Federal Government, order that the assets acquired in Pakistan by such citizen shall be forfeited to the Federal Government.

b) The special court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment that such judgment was announced by the court of competent jurisdiction unless the contrary appears on the record.

Provided further that no order under this section shall be made without providing opportunity, of being heard, to such citizen.

Provided also that during the pendency of the application the court may by an order freeze any of the assets or restrain such citizen, his associates and /or relatives from alienating such assets by lease, sale, gift, transfer or in any other manner.

U/S 58, the Federal Government may authorize the giving of mutual legal assistance to a foreign State in the case of a request to freeze or forfeit assets believed on reasonable ground to be located in Pakistan and be accompanied by a copy of any relevant freezing or forfeiture orders of the Court.

3.2.10. Reporting Of Suspicious Financial Transactions

The law enforcing agencies may not be aware of illegal financial transactions in respect of Norco business without the help and co-operation of the personals of banks and financial institutions. Considering the need of such a co-operation, a mandatory provision ***U/s 67 of the Act*** has to be incorporated in the Act, which reads as under:

a) All banks and financial institutions shall pay special attention to all unusual patrons of transactions which have no apparent economic or lawful purpose and upon suspicion that such transaction could constitute or be related to illicit narcotics activities, the Manager or director of such financial institution shall report the suspicious transaction to the Director General.

b) Who fails to supply the information in accordance with above sub-section, shall be punishable with R.I, which may extent to 3 year or fine or both.

3.2.11. Presumption To The Assets Acquired Through Dealing In Narcotics

The common practice amongst the drug dealers is that the assets acquired by the Norco business are held and possessed by them in the name of their associate, front men, relatives or any other person so that in case of their arrest, the assets may remain immune / intact. In order to forestall this practice a specific provision has been incorporated in the Act and the persons holding such assets, as front men have been made responsible to prove that the assets are their genuinely acquired and not related to Norco business.

U/s 68 of the Act: Where there is reasonable ground to believe that the assets of the person or any part thereof were acquired in relating to the commission of an offence under the Act and there was no source of acquiring such assets it shall be presumed unless the contrary is proved, the onus of which shall be upon the accused, that such assets were acquired generated or obtained through drug-trafficking.

of the banks and financial institutions inhibited the access to the details of the bank accounts of a customer, which posed a great difficulty in tracing out the trail of the financial crimes. Hence under the NA Ordinance the banks and financial institutions have been bound down to provide information about the banking transactions.

Under Section 19 of the Ordinance, the Chairman NAB or an officer of the NAB duly authorized by him may during the course of enquiry of an offence under the ordinance require any bank or financial institution notwithstanding any thing contained in any other law for the time being enforced, to provide any information relating to any person whosoever, including, copies of entries made in a bank's or a financial institution's books such as ledgers, day books, cash books and all other books including record of information and transactions saved in electronic form or digital form and the keepers of the such books and record shall be obliged to certify the copies in accordance with law.

3.3.4 Reporting Of Suspicious Financial Transactions

The law enforcing agencies dealing with the offences of corruption and corrupt practices unless reported may not be aware of any unusual financial transactions in the banks and other financial institutions. The concerned banks and the financial institutions have the first hand knowledge about such corrupt transactions, hence it was considered necessary to lay some responsibility on their shoulders. So a significant provision has been incorporated in the Ordinance in this regard.

Section 20 of the Ordinance, provides that it shall be the duty of all banks and financial institutions to take prompt and immediate notice of all unusual and large transactions in an account, which have no apparently genuine economic or lawful purpose and upon bonafide professional judgment of the bank or the financial institution that such transactions could constitute or be related to an offence under the ordinance, the Manager or Director of such bank or financial institution shall report all such transactions to Chairman NAB forthwith by the quickest possible mode or communication to be confirmed in writing.

Whosoever failed to supply such information shall be punishable with Rigorous Imprisonment, which may extend to 5 years and with fine.

3.3.5 International Corporation For Mutual Legal Assistance

The corrupt and illegal financial transactions may spread over different countries and off shore financial institutions and for tracing, investigating and putting the offenders

to face the trial, international mutual legal cooperation between different countries has become very necessary. For promoting international cooperation in tracing and tracking down the assets obtained from corruption and corrupt practices, special provision has been made in the Ordinance.

Under section 21 of the Ordinance, it has been provided that the Chairman NAB or any officer authorized by him may request a foreign State to freeze / forfeit assets which are to be located in that State and ultimately transfer evidence, documents and assets or proceeds to Pakistan.

Notwithstanding any thing contained in Qanun-e-Shahadat Order 1994, all evidence, documents or any other material transferred by the foreign Government shall be receivable as evidence in legal proceedings under the ordinance.

Under the Ordinance, the Chairman NAB is empowered to employ any person or organization whether in Pakistan or abroad for detecting, tracing and identifying assets acquired by an accused in connection with an offence under the ordinance and secreted or hold abroad or for recovery of and repatriation to Pakistan of such assets.

3.3.6 Transfer Of Property Void

Whenever the corrupt people come to know about any inquiry or investigation into the offence committed by them they try to transfer the ill-gotten property in the name of their associates, front men or some relatives so that it may not be detected. In order to counter any transfer of ill-gotten property **section 23** has been provided in the Ordinance.

Under section 23 of the ordinance, after the Chairman NAB has initiated an enquiry or investigation into an offence allegedly committed by an accused person, such person or his relative or associate or any other person on his behalf cannot transfer or create any charge on any property owned by him or in his possession while the enquiry or investigation are pending before the NAB or the Court and any transfer of right or title or interest or creation of charge on such property shall be void. Any person who contravenes with the above provisions shall be liable to R.I. for a period, which may extend to three years and shall also be liable to fine not exceeding the value of the property involved.

3.4 SBP PRUDENTIAL REGULATIONS

(STEPS TAKEN BY STATE BANK OF PAKISTAN)

It has already been discussed in chapter-1 that there are different channels which are used by the criminals / money launderers to transmit there money from one place to another. The financial sector i.e. banks are one of these channel.

In order to ensure that such transactions are not routed through financial sector of Pakistan, it is essential that people working / affiliated with this sector should be well-equipped with all materials / guidelines so that they can be able to identify patterns of transactions of suspicious nature.

For this purpose State Bank of Pakistan has taken every 'possible effort to frustrate the designs of criminal elements to route their foul financial transactions through banking channels.

The importance of *Know Your Customer (KYC) & Due Diligence* by the banks has been emphasized by SBP through various Prudential Regulations / Circulars such as:

- BPD Circular Letter No. 10 dated 18-03-2005 on "Know Your Customer" (Prudential Regulation M-1) Banking Facilities to NICOP / POC Holders"
- BPD Circular Letter No. 20 dated 16-06-2004 on "Anti money laundering Measures"
- BPD Circular Letter No. 28 dated 04-10-2003 on "Know Your Customer (KYC)" - Prudential Regulation XI
- BPD Circular Letter No. 10 dated 29-03-2003 on Know Your Customer (KYC)" - Prudential Regulation XI
- BPD Circular Letter No. 07 dated 08-06-2002 on "Prevention of money Laundering And Other Unlawful Trades / Activities"

Being regulator of banks / DFIs, State Bank of Pakistan is fully cognizant to its role in ensuring clean and transparent banking system in the country. During the process, SBP has taken following steps to curb and control money laundering.

3.4.1 Enforcement of Prudential Regulations

The basic elements of anti- money laundering for financial institutions include risk based system of know your customer (KYC), account monitoring, record retention, due diligence in correspondent banking relationship and reporting of suspicious transactions.

3.4.1.4 Prudential Regulation M-4 (Correspondent Banking Relationship)

The said regulation sets out parameters for entering into correspondent banking relationship. Banks/ DFIs are prohibited to establish correspondent banking relationship where there are deficiencies in KYC/ CDD policies or where correspondent/ respondent has no physical presence. Particular attention has to be paid in continuing relationships with banks located in jurisdiction that have poor KYC standards or have been identified by FATF as "non-cooperative". Banks/ DFIs have been alerted against use of correspondent account by third parties e.g. payable through accounts. Approval for establishing new correspondent relationship has to be taken from senior management.

3.4.1.5 Prudential Regulation M-5 (Suspicious Transactions)

Banks / DFIs have been advised to pay special attention to all complex, unusually large transactions and all unusual patterns of transaction, which have no apparent economic or visible lawful purpose. Detailed examples of such transactions have been provided by outlining the basic ways in which money could be laundered. If there are reasonable grounds to suspect that funds are the proceeds of a criminal activity, such transactions are required to be reported to concerned authorities. The information to be reported by banks/ DFIs include title, type of account, number of accounts involved, detail of transactions, reasons of suspicion and nature of underlying activity suspected to have generated the proceeds under suspicion. The employees of banks/ DFIs are strictly prohibited from disclosing the fact to any person that certain transaction is being reported for investigation.

3.4.1.6 Reporting Of Suspicious Transactions

In addition to instructions provided in Prudential Regulation M-5, the following directives and provisions of law have been circulated for meticulous compliance amongst banks / DFIs for reporting out of pattern and suspicious transactions.

- Banks have been advised to install software packages, to report urgently to SBP out of pattern transactions, which have no apparent economic or lawful purpose.
- Section 20 of National Accountability Ordinance, 1999 requiring the banks to report suspicious financial transactions to Chairman NAB, and the punishment for failure of the same.
- Section 67 of Control of Narcotics Substances Act, 1997 requiring all banks and financial institutions to report suspicious financial transactions to the Director General, ANF and the punishment prescribed therein for non-compliance.

3.4.1.7 Prudential Regulation G-I Para 'D' (Compliance Officer)

Banks/ DFIs have been required to put in place a Compliance Program to ensure that all relevant laws are complied with, in letter and spirit, and, thus, minimize legal and regulatory risks. For this purpose, the Board of Directors, or Country Manager in case of foreign banks, shall appoint/ designate a suitably qualified and experienced person as Compliance Officer on a countrywide basis, who may be assisted by other Compliance Officers down the line. The Compliance Officers will primarily be responsible for banks'/ DFI's effective compliance relating to SBP Prudential Regulations, relevant provisions of existing laws and regulations, AML laws and regulations and monitoring / reporting suspicious transactions to President / CEO of the bank/ DFI and other related agencies.

3.4.1.8 Prudential Regulation – XI (Opening Of Accounts)

Establishment of *Banker Customer Relation* is a critical subject and keeping in view its importance SBP has through Circular # 10 dated 29-03-2003 issued minimum guidelines to be followed while opening / dealing with customer accounts.

SBP clarifies that these are the minimum requirements and the Banks are, however, free to obtain any further information / documents as they deem fit, provided the same are reasonable and applied across the board to all of their customers.

3.4.1.9 Prudential Regulation – XII

(Prevention Of Criminal Use Of Banking Channels For The Purpose Of Money-Laundering And Other Unlawful Trades)

To safeguard banks against their involvement in money laundering activities and other unlawful trades, SBP has issued following instructions through its "Prudential Regulation – XII". These are as follows:

Determination of True Identity of Customer- Before extending banking services, banks shall make reasonable efforts to determine the true identity of customer. Particular care should be taken to identify ownership of all accounts and those using safe - custody facilities.

Compliance of Banking Laws And Regulations - Banks shall ensure that banking business is conducted in conformity with high ethical standards and that banking laws and regulations are adhered to at domestic and international level.

Bonafides of Transactions - Specific procedures be established for ascertaining customer status and his source of earnings, for monitoring of accounts on a regular basis, for checking identities and Bonafides of remitters and beneficiaries, for retaining internal record of transactions for future reference.

