

PAKISTAN

**MONEY LAUNDERING,  
TERRORIST FINANCING &  
THE GREY LIST**

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# What does the FATF mean by Money Laundering and Financing of Terrorism?

- ⦿ Both are financial crimes
- ⦿ **Money Laundering** disguising money earned from a crime as money earned through legitimate sources; *crime here could be corruption, drug trafficking, fraud or tax evasion*
- ⦿ **Terrorist Financing** collection of funds to support acts of terror of terrorist organisations; *funds may come from legitimate sources such as donations however is for the purposes of a crime*

# What is FATF looking for in AML and CFT

- Identification of inherent risks, development of policies and domestic coordination;
- Pursuing of Money Laundering, Terrorism Financing and Financing of Proliferation;
- Apply preventive measures for the financial sector and other designated sectors;
- Establishing powers and responsibilities for authorities (investigative, law enforcement and supervisory authorities);
- Enhance transparency and availability of beneficial ownership information of legal persons;
- Arrangements and facilitation for the purpose of international cooperation.

# FATF 40 Recommendations

- 1) Countries should criminalise money laundering as per United Nations Conventions;
- 2) Countries should ensure consistent standards in proving intent and knowledge as per United Nations Conventions;
- 3) Countries should adopt measures to confiscate laundered money and property;
- 4) Countries should ensure financial institution secrecy laws are not in contravention of FATF recommendations;
- 5) Financial Institutions should not keep anonymous accounts;
- 6) Financial Institutions should perform normal due diligence measures;
- 7) Financial Institutions should in relation to cross-border correspondent banking and other similar relationships, perform enhanced due diligence measures;
- 8) Financial Institutions should pay attention to money laundering threats arising from new or developing technologies;
- 9) Third party intermediaries shall be permitted to conduct Customer Due Diligence;
- 10) Records on both domestic and international transactions shall be maintained for at least 5 years;

# FATF 40 Recommendations (2)

- 11) Financial Institutions shall pay special attention to large unusual transactions;
- 12) Immediate reporting to Financial Intelligence Unit;
- 13) Officers of financial institutions shall be protected from liability for reporting;
- 14) Financial Institutions shall develop programs;
- 15) Countries should not approve the establishment or accept the continued operation of shell banks
- 16) Countries should consider applying FATF Recommendations to businesses and professions

# Where does Pakistan Stand?

- Basel Anti-Money Laundering Index used 14 indicators dealing with regulations, corruption, financial standards, political disclosure and rule of law.
- Pakistan ranked 46 out of 146 countries in 2017, better than Tajikistan, Mali, Kenya, Sierra Leone and Panama – all of which are currently not on FATF's monitoring list.
- Global Terrorism Index 2017 published by the Institute of Economics and Peace ranks Pakistan as the fifth-most affected country from terrorism behind Iraq, Afghanistan, Nigeria and Syria.

# How Pakistan is affected by the Grey List

- Pakistan's banking channels could be adversely affected as it is inevitably linked with international financial system
- Impact on imports, exports, remittances and access to international banks
- Foreign financial institutions may carry out enhanced checking of transactions of Pakistan
- Institutions may avoid dealing with Pakistan altogether
- Negative sentiment from foreign/ potential investors
- Risk of black list comprising of only North Korea and Iran
- Pakistan has been on the grey list once before between 2012- 2015 when it completed an IMF program and also raised funds from international bond markets

# Actions Pakistan is asked to take to exit the Grey List

- ⦿ Risks are properly identified, assessed and supervised
- ⦿ Remedial actions and sanctions are applied in case of money laundering and financing of terrorism
- ⦿ Coordination of authorities to take enforcement action against illegal money
- ⦿ Authorities are identifying cash couriers and identifying risk of cash couriers being used for terrorism financing
- ⦿ Improving inter-agency coordination including between provincial and federal authorities on combating financing of terrorism risks
- ⦿ Law enforcement agencies are identifying and investigating financing of terrorism and prosecuting related designated persons and entities



# Actions Pakistan is asked to take to exit the Grey List – (2)

- Law enforcement agencies are identifying and investigating financing of terrorism and prosecuting related designated persons and entities
- Prosecutions result in applicable sanctions and enhancing capacity and support for prosecutors and the judiciary
- Effective implementation of targeted financial sanctions against all designated terrorists
- Enforcement including administrative and criminal penalties and cooperation of authorities
- Facilities and services owned or controlled by designated persons are deprived of their resources

# Offence of Money Laundering

Section 3 of Anti-Money Laundering Act 2010.

Offence of money laundering.- A person shall be guilty of offence of money laundering, if the person:-

- (a) acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime;
- (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;
- (c) holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or
- (a) Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified in clauses (a), (b) and (c)

# Amendments in AML Law

- **Amendments in 2016 in the AML law:** In the Schedule to the anti-money laundering law the following Sections from the Income Tax Ordinance 2001 have been included in the list of predicate crimes:
  1. Section 192: Prosecution for false statement in verification;
  2. Section 192A: Prosecution for concealment of income;
  3. Section 194: Prosecution for improper use of NTN; and
  4. Section 199; Prosecution for abatement.

