

Overview of Anti Money Laundering

BY SYED ANWAR KASHIF MUMTAZ

What is Money Laundering

- ▶ Every year, huge amounts of funds are generated from **illegal activities** such as **drug trafficking**, **tax evasion**, **people smuggling**, **theft**, **arms trafficking** and **corrupt practices**. These funds are mostly in the form of cash.
- ▶ The criminals who generate these funds need to bring them into the legitimate financial system **without raising suspicion**. **The conversion of cash into other forms** makes it more useable. It also puts a distance between the criminal activities and the funds.
- ▶ ‘Money laundering’ is the name given to the process by which **illegally obtained funds are given the appearance of having been legitimately obtained**.

Money Laundering Definition

Definition

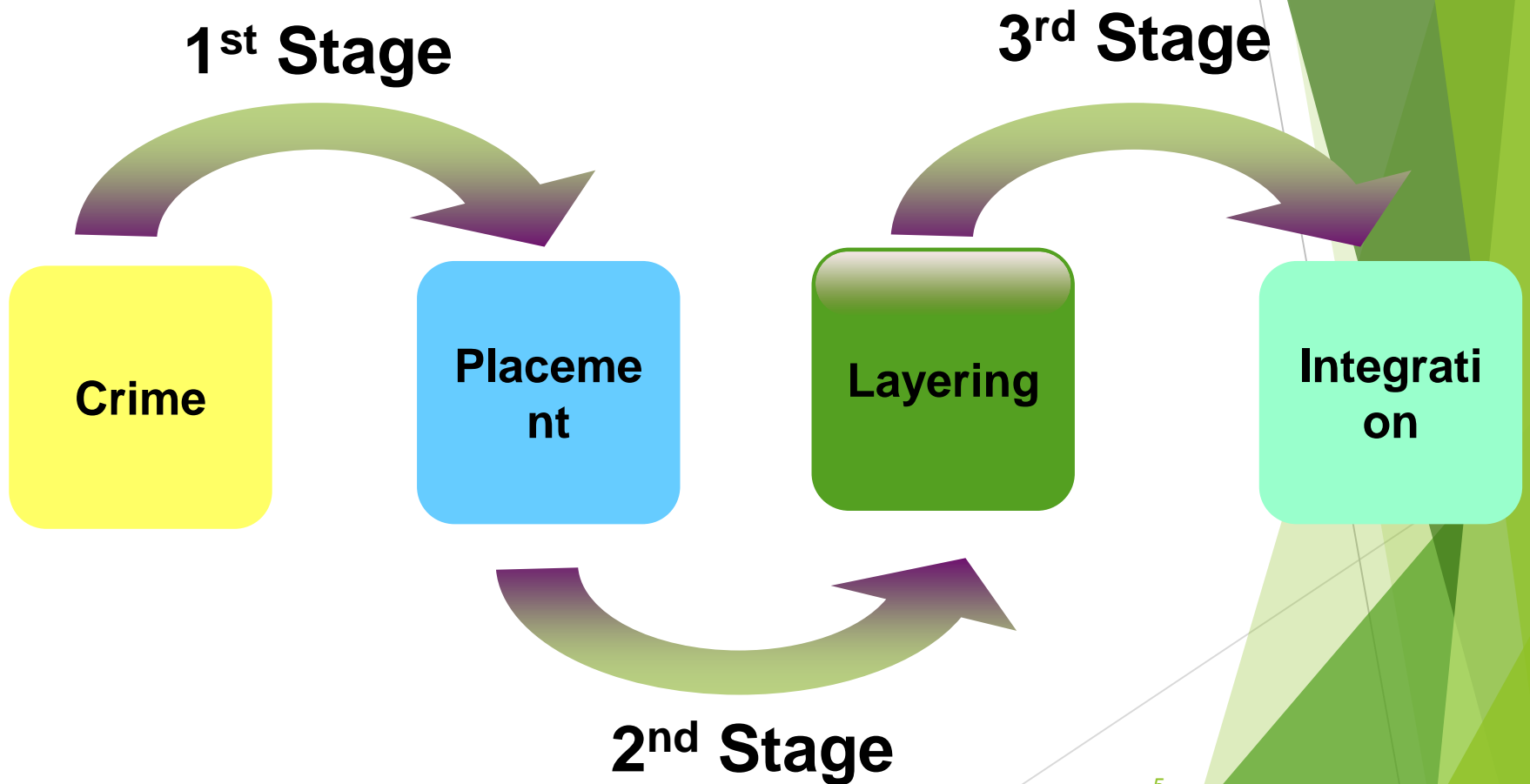
Most countries subscribe to the definition adopted by the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)* (Vienna Convention)