Training of Staff - For an effective implementation of Banks' policy and procedures, importance is given to suitable training of staff.

Internal Audit Set-Up - Banks may make arrangements for setting up an internal audit system in order to establish an effective means of testing /checking compliance with the Bank Policy and procedures established by it.

3.4.2 Other Guidelines Provided By SBP To Prevent ML

3.4.2.1 Guidelines on Internal Controls

Internal controls go a long way in preventing, inter alia, financial crimes in the institutions. As a part of its ongoing efforts to encourage banks/DFIs to adopt robust risk management practices, the SBP in May 2004 has circulated detailed guidelines in that regard requiring all banks/DFIs to ensure existence of an effective system of internal controls.

3.4.2.2 Rupee Travellers Cheques (RTCs)

"Rupee Travellers Cheques" (RTCs) in exceptionally high denomination of Upto Rs.500,000/- being not in line with the true spirit / purpose and instead of using the same to meet the emergent needs, the holders of these instruments often used them as a mode of settling undocumented transactions. therefore in May 2002, SBP has prohibited the issuance of RTCs in denominations exceeding Rs.10, 000/.

3.4.2.3 Bearer Instruments

Various kinds of bearer instruments , previously available in the markets, have been gradually phased out in collaboration with the Federal Government. The measure would augment the Government's efforts towards documentation of the economy.

3.4.2.4 Freezing of Funds/ Bank Accounts

SBP has remained actively involved towards implementation of terrorism related sanctions. The United Nations Security Council Resolutions Nos. 1267 (1999), 1333(2000), 1390(2002) 1455(2003) with the direction to freeze the funds and other

narcotics, and all other Haram activities. Normally, these are the main channels used by money launderers, however, Islamic banking institutions are prohibited to open accounts or provide financing facilities to such persons/institutions.

Islamic banking is also sometimes referred to as "Ethical banking" because ethics are part of rules in Islamic banking unlike the traditional conventional banking, where normally ethics is considered as a choice. Therefore, money-laundering being an unethical practice is not acceptable abinitio in Islamic banking.

3.5 STEPS TAKEN BY VARIOUS BANKS / DFIs FOR RESTRAINING SUSPICIOUS TRANSACTIONS

As per Prudential Regulation G-I Para 'D', all Banks/ DFIs in Pakistan have been required to put in place a Compliance Program to ensure that all relevant laws are complied with, in letter and spirit, and, thus, minimize legal and regulatory risks. For this purpose, the Board of Directors, or Country Manager in case of foreign banks, shall appoint/ designate a suitably qualified and experienced person as Compliance Officer on a countrywide basis, who may be assisted by other Compliance Officers down the line. The Compliance Officers will primarily be responsible for banks' / DFI's effective compliance relating to:

- SBP Prudential Regulations.
- Relevant provisions of existing laws and regulations.
- *Guidelines for KYC.*
- Anti money laundering laws and regulations.
- Timely submission of accurate data/ returns to regulator and other agencies.
- Monitor and report suspicious transactions to President / Chief Executive Officer of the bank/ DFI and other related agencies.

Now we will discuss steps taken by some of the banks in order to comply with the instructions of State Bank of Pakistan.

3.5.1 Steps taken By United Bank Limited

To comply with all applicable Money Laundering Laws and Regulations and internal policies & procedures, UBL introduced "Anti money laundering & Know your Customer Manual" in July 2005. This manual covers Policy Statement of the bank regarding Money laundering & terrorist financing, various Regulations and legal responsibilities of the Bank concerning KYC, Risk Assessment & review / monitoring of suspicious transactions. Further more, retentions / record keeping and reporting such transactions through system generated compliance initiatives.

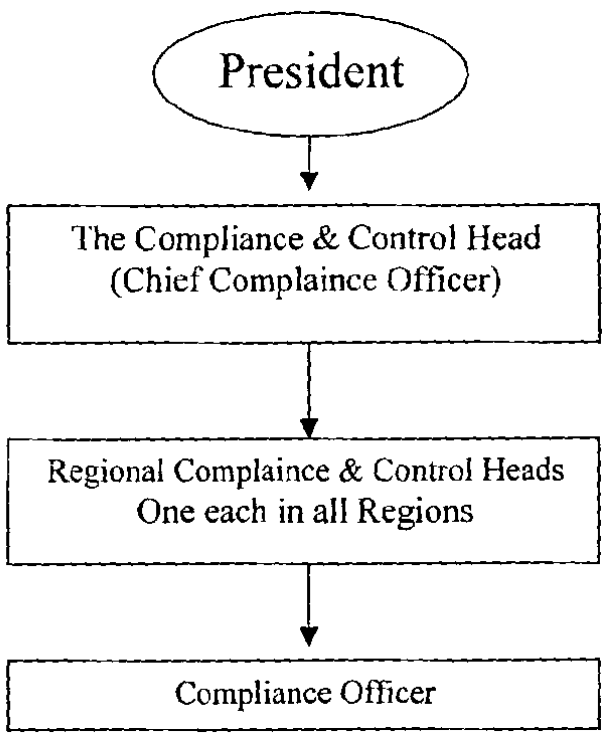
3.5.1.1 Policy Statement & Policy Rationale

The AML policy of UBL is to ensure that Bank's businesses are in conformity with

the regulatory requirements and standards defined by SBP so as to protect the bank from being used as channel for illegal transactions and on detection of any suspicious financial activities to promptly report the same to the regulatory / law enforcing authorities.

3.5.1.2 Establishment of Compliance & Control Department

A Compliance & Control Department has been set-up at Head Office, which is headed by The Compliance & Control Head (Chief Compliance Officer), who directly reports to the President.



3.5.1.3 Account Opening and Risk Categories

UBL has also identified Risk Categories in its manual on AML & KYC and divided them into Low, medium and High risk[1].

[1] UBL Complaince & Control Department, (2005) Anti money laundering & Know your Customer Manual. Karachi: United Bank Limited. pp. 22

document introduced by UBL for its Pakistan operations:

3.5.2.1 *Developments in UAE in relating to AML*

In an effort to fight against money laundering and to support the global drive to curb money laundering activity, on November 14, 2000 under ref: 24/2000 the Central Bank of the UAE released Regulation Concerning Procedures for Anti-Money Laundering (PAML).

The circular which is addressed to all banks, moneychangers, finance companies and other financial institutions operating in the UAE, is a comprehensive document comprising of 25 articles covering all areas of activities that may be used for laundering money.

Through the circular, the Central Bank reiterated the importance of keeping the financial system clean, "The UAE considers it extremely important to ensure that monies earned through illegal activities abroad are not run through the financial system in the country for the benefit of those criminals, irrespective of where the crime was committed". It also reconfirmed its continued support to international efforts to combat money laundering through the excellent banking and financial infrastructure available in the UAE.

The circular also gave reference of the Forty Recommendations issued by the Financial Action Task Force (FATF)

3.5.2.2 Possible Money Laundering via Customer Accounts

The document has also discussed the possible steps to conduct money laundering through Customer Accounts and conclude that money laundering may be performed as follows

i. Customers who are reluctant, avoid providing the required information at the time of opening an account, or provide information that is difficult or expensive to verify.
ii. Any individual or company account that shows virtually no normal personal or business related activities, but is used to receive or disburse large sums that have no obvious purpose or relationship to the account holder and or his business.
iii. Customers maintaining a number of trustee or client accounts which are not required by the type and size of business they conduct and involve transactions in nominee/unknown persons
iv. Customers who have numerous accounts and who deposit small amount of cash regularly into these accounts. So that a single deposit size may appear to be nominal

but the overall amount deposited is a large amount.

v. Customers, who maintain a number of accounts with several financial institutions within the same locality and who transfer the balances of those accounts to one account, then transfer the consolidated amount to a person abroad.

vi. Customers who deposit large value third party endorsed checks in their accounts, when there does not seem to be relevance of such a transaction taking place between the endorser and the customers' nature of business.

vii. A single customer account, to which various individuals come to deposit cash, without an adequate explanation.

viii. Customer accounts that receive an unusual large cash deposit or remittance, an activity never witnessed before.

ix. An account that has remained dormant / inactive for a while and suddenly a large cash deposit/withdrawal is made to /from it.

x. An account that has just received an unexpected large remittance from abroad and immediately withdrawn.

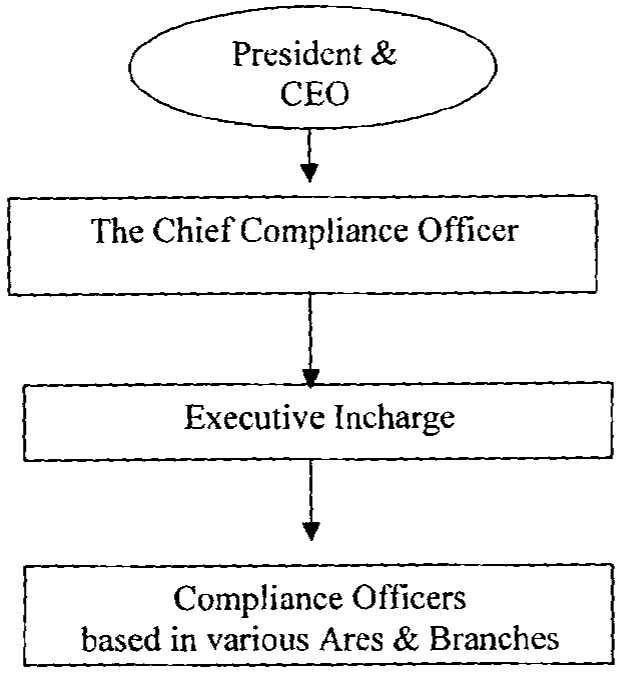
xi. Unusual large deposits in account(s) of jewelry shops in which there has never been such large deposits, particularly in cash.

3.5.3 Steps taken By Askari Commercial Bank Limited

In order to follow various instructions issued by State Bank of Pakistan "Compliance Manual on Money Laundering & KYC" was introduced in January 2004 containing definition / description of Money Laundering & prevention from it, Prudential Regulation – XI & XII, extracts from the Control of Narcotics Substances Ordinance, 1995. It also contains Reporting of Suspicious Transactions, Role of Audit, Training of Staff, Personal Protection, formation of Compliance & Data Division and Compliance Programme.

3.5.3.1 Establishment of Compliance & Data Division

A Compliance & Data Division has been set-up at Head Office comprising the function of Compliance, which is headed over by The Executives Incharge. He is reporting to The Chief Compliance Officer. The Chief Compliance Officer shall be reporting to President / CEO.



3.5.3.2 Introduction Of Check List / Interview Sheet For Opening of Account

ACBL emphasizes on its branches to take care at the time of establishing new banking relations with the people who approach to them for opening of account. All branched are required to conduct an interview of the new customers regarding personal and professional information including reason of opening of account and sources funds deposited therein.

3.5.3.3 List of Questions to be used obtaining Source of Wealth

To ascertain the source of wealth transacted / transmitted through the bank, the ACBL designed a specific questionnaire for different category of customers.

- **Wealth Generated From Business Ownership:** requiring the information regarding description / nature / locations of business and its operations, type of ownership (private or public), particulars of owners / partners along with their percentage share, estimated sales volume, net worth / income and number of employees etc.
- **Wealth Acquired Through Inheritance:** requiring the information regarding the source of inheritance and type / volume of the asset (land, securities, shares etc) so acquired.