All such cases will be treated as predicate crimes only if the tax sought to be evaded is PKR One Million and above.

# Punishment

- ⦿ Companies and their directors:
  - Fine up to PKR 5 million on company and per director
  - Forfeiture of property involved in money laundering or other property of equivalent value
  - Imprisonment
- ⦿ Individuals
  - Up to 10 years imprisonment

# Reporting

- STR: Reporting entities are required to file Suspicious Transaction Reports with the FMU.
- CTR: Currency Transactions exceeding PKR 2 million qualify as a currency transaction which shall be filed with FMU.
- Multiple CTR: Several cash transactions that amount to an aggregate of the specified sum to evade CTR, the same may be filed as an STR.
- Under Section 7 of AML Regulations reporting entities may inform DG FMU for freezing/ seizure of accounts.

# Reporting - (2)

- Under Section 7 of AML Regulations reporting entities may inform DG FMU for freezing/ seizure of accounts.
- Failure to report may result in fine of up to PKR 100,000 and 3 years imprisonment.
- Entities licensed are also at risk of having their license revoked under Section 33 of AML Act.
- Immunity: Section 12 of AML Act provides that financial institutions shall not be liable for furnishing information required under the Act.
- Reporting record is kept for 5 years by FMU.

# Prohibition on Disclosure

- The directors and officers of any reporting entity, financial institution, non-financial business or profession or intermediary which report a suspicious transaction or CTR pursuant to this law or any other authority, are prohibited from disclosing, directly or indirectly, any person involved in the transaction that has been reported.
- Punishment for breach: Imprisonment up to 3 years and fine of PKR 500,000.

# Companies Act 2017

## ● Section 453

- **Prevention of offences relating to fraud, money laundering and terrorist financing**

**(1) Every officer of a company shall endeavor to prevent the commission of any fraud, offences of money laundering including predicated offences as provided in the Anti-Money Laundering Act 2010 with respect to affairs of the company and shall take adequate measures for the purpose**

**(2) Whosoever fails to comply with the provisions of this section shall be liable to punishment of imprisonment for a term which may extend to three years and with fine which may extend to one hundred million rupees.**



# Financial Monitoring Unit (FMU)

- Integrated Data Center for anti-money laundering and countering terrorist financing was established with the financial assistance of the UK Department for International Development (DFID) and support of United Nations Office on Drugs and Crime (UNODC).
- The Data center is going to host a specialist analytical suite of software (goAML) developed by UNODC
- It will enable the Financial Monitoring Unit to automate collection and analysis of suspicious financial transactions being received from reporting entities in Pakistan
- Integrated system will enhance the capability of FMU in disseminating financial intelligence to designated law enforcement agencies in an efficient manner

# Financial Monitoring Unit (contd.)

- goAML is a United Nations Office on Drugs and Crime (UNODC) response to combat money-laundering
- It is an intelligence analysis system intended to be used by FIU (Financial Intelligence Unit)
- FIUs have a big role to play as they have access to financially related information that provides a base for financial investigations.
- An FIU is responsible for receiving, analyzing and processing reports required from financial institutions or person referred to in national anti-money-laundering legislation

# Federal Board of Revenue (FBR)

## Automatic Exchange of Information (AEOI) Portal

- The Automatic Exchange of Information (AEOI) portal provides a comprehensive overview of the work the Organization for Economic Co-operation and Development (OECD) and the Global Forum on Transparency and Exchange of Information for Tax Purposes have done in the area of the automatic exchange of information
- In September 2016 Pakistan signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and became 104<sup>th</sup> signatory to the Convention
- AEOI Portal is implemented by FBR for taxation and thus to avoid its evasion.

# Federal Board of Revenue (FBR) (contd.)

## Common Reporting Standards (CSR)

- Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15<sup>th</sup> July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis
- OECD introduced CRS in order to combat tax evasion and to improve cross-border tax compliance
- CRS draws extensively on the international progress of the Foreign Account Tax Compliance Act (FATCA) and seeks to determine the country of tax residence of any Financial Account Holder
- It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions

# Securities & Exchange Commission of Pakistan

## ● Compliance Report on AML Directive for Insurers

- The insurance division of SECP carried out thematic review of implementation of SRO 20(1)/2012 dated 1st January 2012, requiring insurers to develop internal control procedures based on the customer's/policyholder's profile and product profile, classify customers/policyholders into high and low risk category in order to counter the potential threat of usage of their services for money laundering activities.
- The above review highlighted non-compliance with the directive by life insurers who were not effectively carrying out CDD/KYC and risk profiling of the customers.