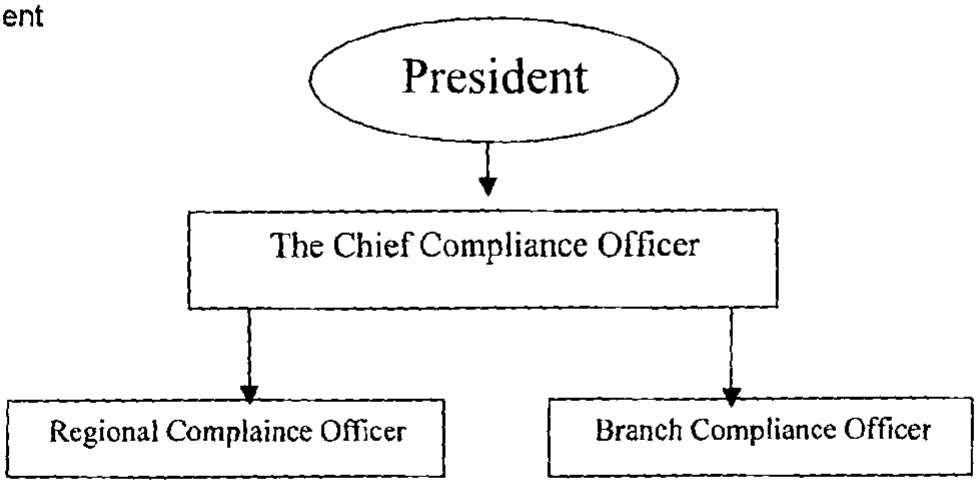
- **Wealth Generated from a Profession:** requiring the information regarding the type / specialty of profession (Physician, Dentist, Engineer, Lawyer etc) and estimated income.
- **Wealth Generated from Investments:** requiring the source and prospective areas of investments, period of investment and estimated annual income.

3.5.4 Steps taken By The Bank of Punjab

Like other Banks, The Bank of Punjab has also taken solid steps for the implementation of compliance programme as advised by SBP. For this purpose, "Operational & Credit Compliance Manual" was introduced in the Year 2004 containing information regarding Operational and credit policies of external regularity authorities including SBP and Bank's internal policies, prevention of ML & Other Unlawful Trades/Activities including Customer Due Diligence and handling of various transactions.

3.5.4.1 Establishment of Compliance Department

Compliance Department has been established under the supervision of Operation Division, headed by The Chief Compliance Officer who directly report to the President



3.5.4.2 Responsibilities of The Chief Compliance Officer

The Chief Compliance Officer is responsible for bank's effective compliance relating to:

- State Bank Prudential Regulations and relevant provisions of existing laws and regulations,

- Anti Money Laundering laws and regulations,
- Internal policies and SOPs
- Monitoring of suspicious transactions

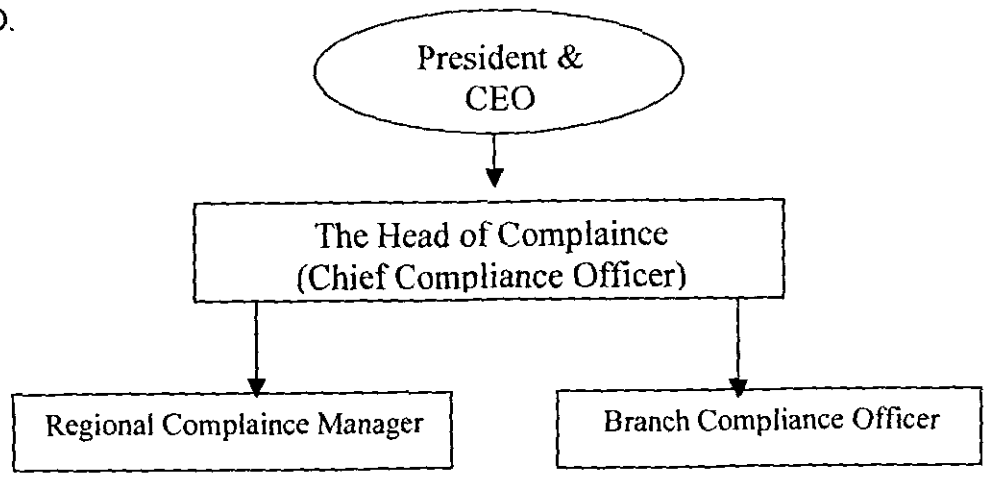
3.5.5 Steps taken By Meezan Bank Limited

Meezan Bank is an Islamic Bank and like other banks, it has also introduced the concept of compliance respecting anti money laundering and in this regard implementation of internal / external policies in the bank. For this purpose "Compliance Manual on KYC" has recently been introduced containing following information:

- Definition and preventive measures of Money Laundering & Other Unlawful Trades/Activities
- Prudential Regulation – XI & XII and Customer Due Diligence
- Reporting of Suspicious Transactions
- Training of Staff

3.5.5.1 Establishment of Compliance Division

A Compliance Division has been set-up at Head Office, which is headed by The Head of Compliance (Chief Compliance Officer), who directly reports to the President / CEO.



3.5.5.2 Responsibilities of Head of the Compliance

The Chief Compliance Officer is responsible for bank's effective compliance relating to:

- State Bank Prudential Regulations along with Anti Money Laundering laws and regulations,
- Timely submission of accurate data / returns to regulatory and other agencies and

- Monitoring and reporting of suspicious transactions to President / COO of the Bank and other related agencies for onward submission to relevant agencies.

3.5.5.3 Reporting Requirements

Following reporting requirements are being observed in MBL:

• Monitoring of Operational Activities along with Account Opening Formalities	Quarterly Basis
• Monitoring of Daily Transactions	Daily Basis

CHAPTER – 4 CONCLUSION AND RECOMMENDATIONS

4.1 WHERE DO WE STAND

In order to ascertain Pakistan's current position viz a viz threat of money laundering practices and its impact on financial sector including Banks and DFIs, especially after the incident of 9/11 when anti money laundering measures were started to be strictly enforced, following analysis is being made on the basis of facts and figures published by SBP.

4.1.1 Implementation Of Anti Money Laundering Steps Through SBP And Its Affects On Financial Sector Of Pakistan

To analyze the implementation of Anti money laundering programme launched by SBP through Financial Sector of Pakistan, various figures recently published by SBP reveal a tremendous increase in business activities generated by financial sector in almost all financial disciplines.

4.1.1.1 Survey of Deposits of Scheduled Banks

Table - 5

TOTAL DEPOSITS OF SCHEDULED BANKS (STOCKS)

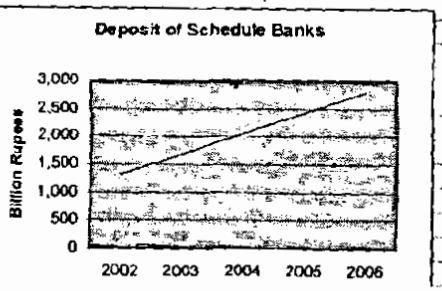
Million Rupees

AS ON LAST WEEK OF	2002	2003	2004	2005	2006
January	1,315,168	1,522,733	1,808,264	2,174,060	2,588,582
February	1,317,759	1,548,337	1,848,798	2,227,063	2,630,445
March	1,336,324	1,588,690	1,872,492	2,268,001	2,650,429
April	1,345,606	1,581,534	1,912,244	2,309,546	2,695,939
May	1,366,472	1,628,348	1,961,001	2,338,583	2,733,969
June	1,428,102	1,699,832	2,006,675	2,377,458	2,786,731
July	1,442,363	1,699,459	2,070,264	2,424,130	2,813,325
August	1,466,019	1,723,857	2,074,487	2,425,752	2,806,645
September	1,483,152	1,743,432	2,078,425	2,408,424	
October	1,479,776	1,707,905	2,078,917	2,418,434	
November	1,507,960	1,772,491	2,105,430	2,483,395	
December	1,532,168	1,793,176	2,161,098	2,661,697	

Source: Weekly Statement of Position which covers domestic operations of banks.[1]

[1] State Bank of Pakistan, (2006) Economic Data [Online] Available: http://www.sbp.org.pk/ecodata/index.asp#monetary [accessed on 7th February, 2007]

Position as on	Jan-02	1,315	Billion Rupees	
Position as on	Aug-06	2,807	Billion Rupees	
Rise During the Period		1,492	Billion Rupees	113 %



4.1.1.2 Survey of Foreign Currency Deposits of Scheduled Banks

Table - 6

Foreign Currency Deposits

(Million US $)

End Period	FE - 25 Deposits and Utilization												Old FCA			Grand Total
	Deposits		Total Deposits/ Utilization	Utilization												
	Residents	Non-residents		Financing	Placements with					Balances		Others				
					SBP		Banks									
	Total	Total		Total	CRR[1]	SCR[1]	Within Pakistan	Outside Pakistan	Total	Held abroad	Cash in hand		Resident	Non-Resident	Total	
Oct, 06	3,131	364	3,485	1,235	180	528	10	612	1,331	251	118	521	68	24	92	3,578
Sep, 06	3,124	365	3,489	1,186	181	537	25	659	1,402	323	97	481	69	24	93	3,582
Aug, 06	3,116	371	3,487	1,182	181	531	23	677	1,411	372	95	427	71	25	96	3,583
Jul, 06	3,193	360	3,553	1,190	183	538	23	712	1,457	363	81	436	74	28	102	3,655
Jun, 06	3,174	369	3,543	1,185	181	533	30	916	1,659	358	83	257	75	28	103	3,646
May, 06	3,083	397	3,481	1,147	181	534	26	787	1,529	356	78	371	76	28	104	3,585
Apr, 06	3,130	380	3,510	1,099	178	523	25	926	1,632	330	85	340	78	27	105	3,615
Mar, 06	3,060	369	3,429	1,182	178	532	25	599	1,324	424	91	408	82	29	111	3,540
Feb, 06	3,089	414	3,503	1,195	181	532	25	641	1,379	430	99	399	86	31	117	3,620
Jan, 06	3,157	410	3,567	1,162	183	537	48	869	1,637	464	83	221	88	32	121	3,688
Dec, 05	3,081	425	3,507	1,116	178	522	33	759	1,491	497	76	327	89	32	121	3,628
Nov, 05	2,972	381	3,353	981	172	502	32	771	1,476	485	80	331	91	33	124	3,477
Oct, 05	2,913	377	3,292	853	166	486	31	919	1,602	476	71	258	94	34	128	3,419
Sep, 05	2,875	344	3,219	743	170	500	8	984	1,662	394	80	340	93	34	126	3,345
Aug, 05	2,900	363	3,263	662	171	473	7	1,211	1,862	395	66	279	95	34	127	3,390
Jul, 05	2,916	385	3,302	548	170	500	8	1,223	1,900	530	76	249	98	34	132	3,434
Jun, 05	2,902	380	3,282	489	171	502	9	923	1,605	744	71	373	119	35	154	3,437
May, 05	2,759	346	3,105	443	166	458	25	1,115	1,824	529	65	244	125	36	161	3,266
Apr, 05	2,782	360	3,142	416	165	457	26	1,262	1,939	407	54	326	157	36	194	3,336
Mar, 05	2,736	354	3,110	397	161	475	20	1,306	1,963	375	68	307	143	37	180	3,289
Feb, 05	2,895	354	3,249	362	166	497	18	1,380	2,061	382	71	375	150	38	188	3,437
Jan, 05	2,775	335	3,110	314	160	477	19	1,298	1,953	578	71	214	162	38	200	3,330
Dec, 04	2,751	365	3,115	262	157	471	18	1,361	2,007	552	64	231	151	39	190	3,305
Nov, 04	2,650	330	3,009	313	153	463	15	1,376	2,007	462	64	163	160	39	199	3,209
Oct, 04	2,605	335	2,940	402	157	435	17	1,083	1,691	591	50	200	160	40	199	3,139
Sep, 04	2,505	333	2,837	491	154	427	14	873	1,468	611	53	214	164	39	203	3,040
Aug, 04	2,449	380	2,829	571	142	415	85	697	1,331	596	54	237	160	40	200	3,028
Jul, 04	2,446	366	2,806	716	142	424	39	536	1,142	572	52	374	161	40	201	3,007
Jun, 04	2,340	331	2,671	846	138	410	36	362	946	447	48	334	165	42	207	2,878
May, 04	2,302	333	2,635	865	139	415	46	351	931	429	46	344	171	44	215	2,850
Apr, 04	2,294	330	2,624	960	135	405	31	336	907	454	50	253	167	44	211	2,835
Mar, 04	2,235	331	2,565	1,002	132	393	46	249	819	458	55	201	175	45	220	2,785
Feb, 04	2,411	328	2,739	979	140	419	63	269	891	569	59	241	175	46	221	2,960
Jan, 04	2,171	338	2,509	974	129	384	38	306	860	432	60	183	177	46	224	2,733
Dec, 03	2,174	336	2,510	971	128	381	38	195	742	484	64	249	176	51	227	2,737
Nov, 03	2,065	343	2,408	844	124	369	24	464	981	388	61	135	184	51	235	2,643
Oct, 03	2,032	352	2,384	798	122	360	73	444	999	375	53	139	185	52	237	2,621
Sep, 03	2,018	322	2,339	818	120	358	24	433	936	373	52	161	185	53	238	2,577
Aug, 03	2,047	336	2,383	893	121	362	38	435	946	326	51	167	201	57	257	2,640
Jul, 03	2,025	329	2,354	983	120	359	27	275	780	368	57	165	219	59	278	2,631
Jun, 03	1,954	343	2,296	1,036	117	351	38	231	737	288	49	167	232	62	293	2,590
May, 03	1,925	334	2,258	1,039	117	332	36	250	746	366	46	162	266	64	330	2,589

Click for feedback: http://www.sbp.org.pk/stats/survey/index.asp

[1] State Bank of Pakistan, (2006) Economic Data [Online] Available: (http://www.sbp.org.pk/ecodata/index.asp#monetary [accessed on 7th February, 2007]

4.1.3 Survey on Implementation of AML Steps and Its Impact on Foreign Private Investment of Pakistan – A Corporate Perspective

Table - 10

Net Inflow of Foreign Private Investment - Sector-wise

Million US$

S.N	ECONOMIC GROUP	2001-02	2002-03	2003-04	2004-05	2005-06	July-October 2006-07	July-October 2005-06
1	*Food*	*7.6*	*6.0*	*3.3*	*10.0*	*51.3*	*5.2*	*5.1*
2	Food Packaging	0.0	-	-	-	2.0	0.3	0.3
3	Beverages	-13.6	1.0	0.7	6.2	6.2	0.8	3.4
4	Tobacco & Cigarettes	0.9	0.0	0.5	6.7	2.5	2.3	0.8
5	Sugar	0.1	0.9	0.4	4.2	5.1	4.3	3.7
6	Textiles	18.4	26.1	35.5	39.3	47.0	26.3	12.4
7	Paper & Pulp	0.7	1.4	1.7	0.0	0.1	0.0	0.0
8	Leather & Leather Products	0.5	1.2	3.5	6.5	3.5	0.3	1.0
9	Rubber & Rubber Products	0.3	0.0	0.0	0.0	4.7	0.7	0.1
10	Chemicals	10.6	86.2	15.3	51.0	62.9	19.9	16.1
11	Petro Chemicals	2.2	0.8	1.5	1.1	9.5	2.3	0.3
12	Petroleum Refining	2.8	2.2	70.9	23.7	31.2	19.1	8.7
13	*Minning & Quarrying*	6.6	1.4	1.1	0.5	7.1	2.9	2.1
14	Oil & Gas Explorations	268.2	186.8	202.4	193.8	312.7	198.7	82.3
	Of which Privatisation proceeds	*117.0*	*10.0*					
15	Pharmaceuticals & OTC Products	7.2	6.2	13.2	38.0	34.5	10.3	9.0
16	Cosmetics	0.0	0.0		1.1	0.8	0.0	0.5
17	Fertilizers	0.0	0.0	*0.0*	3.5	107.6	1.3	6.6
18	Cement	0.4	-0.4	1.9	13.1	39.0	8.3	2.8
19	Ceramics	0.0	0.0	*0.1*	0.4	0.4	0.1	
20	Basic Metals	0.0	0.1	0.1	0.4	3.1	2.5	0.8
21	Metal Products	0.3	0.1	1.3	2.1	4.0	1.6	1.0
22	Machinery other than Electrical	0.1	0.4	0.7	2.8	1.2	1.9	0.5
23	Electrical Machinery	10.5	10.5	8.7	3.4	1.7	-2.4	0.9
24	*Electronics*	15.9	6.7	7.5	10.3	18.1	6.0	6.5
	I) Consumer/Household	12.6	4.2	6.0	7.9	7.8	3.7	3.6
	II) Indutrial	3.3	2.5	1.6	2.4	10.3	2.3	2.9
25	Transport Equipment(Automobiles)	1.1	0.6	3.3	33.1	33.1	15.7	10.5
	I) Motorcycles	0.8	0.0	0.0	0.9	3.3	0.3	0.5
	II) Cars	0.0	0.5	2.4	27.2	26.7	12.9	9.0
	III) Buses,Trucks,Vans & Trail	0.3	0.2	0.9	5.1	3.2	2.5	1.0
26	Power	36.4	32.8	-14.2	73.3	320.6	53.5	20.8
	I) Thermal	29.8	12.1	-21.4	69.3	319.7	53.4	20.8
	Of which Privatisation proceeds					*255.0*		
	II) Hydel	6.5	20.6	7.1	4.1	0.9	0.2	0.0
27	Construction	12.8	17.6	32.0	42.7	89.5	18.9	15.6
28	Trade	34.2	39.1	35.6	52.1	118.0	76.4	33.3
29	Tourism	0.1	0.1	0.0	0.0	3.4	1.1	1.1
30	Transport	21.4	87.4	8.8	10.6	18.4	7.1	2.0
31	Storage Facilities	0.0	2.4	0.0	3.7	0.2	0.1	0.0
32	Communications	12.7	24.3	221.9	517.6	1,937.7	352.5	151.6
	1) Telecommunications	6.0	13.5	207.1	494.4	1,905.1	337.3	145.3
	Of which Privatisation proceeds				*260.0*	*1,186.0*	*133.2*	
	2) Information Technology	6.3	9.9	13.7	22.2	30.2	14.3	5.6
	I) Software Development	3.5	4.4	6.3	8.8	5.0	1.7	2.2
	II) Hardware Development	0.4	1.2	1.3	3.9	1.1	0.8	0.3
	III) I.T.Service	2.4	4.2	6.2	9.6	24.2	11.7	3.1
	3) Postal and Courier Services	0.3	0.9	1.1	1.0	2.4	0.9	0.7
33	Financial Business	3.5	207.6	242.1	269.4	329.2	351.4	44.2
	Of which Privatisation proceeds		*178.0*	*199.0*	*103.0*	*99.3*		
34	Social Services	2.0	0.3	0.9	1.2	3.1	1.1	0.3
35	Personal Services	8.3	19.4	15.5	23.5	61.6	24.9	16.9
36	Others	12.7	28.8	33.1	78.9	65.5	21.0	18.5
	TOTAL	484.7	798.0	949.4	1,524.0	3,521.0	1,236.3	479.7
	Total Without Privatisation	*367.7*	*610.0*	*750.4*	*1,161.0*	*1,980.7*	*1,103.1*	*479.7*

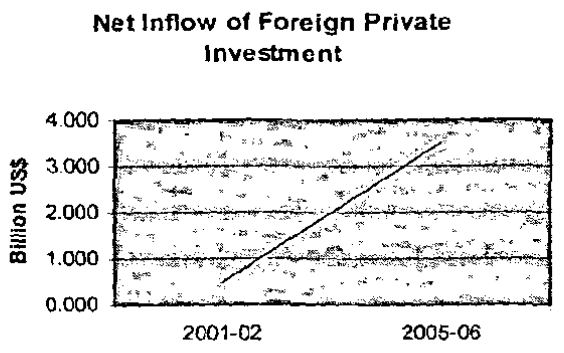
Source: State Bank of Pakistan.
Contact Person : Mr. Behzad Ali Ahmad, Joint Director
Contact Number : 021-2453616

[1]

[1] State Bank of Pakistan, (2006) Economic Data [Online] Available: (http://www.sbp.org.pk/ecodata/index.asp#monetary [accessed on 7th February, 2007]

Position as on	2001-02	0.485	Billion US$
Position as on	2005-06	3.521	Billion US$
Rise During the Period		3.036	Billion US$

626 %



The facts and figures, as reflected in the foregoing tables, show that the total deposits of the scheduled banks have substantially surged from 1.315 billion Rupees from January 2002 to 2.807 billion Rupees till August 2006. Hence total rise in the deposits is recorded to 1.492 billion Rupees, which is 113%.

The data of foreign currency deposits of scheduled banks from May 2003 to October 2006 shows increase upto 38%.

On the other hand, advances of the scheduled banks have also recorded substantial increase of 1.201 billion Rupees from January 2002 to August 2006, which is upto 122%. Investments of the scheduled banks in the same period have also shown a rise of 143%. Hence the data of Foreign Exchange Reserves shows that there was no detrimental effect due to implementation of Anti Money Laundering Steps as from 1998-99 to 2005-06, and rather a substantial increase of US$ 11.474 billion was achieved. Similarly foreign private investment in Pakistan has also shown increase of 626%.

Above findings and observations reveal that implementation of AML policy by various regulatory bodies and law enforcing agencies show the following facts & figures:

Description	Period	Rise in %age
implementation of AML steps through SBP and its affects on financial sector of Pakistan		
• deposits of scheduled banks	2002-06	113
• foreign currency deposits of scheduled banks	2003-06	38
• advances of scheduled banks	2002-06	122
• investments of scheduled banks	2002-06	143

survey on implementation of AML steps and its impact on foreign exchange reserves of Pakistan	1998-06	690
survey on implementation of AML steps and its impact on foreign private investment of Pakistan – a corporate perspective	2001-06	626

All it shows that the anti money laundering steps taken by SBP and commercial banks / DFIs have cast no adverse effect which was feared and rather there has been a substantial increase witnessed as mentioned above in the history of Pakistan. Therefore the fears in the minds of the banks and DFIs are quite unfounded. The government can safely go ahead by introducing Anti Money laundering Legislation in the country and SBP can also further tighten the supervisory measures on the banks and financial institutions.

4.2 LIMITATION & HURDLES

Combating money laundering is a core element in the fight against crime. There are both practical and legal hurdles in the way to fight against it, which are discussed as follows:

4.2.1 Practical Issues

The practical issues, which impose limitations and create hurdles, are summarized as under

4.2.1.1 Globalization of Economic System

The globalization of economic system and the technologies supporting it have generally made it easier for offenders to move, disperse and conceal illegal assets. Tracing of diverted assets, especially the amounts generated by large-scale corruption cases, usually involve complex, lengthy and expensive investigations. It demands a great care and diligence because the evidence obtained must meet a high standard to ensure successful criminal and civil proceedings and consequent freezing and forfeiture.