# Securities & Exchange Commission of Pakistan - (2)

- Pursuant to section 153 (h) of the Act, a person will not be eligible for appointment as a director of a company unless he holds a National Tax Number (NTN) as per provisions of the Income Tax Ordinance 2001.
- Pursuant to section 452 of the Act, every substantial shareholder or officer of a Pakistani company will have to report to their company any shareholding in a foreign company or corporate body.
- The SECP will keep a record of the beneficial ownership of the shareholders and officers in the Companies' Global Register of Beneficial Owners and will provide information to the Federal Board of Revenue (FBR) or any agency.
- Officials of all companies will be bound to check fraud and money laundering including predicated offences under the Anti-Money Laundering Act 2010 pursuant to section 453 of the Act.

# FIA

- ◉ There are 22,000 underground hawala dealers in terms of which the relevant prosecuting Law Enforcement Agency is FIA. The question that arises is whether there are there any prospects of regulating hawala, such as in the case of UAE.
- ◉ FIA has expressed the need for hawala dealers to be regulated rather than be totally unregulated. There is a large Pakistani diaspora outside Pakistan some of who are illegal residents of other countries, who use hawala to send money back to their families, which is the human rights element of these matters.
- ◉ When there is such a huge demand for hawala, rather than looking towards a system of criminalising, SBP may come forward and bring hawala dealers under some sort of subordinate regulation.
- ◉ For this we understand that an MOU was entered into between FIA and SBP.
- ◉ Hawala and hundi happens in many countries and law enforcement agency resources are misallocated in terms of excessive prosecution where alternatively the TF risk can be mitigated by simply regulating the sector.
- ◉ It appears that there still not specific hawala and hundi cases connected to TF. Most of the investigations are based on vulnerabilities, however is it fair to say that there is an expectation that hawala dars are used to fund terrorists.
- ◉ As part of mitigation against TF risk it may be submitted (if is the case) that Pakistan is considering whether to legalise hawala by bringing into the licensing framework. This is again in the nature of redesigning to the system even if no terrorism incident has directly occurred as a result of hawala.

# ANF

- ANF has developed an SOP of investigation and a guideline for investigating officers.
- If a link to TF surfaces cases may be referred to CTD and FIA. We understand that so far no such linkage has surfaced.
- Case studies have also been shared with NACTA which shall demonstrate mitigation measures given that in absence of an actual incident involving terrorism, investigations and monitoring is continuously ongoing.
- ANF also has created a special intelligence cell.
- Domestic Coordination is taking place as a result of which 17 meetings of the task force took place showing Intercoordination and referrals between agencies.



# NAB

- ◉ We understand that October onwards 4 references have been filed in accountability courts through JIT in terms of which information has been requested from FIA, SBP and SECP.
- ◉ Specific prosecutions are taking place and references are being filed under the Anti Money Laundering Act. These references have been filed as a result of complex investigations.
- ◉ The need is to show that investigation agencies are not going after simple investigations and are more sophisticated.

# Customs (1)

- **Custom General Order and a proper TF Mechanism has been implemented by way of agreements / MOUs with other Law Enforcement Agencies which demonstrates intercooperation between Law Enforcement Agencies.**
- **We understand that four CTDs shall investigate the TF element and hence a mechanism has been implemented whereby which upon landing at an airport or arriving at a seaport in the event a TF risk is suspected Customs involves CTD at a very initial stage.**
- **Information is sent to CTD and FIA hence proving collaboration. From border reports the question that arises is whether any CTD or FIA used it and connected it to a TF investigation, as Customs cannot classify whether the same is TF.**
- **Pakistan is required to demonstrate progress by referring to the establishment of task forces, border post resources and other dedicated resources.**

## Customs (2)

- ◉ Further explanation may be given as to how the TF mechanism is being updated in terms of border protection by way of more baggage and medical scanners. This gives a sense of risk mitigation and increased controls.
- ◉ Although there is an increase in investigations, it is systematically and regularly being discovered that cash courier issues are AML related and not specific to TF. Even if the results are not TF related these measures/steps still demonstrate how money is confiscated. Undeclared cash is not necessarily categorized as TF and hence demonstrable efforts may be limited to mechanisms put in place to detect it.
- ◉ There is a complete framework under the Customs Act to impose both civil penalties and criminal sanctions ranging from license cancellation to imprisonment. It may be argued that ultimately both the AML and TF aspects are being addressed by currency which is being confiscated.
- ◉ Afghani arrests were carried out at Toghham and shared on a Custom to Custom cooperation. This is evidence as regards to mitigating the risk of transnational TF.
- ◉ Given that 21 new cases and installation of increased scanners are also demonstrative of increased controls.

# Trade Sanctions

- ◉ Imposed for a variety of different purposes:
  - Sanctions have been used against governments considered to be a security threat or oppressive to their citizens,
  - To cut off international criminals and narcotics traffickers from the financial system,
  - To prevent the financing of terrorism,
  - To promote cyber-security.

Thank you