4.2.1.2 Multi-National Nature of Offence

The offence of money laundering being a multi-national nature of offence, the time consumed by mutual legal assistance requests is a major problem for investigators, particularly in cases where assets or evidence must be traced through a series of jurisdictions and legal proceedings which must be completed and requirements which must be met before the case can then pass to the next jurisdiction, where the process must be repeated. The offenders understand these sophistications and structure their activities to make advantage of it.

4.2.1.3 Heavy Costs

Heavy costs that may incur and the scarcity of resources may pose a serious obstacle particularly for countries already impoverished by the offenders whose assets they now seek to trace. The financial cost of assembling an effective team of investigators to trace and recover assets and the sufficient number of people with necessary expertise may not be available. In some cases law firms, investigators and others may be willing to work on the basis of fees which are contingent on a successful investigation and ultimate recovery of assets but practically it is impracticable while

some jurisdictions prohibit such practices and it may give rise to conflict of interests which may jeopardize the successful legal proceedings.

4.2.1.4 Lack of Seriousness

It is mandatory for financial institutions, doing their business in the developing countries like Pakistan, to have an effective system of *due diligence* in their organization as far as KYC and AML is concerned. This obviously needs a big amount to be spent on this activity, which ultimately reduces the business / profitability of these financial institutions. It has been observed that, usually, proper attention is not given by these financial institutions to tackle the problem of Money Laundering.

4.2.1.5 Scarcity of Resources (Financial, Human & Technical)

We know that enforcement of any policy requires financial, human and technical resources. The third world countries do not have surplus funds to be spent to combat money-laundering activities.

Furthermore, skilled human resource is also a major obstacle for these countries in the way of handling Money Laundering activities. The available human resource is also not technically equipped according to our culture, environment and requirements to effectively overcome the situation.

4.2.1.6 Transfer of Evidence & its Admissibility

The practical problem also arise from the need to transfer evidence from one jurisdiction to another in a manner which ensures that it will be admissible and credible where it is to be used in the court. Assets recovery cases often straddle on the boundary between civil and criminal proceedings or may be considered civil in one jurisdiction and criminal in another. Many jurisdictions impose higher standards for criminal evidence, which may make civil recovery easier where it is feasible, but may make evidence gathered for civil proceedings insufficient to meet the standards for criminal ones. To establish authenticity, witnesses such as bank officials or investigators must often have to travel to foreign jurisdiction to give personal testimony, which generates costs and demands on their employers. Recent developments may make such testimony by video-conference possible but this also raises legal and technical issues, and in same cases the evidence thus given may not be as effective as required.

4.2.1.7 Disposition of Recovered Assets & Competing Claims

In the final stages of a successful recovery effort, practical problem may also arise over the ultimate disposition of the assets. There may be competing claims from countries other than the victim country and competing claims for compensation from various individuals and companies, which may have suffered losses within the victim country. There may also be competition between proposals to use the assets to compensate individuals and proposals to use them for projects to rebuild political, economic and legal institutions, the reduction of external debt or various public works.

4.2.1.8 Cash Based economy

In the cash based economies like Pakistan, it is very difficult to check money laundering as most of the business transactions are done on cash and verbal agreement. People usually avoid documentation of their business transactions due to various reasons. For the last 5 years, government is trying its level best to convert the economy to documented economy.

4.2.1.9 Lack of will

One of the most important practical problem is lack of will on the part of the Government, Law enforcing agencies and the financial regulators to curb the money laundering practices. As in these practices, influential personalities are involved, the institutional system being not so strong in our country, the concerned departments deliberately avoid to lay hands on such matters; so that they may not come in direct confrontation with the interests of any influential personality and fear to invite his wrath. This attitude on the part of the concerned Government functionaries and the departments is a real problem to check money laundering practices.

4.2.1.10 Culture

Cultural values also have their impact upon the efforts to crush money laundering. In Pakistan, where people do not feel that money laundering is a crime and they without any hesitation get involved in different businesses which ultimately lead to money laundering at small or large scale. The evil practices like tax evasion, drug dealing, smuggling and human trafficking are common in our people. In their estimation it is not a foul play, so they consider it as permissive and quite correct, which promotes the evil of money laundering.

4.2.1.11 Use of non-banking channel for foreign remittances

The foreign remittances through non-banking channels also provide a safe mechanism to money launderers. The general public in Pakistan does not know about the problem of money laundering and most of the people deal with financial matters in the primitive manners. They are feared to unintentionally get involved in it by playing in the hands of nefarious elements. Though, now, most of the business community does business through banks and other financial institutions but still they are quite unaware of the modern banking / financial practices and use / misuse of the same. Hundi and Hawala are the major channels of remitting money from abroad to their hometown and vice versa. All it facilitates safe channels to the money launderers.

4.2.1.12 General Awareness of Public

People in the countries like Pakistan are generally unaware of the fact that money laundering is not only slaughtering our economy but also damaging our image and fame in the eyes of the world. A big chunk of population has no concern with national interests, as they are so much busy in meeting, through whatever means, the financial needs of their families that they have no time to even talk or think over the issues like it.

4.2.2 Legal Issues

There are certain legal issues which impose limitations and create hurdles in the fight against money laundering. These are discussed in some detail as under: -

4.2.2.1 Absence of Legislation

Money laundering is a burning issue for almost last 10 years, but unfortunately most of the third world countries are very slow and lethargic to enact the legislations to effectively and rationally combat this problem.

As per newspaper reports the "Anti Money Laundering Bill" is under consideration of the government for quite some time, but it has not so far been presented in the National Assembly for approval.

4.2.2.2 Discrepancies in Procedural Law.

A major concern in all cases of a multinational nature is the reconciliation of differences or discrepancies in the relevant substantive and procedural laws of the countries involved. The issue of this nature commonly arise in asset recovery cases and

more seriously in cases involving civil law and common law jurisdictions, both having involved fundamental legal differences and asymmetries which can cause difficulties even between relatively similar legal cultures, particularly with respect to the exact definition of criminal offences and areas such as the liability of corporations or legal persons.

4.2.2.3 Discrepancies Relating to Fundamental Legal Principles.

Another significant area of discrepancy between legal systems relates to fundamental principles governing protection of civil liberties, privacy, disclosure of prosecution information and evidence to the defence in criminal cases and other substantive or procedural safeguards. While the substance of many of these principles may be similar in many countries, the manner in which each country's laws enunciate such principles and the ways in which their courts apply them may be quite different. Thus, even though evidence was properly obtained by means of lawful search and seizure in one country, for example, this may be difficult to establish in the courts of another. Conflicting legal rules may impede the cooperation and coordination operating under the laws of different countries.

4.2.2.4 Application of Civil/Criminal Proceedings for Forfeiture of Assets.

There are also discrepancies between the approaches taken by different jurisdictions to the use of civil, as opposed to criminal, proceedings for tracing, freezing, seizure and forfeiture of illicitly transferred assets. Generally, criminal actions allow for more effective remedies, but their penal nature establishes a higher burden of proof and more stringent procedural safeguards, which must be met before they can be applied. This higher burden is commonly cited as a major obstacle to the ability of investigators to locate evidence and trace assets and transactions held / made through nominees, shell corporations, foundations, lawyers who are barred from disclosing their client's identities and institutional secrecy on the part of banks and financial institutions in jurisdictions where it is established. Civil proceedings, on the other hand, offer more realistic burdens of proof, but in many jurisdictions legislation and the courts do not regard such proceedings as adequate to overcome secrecy provisions. In some cases, the best approach appears to be a combination of the two, in which criminal proceedings are used to obtain access to necessary information (the equivalent of civil discovery), and then civil proceedings brought as a more expeditious way to seek actual

freezing and recovery of the illicit assets. The approach is possible in some civil law countries, but very hard in common law jurisdictions.

4.2.2.5 Discrepancies Between Evidentiary Procedures or Rules.

As already noted, discrepancies between the evidentiary procedures or rules in different jurisdictions are also frequently encountered. Evidence gathered by regular means in one jurisdiction may not meet the standards for admissibility in others, particularly if both civil and criminal proceedings are involved. Other rules also limit admissibility. Evidence furnished to one country under mutual legal assistance agreements may not be used in a third country or for proceedings other than those for which it was originally obtained.

4.2.2.6 Implications of Transferring Witnesses Between the Jurisdictions.

The practical problem associated with transferring witnesses from one jurisdiction to another may also have legal implications. Assuming that resources can be found to transfer the witness, the questions of whether he or she can be transferred and compelled to testify against his or her will, and potential criminal liability for refusal to give evidence or perjury must sometimes be dealt with. In some cases, the question of whether a foreign witness can be given immunity from prosecution for related or unrelated offences and if so, the extent of such immunity may also arise.

4.2.2.7 Competing Judgments Regarding Assets.

The practical problem arises when there are conflicting claims regarding the recovered assets because their recovery is sought by other countries or individuals claiming criminal victimization or civil damages, may be compounded by additional legal problems. Proceedings brought in more than one jurisdiction may result in competing judgments claiming the assets, which have to be reconciled before the courts of the country where the assets are located, for example. Civil / criminal law claims which confiscate assets for the benefit of the state or which would be used to compensate criminal victims.

4.3 RECOMMENDATIONS & SUGGESTIONS – FUTURE STRATEGY

It is recognized at every level that the problem of Money Laundering has become such a global threat to the integrity, reliability and stability of the financial and trade systems and even government structures as to require strict and effective counter measures by the international community in order to deny safe havens to criminals. We know that 'bad money' earned through money laundering should not become part of the economy as it would have bad effects on the economic system and cause damage to smooth growth of its development.

It is needed to make special efforts against the laundering of money linked to drug Trafficking. Money-laundering legislation and programmes at various levels are required to be in accordance with the relevant provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

On the basis of this study, below mentioned recommendations are suggested for Government, Financial Institutions and Law Enforcing Agencies.

4.3.1 Recommendation & Suggestions For Government

The following recommendations are suggested for the government.

4.3.1.1 Introduction of AML Legislation

Money laundering, a burning issue for almost last 10 years, but unfortunately in Pakistan no law has since been finalized and promulgated exclusively to combat this problem. Hence a comprehensive Anti-Money Laundering legislation must be promptly enforced

Salient features of proposed Legislation are enclosed herewith as Appendix-1

4.3.1.2 Allocation of reasonable budget

Reasonable budget must be allocated to effectively fight against this problem so that an upto date system may be introduced / run in order to control the complex money laundering transactions.

4.3.1.3 Adoption of Broad Based and Multi Dimensional Strategy

Fight against money laundering is an ongoing process. The government should adopt strategies that make the AML operations as fool proof. We need to identify the parallels between drug money laundering on the one hand and between corruption related money laundering and terrorist financing on the other and we need to achieve an effective international capability to investigate and prosecute all these crimes.

4.3.1.4 Introduction of Crime Control Strategy

Government must introduce a crime control strategy to get the following objectives:

- Combat money laundering by denying criminals access to financial institutions and by strengthening enforcement efforts to reduce inbound and outbound movement of criminal proceeds.
- Seize the assets of criminals through aggressive use of forfeiture laws.
- Enhance bilateral and multilateral cooperation against all financial crimes by working with foreign governments to establish or update enforcement tools and to implement multilateral anti-money laundering standards.
- Target offshore centers for international fraud, counterfeiting, electronic access device schemes and other financial crimes.

4.3.1.5 Mutual interaction

AML authorities must focus establishing international standards, obtaining agreements to exchange information, establishing linkages for cooperative investigations, and overcoming political resistance in various key jurisdictions to ensure cooperation among them.

Holistic efforts are required to fight the menace of money laundering with effective cooperation among various departments and agencies working in this sector with in the country. So, there must be an independent body, which plays an effective role as central unit for all organizations (i.e. law enforcing agencies, capital market, financial institutions and business community) dealing with money laundering problem. So that these may share their knowledge and experiences in order to strengthen each other.

4.3.1.6 Introduction of Documented Economy

Business community at large and small scale should be encouraged to have their all financial and non-financial transactions to be in writing. For this purpose easy and economical documented system should be introduced. People may also be encouraged to use banking channel for their domestic and international financial transactions.

4.3.1.7 Establishment of a Strong and Reliable Data Base

Government is required to increase the jurisdiction of NADRA, so it has all relevant information about an individual, which not only provide his personal data but also its financial background.

4.3.1.8 Provision of Training and Technical Assistance

Government must take initiative that law enforcing and regulatory agencies should be provided training on money laundering countermeasures and financial investigations. The members of law enforcing agencies and financial regulatory bodies must be sent to renowned international institutions for training courses. These courses must give financial investigators, bank regulators, and prosecutors the necessary tools to recognize, investigate, and prosecute money laundering, financial crimes, and related criminal activity. These courses must be arranged in every part of the country.

4.3.1.9 Monitoring of International Tendering

As in the International tendering of Mega Projects, mass-scale movement of funds is carried out between the jurisdictions, an effective mechanism needs to be evolved and established to keep an hawkish eye on the movement of such funds so that

no illegal money find way to be channeled through it and the money launderers may not succeed to misuse the process for laundering the dirty money.

In the NA Ordinance 1999 there is legal provision in Section 33-B that binds all the Govt. Departments to report to the Chairman NAB about the details of the public contracts worth Rs.50 million or more. Similarly, Public Procurement Rules 2004 require that all public procurement contracts exceeding the financial limit of Rs.10 million shall be subject to an integrity pact/undertaking between the procuring agency and the contractors. Such like legal provisions may also be introduced regarding the private contracts between the parties, so that an effective check may be kept on the movement of illegal funds in the garb of International Contracts.

4.3.1.10 Promoting Public Awareness

We know that there is a strong link between poverty and illegal activities. Therefore, it is needed to create culture of obeying laws, change of behaviour and conviction to effectively fight against money laundering.

Money-laundering cannot be checked through legislation alone, therefore there is need to strengthen national, social, and political institutions, promoting rule of law, tackling corruption, improving economic status of people and raising their standard of living.

Awareness and guidance must be provided to general public through seminars, publication and radio / TV programmes, so that they may become morally much strong and able to differentiate money laundering and genuine business activities.

4.3.2 Recommendation & Suggestions for Law Enforcing Agencies

Money laundering being a complex nature of crime, the law enforcing agencies will have to be equipped with ability and courage to fight against this evil. In this regard, there are following recommendations and suggestions for the law enforcing agencies.

a) The law enforcing agencies in Pakistan are shy of treading on the difficult terrain of financial investigations that are both complex and time-consuming. The fundamental reason seems to be, apart from the constraints of other pressing professional demands, lack of expertise on the part of investigating officers. Hence there is urgent

need to run basic and advance courses designed by experts for the trainers as well as field officers of all the concerned law enforcing agencies. Such courses could be managed jointly at the regional level with the coordination of UNDP and other international agencies for improving the professional skills of the intelligence, investigative and prosecution personnel of the law enforcing agencies.

b) In order that AML and asset forfeiture operations get adequate priority and required resources, there is need to establish separate dedicated wings within various law enforcing agencies like ANF, NAB and FIA etc. These wings should be well equipped with modern technical and logistics facilities and other resources.

c) A national fund for forfeited money laundering assets may be set up which may receive fixed percentage for all forfeited assets from all the concerned agencies. This fund should be utilized for:

   i) setting up of an efficient communication network between the law enforcing agencies;

   ii) development of a well established intelligence data on bank accounts and other assets of the criminals; and

   iii) arranging training programmes for the personals of the law enforcing agencies.

d) Regular exchange of intelligence reports / data on transnational money laundering cartels, their network and modus operandi should be ensured between the different national law enforcing agencies as well as international agencies. In that regard it should also be ensured that a practical and efficient mechanism is established and developed.

e) There is need to educate and sensitize the concerned government agencies to the ill-effects of money laundering and the need to combat it by adoption of stringent counter money laundering measures through domestic policy as well as offering meaningful co-operation and assistance to international regulatory bodies and law enforcing agencies.

4.3.3 Recommendations & Suggestions For Financial Sector

Financial sector plays an important role in the economic development of a country. It not only provides various indicators of economic development but itself is a big indicator. So this area must be free from illegal activities like Money laundering.

There are following recommendations and suggestions for banks / DFIs;

4.3.3.1 Provision of Sufficient Current Knowledge & Awareness to Front-Line Bankers

The front-line bankers should be aware of:

a) current trends in money-laundering abroad and other variety of crimes that generate "tainted money";
b) how seemingly legal transactions cab be crime generated;
c) customers and type of transactions that need to be screened;
d) consequences of perceived loss of integrity by a country's financial system due to mercenary attitude of its bankers in checking suspicious financial transactions and money laundering practices; and
e) damage done to the socio-economic-political infrastructure by money laundering.

4.3.3.2 Imparting Task-Related Skills to Front-Line Bankers

The font-line bankers must possess the skills and ability to:

a) establish customer's identity, the documentary evidence thereof, and expertise needed to identify fake documents;
b) adopt alternative ways for establishing the real standing / business credentials of prospective customers;
c) monitor customer accounts to verify whether transactions booked therein are compatible with the nature, size, and type of customer's business;
d) visit the customer's business premises to verify the activity booked in customer accounts;
e) maintain inter-bank liaison regarding customers with multiple banking relationships, identifying suspicious transactions and verifying validity of the same without giving away hints thereof;
f) watch employee conduct in relations with customers, cautioning employees about any observed improprieties, and exercising care in selecting employees for verifying suspicious transactions; and
g) reporting of suspicious transactions to the concerned in-house officers, specifically assigned for the job and the concerned law enforcing agencies.

4.3.3.3 Taking effective administrative and Supervisory Measures

For countering money laundering practices the following administrative and supervisory measures should be taken by the banks and financial institutions:

a) Establishment of a Suspicious Transactions Reporting Cell (STRAC) at the bank Head Office and defining its mandate including Its functions and responsibilities in the context of currently applicable Pakistani laws, SBP regulations, and FATF Recommendations;
b) Maintain interaction with banks in Pakistan and abroad on suspicious financial transactions / persons;
c) Maintain interaction with local and international law enforcing agencies on reported suspicious financial transactions / persons;
d) Keep liaison with bank's branch network and up-date knowledge base at branch level on trends in money laundering;
e) Make arrangements for effective infrastructure in terms of:

   i) clear defined authority and reporting lines.
   ii) access to good auditors, consultants, legal advisors, national / international banks, and financial crime prevention agencies.
   iii) computer hardware and software to create, maintain, and up-date its database on a continuous basis, and
   iv) ensuring fool proof arrangement against unauthorized access to its database.

f) Staffing with executives and officers having proven knowledge and skill in:

   i) current trends in money laundering worldwide, and its implications;
   ii) account opening procedures, especially identity checks and the available options therefore;
   iii) detection of fake, bogus, or purely criminal transactions with frequency, route and sender/beneficiary identities, etc.;
   iv) investigating internally the suspicious transactions and arriving at conclusions; and
   v) ensuring secrecy of on-going inquiries with branches, banks, and law enforcing agencies;

Islamic country and the people there having a strong passion to the adherence to Islamic values, there is an urgent need to promote Islamic perspective of the illegal and un-ethical business transactions including money laundering. In Islamic perspective social and ethical responsibility exercised by a business organization is seen as a benefit rather than a cost, as Islam takes an integrated view of individuals and society. Islam suggests that corporate social responsibility should not be viewed in a narrow sense – solely in meeting legal obligations. In Islam, businesses are as much spiritual entities as they are material entities. Hence Islamic motivation in that regard can be of great help to check illegal business activities like money laundering.

4.4 CONCLUSION

The international community recognizes the money-laundering and suspicious financial transactions as a serious challenge and a threat not only to the soundness of the financial institutions but also to the integrity, reliability and stability of the government structures around the world. In any case bad money earned from serious crimes should not become part of the economies through money-laundering process. No doubt many strong global and regional initiatives have been taken to overcome the problem but there is an ardent need of more co-operation at global level amongst the regulators to fight against this menace.

Money-laundering being a group activity with boundary-less chain of financial transactions becomes an intricate and sophisticated process. Criminals and money-launderers are continuously adopting new routes and channels for their activities. Such complexities are compounded by corollary factors such as gaps in domestic legislation, perceived defects in the legitimacy of process initiated to establish facts and determine culpability and last but not the least, the deficiencies in international co-operation. In any case the complexities of the issues surrounding the transfer of illicit funds derived from criminal activities and acts of corruption and the return of such funds cannot be under-estimated. Not with standing the difficulties or complexities, the dimensions of the problem demand joint and conclusive action by the international community. For this action to be effective, the international community must embark upon sustained efforts to forge consensus. Such consensus needs to be based on a common perception and appreciation of its foul impacts on the social, political and financial stability and finally, agreement on the international aspects of the problem that require genuine and meaningful co-operation. The UN can play an important role to overcome this problem. It has already emphasized the need of international co-operation and working together in finding solutions to this colossal problem, which will make it possible to give fruitful results.

Since the word "money-laundering" was hitherto unknown and stranger in Pakistan till the late 90s and soon became a cause of concern to the law enforcing agencies and financial institutions, Pakistan being a member of international community had to take steps to incorporate legal provisions against money-laundering activities through legislation. Anti Terrorism Act 1997 empowers the Government to prohibit fund-

raising and money laundering for terrorist financing and initiate action against persons and entities having nexus with terrorism. The Control of Narcotics Substance Act 1997 obligates the banks and financial institutions to report suspicious transactions that may involve proceeds from crime. Similarly National Accountability Ordinance 1999 also requires the similar reporting by the banks and financial institutions regarding corruption-related suspicious transactions. But the existing legal provisions in the above legislations being not comprehensive and all-encompassing are not sufficient to adequately address the problem. The relevant provisions in the Anti-Terrorism Act 1997 regarding Terrorist Financing being elaborate to some extent may cater to the present need but the provisions in the Control of Narcotics Substance Act 1997 and the National Accountability Ordinance 1999 are quite insufficient being merely of vague and casual nature. On the face of magnitude of the problem relating to Norco-related and corruption-related money laundering, the existing provisions are quite inadequate on the face of magnitude of the problem. Both section 67 of the Control of Narcotics Substance Act 1997 and section 20 of the National Accountability Ordinance 1999 provide merely the reporting requirements of suspicious transactions by the banks and financial institutions but not any further course of action regarding the freezing/attachment of such funds and the procedure of penal action and subsequent sentence to the offenders. The existing provisions in the different legislations being quite inadequate, there is an utmost need of an exclusive, comprehensive and all-encompassing legislation covering money-laundering relating to corruption, narcotics and terrorist financing etc. There must also be a separate specialized law enforcing agency and also the special courts to deal with offences relating to money laundering. An anti-money laundering draft bill has been prepared under the supervision of Ministry of Finance and is ready to be presented before the Cabinet or in the Parliament. There is an utmost need to expedite the process of the promulgation of the new legislation.

In the financial sector, SBP and SECP, being the regulatory bodies, have issued different regulations and guidelines but the same being not implemented seriously have not given the desired results. Though in papers the different banks and DFIs have adopted these regulations & guidelines but in practice the same are being quite ignored. So far not a single money-laundering case could be detected in Pakistan and the main cause of the failure in that regard is lack of seriousness and sincerity on the part of dealing hands in the banks and DFIs. Hence there is need to properly educate the

employees of the Banks & DFIs and to keep a constant check on them regarding the compliance of relevant guidelines and regulations.

It has been seen that in our country the money changer's business is not systematically regulated and documented. The black money is mostly changed from one currency to another in order to avoid detection and glare of the law enforcing agencies. The business activities of the money changers being not strictly documented are susceptible to money launderers and they may target this field to avoid detection. Furthermore, through an exclusive regulation the exchange / forex companies must be made to strictly follow the guidelines of SBP, so that there may not be any chance of routing through them any illegal funds.

Stock market is another field, which may become prone to fall pray of the machination of money launderers. Now a days, in our country, new companies are being established and got registered very rapidly. The unscrupulous elements are getting registered companies and then start business activities quite ultra-varies to their disclosed object and the Memorandum of Articles. The money launderers can safely establish a fake company for their illegal activities. Hence there is need that the operation power of SECP must be strengthened and in that regard a separate specialized wing must be established with sufficient powers to forcibly restrict the activities of the companies, which may indulge in malpractices. It has been seen that despite the warnings and action by SECP such unscrupulous companies continue with their illegal business practices, which must be forcibly curbed.

Under and over invoicing in foreign trade transaction i.e. import and export of goods is one of the most popular channels among money launderers. Further, in loose system, the money launderers can safely avail to carry cash and other valuables from one destination to another through shipping consignments. An efficient mechanism will have to be evolved to minutely check that the goods are the same, which have been declared, and there is no discrepancy in the actual goods and the declared ones in the documents. In that regard the customs authorities especially the dealing hands at the ports will have to be specially trained against the threats of the money laundering practices and the different channels / modes adopted by the money launderers to hoodwink the eyes of the custom authorities.

The Money launderers try to legitimize and whiten the ill-gotten money by paying taxes and other duties thereon, so that it may look as clean and genuinely acquired. The economy in our country being tax-based, the CBR can play an effective role in the checking, detection and reporting the illegal funds and un-usual financial transactions. Though CBR's primary responsibility is revenue collection but in view of the need of the day, it should take a step forward and also assume the responsibility to enquire into the legitimacy of the funds shown to have been earned / generated. Presently, CBR is not playing its role in that regard. Therefore, it is needed that its sphere of functioning must be expanded to check, trace and report the movement of ill-gotten money.

The money launderers in order to conceal their activities and the illegal funds constantly change their channels and methods. The area of real estate, which business-wise is a flourishing field in our economy, may be a target of money launderers. A large number of new and luxury housing schemes are being mushroomed in the big cities like Islamabad, Lahore and Karachi etc. and the price of land touches astronomical heights within days. The real estate business may be a favorite target of the money launderers as the money invested therein multiplies very rapidly and it can be safely shown to be legitimized. A hawkish eye will have to be kept on real estate investments and in that regard a special regulatory body needs to be established.

The role of chartered accountability firms and audit bodies in the detection and checking of money laundering practices cannot be ignored. An effective mechanism through a proper legislative must be evolved to put serious obligation on the chartered accountancy firms / audit bodies to discharge their responsibilities fully in that regards.

International tendering is another area, which is highly susceptible to money laundering practices. Though legal provisions are there about reporting by the concerned departments, the details of the public contracts over and above certain monetary limits to the NAB but there is no such arrangement about the contracts between the private parties. There must be specific legal provisions to provide effective monitoring of the international tendering and contracts, both public and private, so that no ill-gotten money take way to route through this channel.

The evidence shows that the terrorist groups which for their activities are financed through money laundering practices, mostly prefer to utilize cash carriers to move funds from one place to another. They avoid banking channels which being

documented are considered unsafe and prone to be easily detected. On the borders strict vigilance is needed to be kept to forestall hard cash movement across the borders. In that regard intelligence network needs to be sufficiently strengthened.

Since 9-11, money laundering has received substantially more attention as it was generally accepted that the attacks were partially funded by laundered money. After these attacks Pakistan and whole region surrounding it is in direct focus of the world. The Government and the financial sector of Pakistan have started to develop the concept of a coordinative fight against terrorism. Now, more attention is being given to stop the process of money laundering that leads to terrorist financing before it is completed.

The foul influence and effects on economic, political, legal and social sectors have already been discussed in detail in chapter 1.9, which shows that money-laundering activities are quite injurious to the fabric of the society as a whole and especially the financial sector, which is directly influenced. The Government, through legislation, can not check Money Laundering alone, therefore there is need to strengthen national, social and political institutions promoting rule of law, tackling corruption, improving status of people and raising their standard of living. As there is strong link between poverty and illegal activities, there is need to develop a macro-economic structure in the society ensuring to provide sources of income to the people, so that they may not be lured to indulge in criminal activities like poppy-cultivation, terrorism and other corrupt practices which ultimately lead to money-laundering.

In addition to that Pakistan being an Islamic country and the people having a strong passion to adherence to Islamic values, it is utmost needed to promote Islamic perspective of the corporate social responsibility vis-à-vis the illegal and un-ethical financial transactions like money laundering. Hence Islamic motivation in that regard can prove very fruitful to check suspicious financial transactions and money laundering practices.

As far as the reservations of the banks and financial institutions in regard to adverse effects of the implementation of anti-money-laundering rules, regulations and instructions are concerned; the same have proved quite unfounded and baseless. The banks and the financial institutions being profit-oriented organizations were under false impression that by adopting anti-money laundering measures their business activities

PROPOSED ANTI MONEY LAUNDERING LEGISLATION

To provide for prevention of money laundering offence and to combat the present day wave of financing of terrorism, there is utmost need of a comprehensive anti money laundering legislation. Herein under are detailed salient features of the proposed legislation:

i. **Financial Monitoring Unit:**

A special set up may be established with the nomenclature of financial money laundering unit (FMU) and it may be housed in SBP under a DG who must be a specialist in Financial Sector. The DG may with the approval of Federal Government appoint subordinate staff to carry out the responsibility of FMU.

ii. **Functions of FMU:**

Its functions may include:

a. to receive reports of suspicious transactions from financial institutions, DFIs and other professions/businesses;
b. to analyse the suspicious transactions reports and in that regard to call for record and information from any agency in the country;
c. to disseminate the information so gathered after the analysis to the concerned investigating agencies;
d. to create and maintain a comprehensive data-base of all suspicious transaction reports and related information and to establish a necessary

iii. **Establishment of Special Courts:**

The Federal Government may by notification establish special courts for the whole or any part of the country and appoint a Judge for each of such court.

The Judge of a Special Court must be a session Judge qualified to be Judge of High Court and he may be appointed for a term of 3 years. The Judge of a special court may be appointed after consultation with the chief justice of High Court of the concerned Province.

a. **Offences Trial-able by the Special Courts:**

Not withstanding any thing contained in the criminal procedure code or any other law, the offence of money laundering along with the predicate offence which generated the said proceeds of crime shall be triable exclusively by the Special Court.

b. **Offence of Money Laundering to be non-cognizable and non-bail-able.**

Not withstanding anything contained in the code of criminal procedure, the offence of money laundering shall be non-cognizable. The special court shall not take cognizance of the offence except upon a complaint in writing made by the investigating officer or any officer of Federal government authorized in writing in this behalf by the government by a general or special order.

c. **Appointment of Investigating Officer and their powers:**

The Federal Government may appoint the persons having special professional skill as investigating officers. Subject to certain conditions and limitations an investigating officer may exercise all powers conferred

upon him to discharge his duties including the power to summon any person whose attendance is considered necessary to give statement or to produce any record/document

i. **Power of Search and Seizure**

Where an investigating officer reasonably believes that an offence in respect of money laundering is being carried on at any place, he may with the permission of special court enter any such place and seize the proceeds of crime along with the record which may be available at such place. The investigating officer may himself or authorize any subordinate officer to search any person who is reasonably believed to have committed the offence of money laundering and if any record or proceeds of crime are found with him to take possession of the same and prepare an inventory which may be used as evidence before the special court in the subsequent proceedings.

ii. **Power of Arrest:**

If the investigating officer or any other officer, who may be authorized by a general or special order, reasonably believes that any person is guilty of offence of money laundering, he may after obtaining warrants from the special court or nearest judicial magistrate arrest such person and soon after arrest must inform him of grounds of such arrest. Every person arrested must be, produced before a judicial magistrate within twenty four hours excluding the time for journey from the place of arrest to the magistrate's court.

iii. **Power of Summons and production of documents:**

The FMU and the investigating officers may be vested with powers of a civil court regarding the discovery and inspection of documents and enforcing the attendance of any person including any officer of a banking company or financial institution compelling with production of any record or documents. All such persons may be made bound to attend and state the truth respecting the subject for which they are examined.

iv. **Application of the provisions of code of criminal procedure 1898:**

Save as otherwise provided the provisions of code of criminal procedure may apply to the proceedings conducted by an IO or a special court and for the said purpose the special court may be deemed a court of sessions.

v. **National Executive Committee to combat money laundering:**

A national executive committee may be constituted which may be composed of

i) Minister for Finance or State Minister for Finance (Chairman).

ii) Senior Advisor to the Prime Minister on Foreign Affairs (Member).

iii) Minister for Law Justice & Human Rights (Member).

iv) Minister for Interior (Member)

v) Governor SBP (Member)

vi) Director General of Financial Monitoring Unit (FMU), a specially constituted body (Secretary of the Committee).

Functions of National Executive Committee

The functions of the National Executive Committee may include:-

i) to meet regularly to develop, co-ordinate and publish annual national strategy to fight money laundering.

ii) to provide guidance in and to sanction in framing the rules and regulations;

iii) to ensure that the SBP and SECP issue necessary prudential regulations to all financial institutions for effective supervision to combat money laundering in line with international best practices;

iv) make recommendations to the government for effective national strategy to fight money laundering;

v) Issue necessary directions to the agencies involved in the administration of law;

vi) Discuss any issue of national importance relating to money laundering;

General Committee

The National Executive Committee may be assisted by a general committee which may be composed of:-

i) Secretary Finance (Chairman)

ii) Attorney General (Member)

iii) Secretary Interior (Member)

iv) Secretary Foreign Affairs (Member)

v) Secretary Law & Justice (Member)

vi) Chairman SECP (Member)

vii) DG FMU (Secretary of Committee)

viii) Any other member nominated by the Govt.

Functions of General Committee

The functions of General Committee may include:-

i) to take necessary measures for development and review of performance of investigating agencies, special courts, FMU and the financial/non-financial institutions relating to anti- money laundering.

ii) to review and organize training programmes for government institutions, financial institutions, non-financial institutions, professions and other persons relating to anti-money laundering.

iii) to provide necessary assistance to the National Executive Committee in carrying out its functions and duties.

iv) to discuss any other issue of national importance relating to money laundering.

vi. **Agreements with foreign countries – Reciprocal Assistance with in Contracting States:**

The federal government may enter into agreements on reciprocal basis with the governments of the other countries for

a. enforcing the provisions of anti money laundering legislation

b. transfer of property relating to money laundering and

c. exchange of information for prevention of influence of money laundering or investigation of such cases.

The investigating officer or any officer superior in rank authorized by the Federal Government may request to a contracting foreign state through a letter of request to do the following acts:

a. examine facts and circumstances of the case and take evidence for documents or other articles produced
b. take any other such steps as may be specified in the letter of request

Every statement recorded or document or thing received from a contracting state shall be deemed to be evidence collected during the course of the investigation and as such admissible in the court. On the other hand if a letter of request is received from a contracting state the federal government may forward a letter of request to a special court or to an investigating agency for execution of such request in the manner sought by the contracting state.

Reciprocal arrangements for execution of process and assistance for transfer of accused persons

Where a special court desires his warrants of arrest or summons to be served upon a person at any place in any contracting state it may send such summons or warrants to such state and it will be caused to be executed.

In the similar way where a special court receives for service or execution summons or warrant from any contracting state, it shall cause the same to be served or executed as if it were issued by the court itself.

Attachment/seizure and forfeiture etc. of property in a contracting state.

Where any property is attached or forfeited and such property is suspected to be in a contracting state, the special court may issue a letter of request to a court or an authority in the contracting state for execution of such order.

In the similar way where such letter of request is received from a contracting state requesting attachment or forfeiture of certain property in this country the federal government may forward such letter to the investigating agency for execution in the manner sought by the foreign state.

LIABILITY FOR FAILURE TO FILE SUSPICIOUS TRANSACTION REPORT AND FOR PROVIDING FALSE INFORMATION

It may be provided that whoever willfully fails to comply with the suspicious transaction reporting requirements may be sentenced for a term which may extend to five years or with fine which may extend to one hundred thousand rupees or both.

In the case of conviction of a financial institution, the SBP or SECP, who so ever is the regulator, may also revoke its license or take other administrative actins which may deem appropriate.

Furthermore, if any person being legally bound to state the truth refuses to answer any question put to him in the course of any proceedings or gives false answer and refuses to attend and give evidence or produce books of account or other documents at

certain place and time, he may be made liable to pay by way of penalty a sum which may not be less than five thousands rupees and may extend to ten thousand rupees for each such default or failure.

Bar of Jurisdiction

No suit to be brought in any court to set aside or modify any proceedings taken under the law and no prosecution or other proceedings to lie against any officer or any agency or committee supervised or controlled by the Federal Government for anything done or any action taken by an investigating officer, committee or special court in pursuance of any power conferred under the law.

Offences by Companies

Where a company commits a contravention of any rule, direction or order, any person responsible for such contravention in the conduct of the business of company shall be deemed to be guilty of the contravention and liable to be proceeded against and punished accordingly.

Provided that if it is proved that any contravention has taken place with the consent, connivance or knowledge of any director, manager or secretary or any other officer of the company, he shall also be deemed to be guilty of the contravention and to be punished accordingly.

Continuity of Proceedings in the Event Death or Insolvency

The proceedings of freezing or attachment of any property under the law may not abate in case of death or insolvency of any concerned person and it may continue irrespective of any right of any legal heir to that property.

Where a property of a person has been attached under the law and no representation against the order attaching such property has been preferred or any representation has been preferred to the special court, and

a) in case referred above, such person died or is adjudicated as insolvent before preferring representation to the special court, or

(b) in case referred above such person dies or is adjudicated as insolvent during the pendency of representation, then it may be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer representations to the special court, or as the case may be to continue the representation before the special court, in place of such person.

The above provisions of representation may be made applicable in respect of any appeal before the High Court.

Over Riding Effect of Anti-Money Laundering Legislation

The provisions of Anti-Money Laundering legislation may be made effective not with standing anything

inconsistent therewith contained in any other law for the time being in force. Furthermore, the provisions of this legislation must be in addition to and not in derogation of the control of Narcotics Substance Act 1997, The Anti Terrorism Act 1997, and the National Accountability Ordinance 1999.

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GLOSSARY (KEY TERMS AND ABBREVIATION)

AML	Anti Money Laundering
ANF	Anti Narcotics Force
ANTF	Anti Narcotics Tasks Force
APG	Asia Pacific Group on Money laundering
ARS	Alternate Remittance System
ATM	an unattended machine (outside some banks) that dispenses money when a personal coded card is used
Bank Secrecy Act-"BSA"	known as the Currency and Foreign Transactions Reporting Act, requires U.S.A. financial institutions to assist U.S. government agencies to detect and prevent money laundering.
BIS	Bank of International Settlements
CFATF	The Caribbean Financial Action Task force on Money laundering
CFT	Countering Financing of Terrorism
Collateral	A security, which is only in aid of an obligation, generally an additional security in reinforcement of the main security. Thus, one may give a bill of exchange, or a mortgage, as a security for a debt at the same time depositing share certificates as collateral security.
Contentment	Happiness with one's situation in life
Customer Due Diligence	make all reasonable efforts in respect of every prospective customer including necessary requirements ensuring true identity of prospective account holders, ascertaining nature of the business, determining beneficial ownership of accounts. Further it is also a continuous process by giving the degree of care so required.
Cyber Payment	the electronic movement of funds using high speed communication links related to information technology, computers or the Internet
DFIs	Development Financial Institutions
Dollarization	The use of the US dollar in transactions

Double Invoicing A method for moving funds into or out of a country, an offshore entity keeps the proverbial two sets of books. To move 'clean' funds into say, Pakistan, a Pakistani exporter overcharges for goods or service. To move funds out of Pakistan, a Pakistani importer is overcharged.

Emerging Country Newly industrialized country - a handful of countries in Central Europe, Latin America and Asia have experienced rapid economic growth throughout most of the past decades. These countries including china, India, Indonesia, South Korea, Brazil, Mexico, Argentina, South Africa, Poland and turkey are generally recognized as emerging countries.

Escrow A written agreement (or property or money) delivered to a third party or put in trust by one party to a contract to be returned after fulfillment of some condition

European Union An international organization of European countries formed after World War II to reduce trade barriers and increase cooperation among its members

FATF The Financial Action Task Force

FCIW Financial Crimes Investigation Wing

FIA Federal Investigation Agency

FinCEN Financial Crimes Enforcement Network, a department of US Treasury

FIU Financial Intelligence Unit

FMU Financial Monitoring Unit Pakistan

FSA Financial Services Authority of the United Kingdom

FSRBs FATF Style Regional Bodies

G-7 The Group of Seven industrialized nations i.e. US, Japan, Germany, France, Italy, the U.K. and Canada.

GDP Gross Domestic Products - the total market values of goods and services produced by workers and capital within the country during a given period (usually 1 year)

Hawala Also known as hundi - an underground banking system based on trust whereby money can be made available internationally without actually moving it or leaving a record of the transaction

Hundi	see Hawala
IFCs	International Financial Centers
IMAC	International Mutual Assistance in Criminal Matters
IMF	International Monetary Fund - A United Nations agency to promote trade by increasing the exchange stability of the major currencies
Integration	The return of funds to the legitimate economy for later extraction.
INTERPOL	An international intelligence agency permitting collaboration among intelligence agencies around the world, based in France
Kickback	A commercial bribe paid by a seller to a purchasing agent in order to induce the agent to enter into the transaction
Layering	the creation of complex networks of transactions, which attempt to obscure the link between the initial entry point and the end of the laundering cycle.
Loan Back System	The criminal puts the funds in an offshore entity that he owns and then loans them back to himself. According to researchers, this technique works because it is hard to determine who actually controls offshore accounts in some countries.
ML	Money Laundering
Megabyte Money	Money in the form of symbols on computer screens
Mudarabah	A kind of partnership where one partner gives money to another for investing in a commercial enterprise. The investment comes from the first partner who is called "Rab-ul-Maal" while the management and work is an exclusive responsibility of the other, who is called "Mudarib" and the profits generated are shared in a predetermined ratio.
NAB	National Accountability Bureau
NBFIs	Non-Bank Financial Institutions - Any institution which is not a bank as defined by legislation but is involved in finance, such as investment banks, merchant banks, finance companies, building societies, credit unions and life offices.
NCCT	Non-cooperative countries and territories on the list issued by the FATF
NCCTs	Non-Cooperative Countries and Territories See 'Black List' above.

Negotiable Instrument A promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order or to the order of a specified person or to the bearer thereof (Section 13 of the Negotiable Instrument Act 1881). Presumption as to negotiable instruments: until the contrary is proved (a) every negotiable instrument was made or drawn for consideration: and every such instrument when it has been accepted, endorsed, negotiated or transferred for considerations; (b) every negotiable instrument bearing a date was made or drawn on such date; (c) every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; (d) every transfer of a negotiable instrument was made before its maturity; (e) the endorsement appearing upon it were made in the order in which they appear thereon; (f) a lost promissory note, bill of exchange or cheque was duly stamped; (g) the holder is a holder in due course.

OAS The Organization of American States is an international organization, headquartered in Washington, D.C., United States of America. Its members are the 35 independent states of the Americas

ODCCP United Nation's Office for Drug Control and Crime Prevention

OFAC The Office of Foreign Assets Control of the United States

OECD The Organization for Economic Co-operation and Development is an international organization of those developed countries that accept the principles of representative democracy and a free market economy. It originated in 1948 as the Organization for European Economic Co-operation (OEEC) for the reconstruction of Europe after World War II. Later its membership was extended to non-European states, and in 1961 it was reformed into the Organization for Economic Co-operation and Development.

OFC Offshore Financial Center

Offshore companies / corporations that are formed on domestic level but have (offshore) branches in other countries.

OGBS Offshore Group of Banking Supervisors

Organized Crime Underworld organizations - The people and the groups involved in criminal activities that occur within a centrally controlled formal structure on international or national level in order to get monetary benefits.

PEP Politically Exposed Persons is the term used for individuals who are or have been in the past entrusted with prominent public functions in a particular country. This category includes, for

example, heads of State or government; senior politicians and government, judicial or military officials; senior executives of State-owned corporations and important political party officials.

Perpetrating Perform an act, usually with a negative connotation

Persecution The act of persecuting (especially on the basis of race or religion)

Placement: The initial point of entry for funds derived from criminal activities.

PNCB Pakistan Narcotics Control Board

Predicate Offence means any criminal offence as a result of which proceeds were generated that may become the subject of an offence under the relevant law of the concerned state.

Racketeering Carrying on illegal business activities involving crime for profit (especially an act of obtaining money by fraud or extortion)

Respondeat Superior - let the superior make answer ---------- the doctrine holding an employer or principle liable for the employee's or agent's wrongful acts committed within the scope of employment or agency.

SBP State Bank of Pakistan

SECP Securities and Exchange Commission of Pakistan

SFPFs Senior Foreign Political Figures

Siphoning off Convey, draw off

Socratic Socratic Method is most important contribution of Socrates to Western thought. It was first described by Plato in the Socratic Dialogues. Under this method, to solve a problem you would ask a question and when finding the answer you would also have an answer to your problem.

Strasbourg the capital and principal city of the Alsace region in northeastern France

STR/SAR Suspicious Transaction Report/ Suspicious Activity Report

SVPs Stored Value & Products

TOC Transnational Organized Crime

TF Terrorist Financing

Typology	Classification according to general type
US	United Sates
UN	The United Nations - An organization of independent states formed in 1945 to promote international peace and security.
UNDP	United Nations Development Programme – UNDP is the UN's global development network (Headquartered in New York City), an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. . The organization has country offices in 166 countries, working with them on their own solutions to global and national development challenges.
UNCTAD	- Established in 1964, UNCTAD promotes the development-friendly integration of developing countries into the world economy. it has progressively evolved into an authoritative knowledge-based institution whose work aims to help shape current policy debates and thinking on development, with a particular focus on ensuring that domestic policies and international action are mutually supportive in bringing about sustainable development.