- ▶ The process by which criminals attempt to hide and disguise the true origin and ownership of the proceeds of their criminal activities.
- ▶ **Proceeds of crime** means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity

Activities/Generators of Criminal Wealth

- ▶ Corruption
- ▶ Embezzlement
- ▶ Smuggling
- ▶ Tax evasion
- ▶ Frauds specially computer supported frauds
- ▶ Drug trafficking
- ▶ Counterfeiting
- ▶ Bribery & kickbacks
- ▶ Under & over-invoicing
- ▶ Bogus trade transactions to launder money through round tripping
- ▶ Illegal arms sales
- ▶ Facilitating illegal immigration

Three Stages of Money Laundering



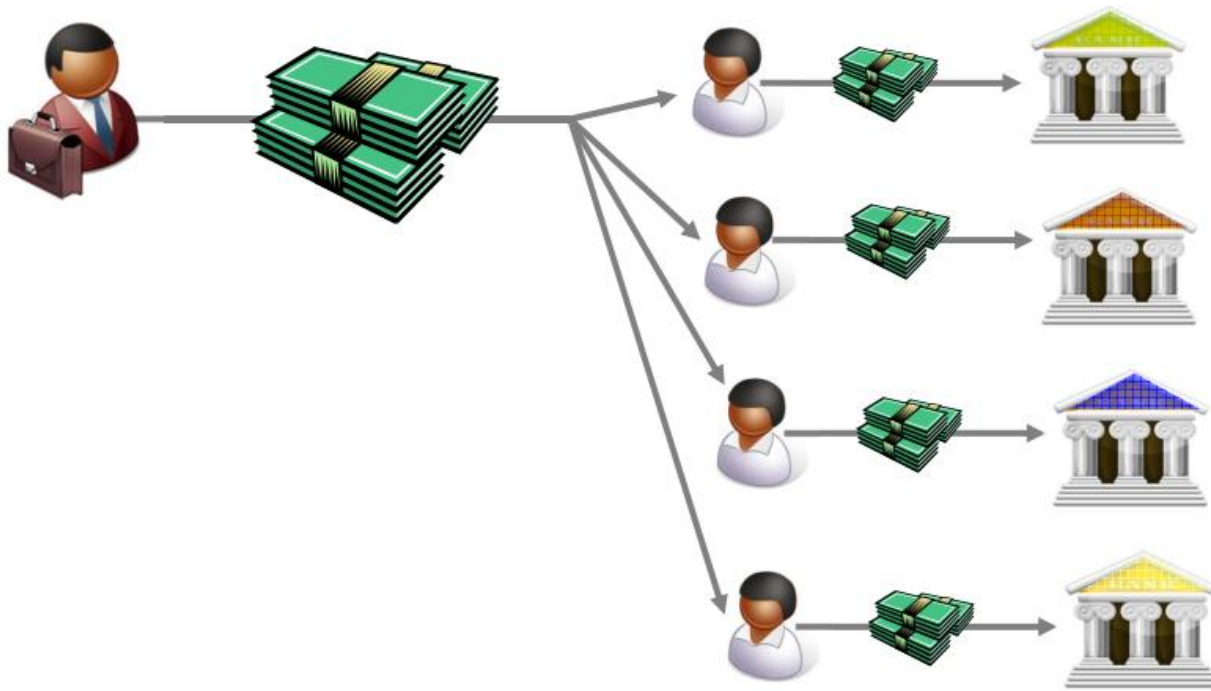
Placement

- ▶ Placement involves **putting or introducing illicit cash into the financial system.**
- ▶ ‘placement’ makes the funds more liquid. For example, if cash is converted into a bank deposit, it becomes easier to transfer and manipulate.
- ▶ Money launderers place illegal funds using a variety of techniques, which include depositing cash into bank accounts and using cash to purchase assets.

Examples of Placement Activity

- ▶ Large amounts of cash are broken into smaller amounts & deposited over time into different branches of a financial institution
- ▶ Exchange of one currency into another
- ▶ Conversion of smaller notes into larger denominations (refining)
- ▶ Conversion of funds into financial instruments e.g. money orders, bank cheques, travellers cheques
- ▶ Purchase of precious metals or art
- ▶ Purchase of Prize Bonds, etc

Placement



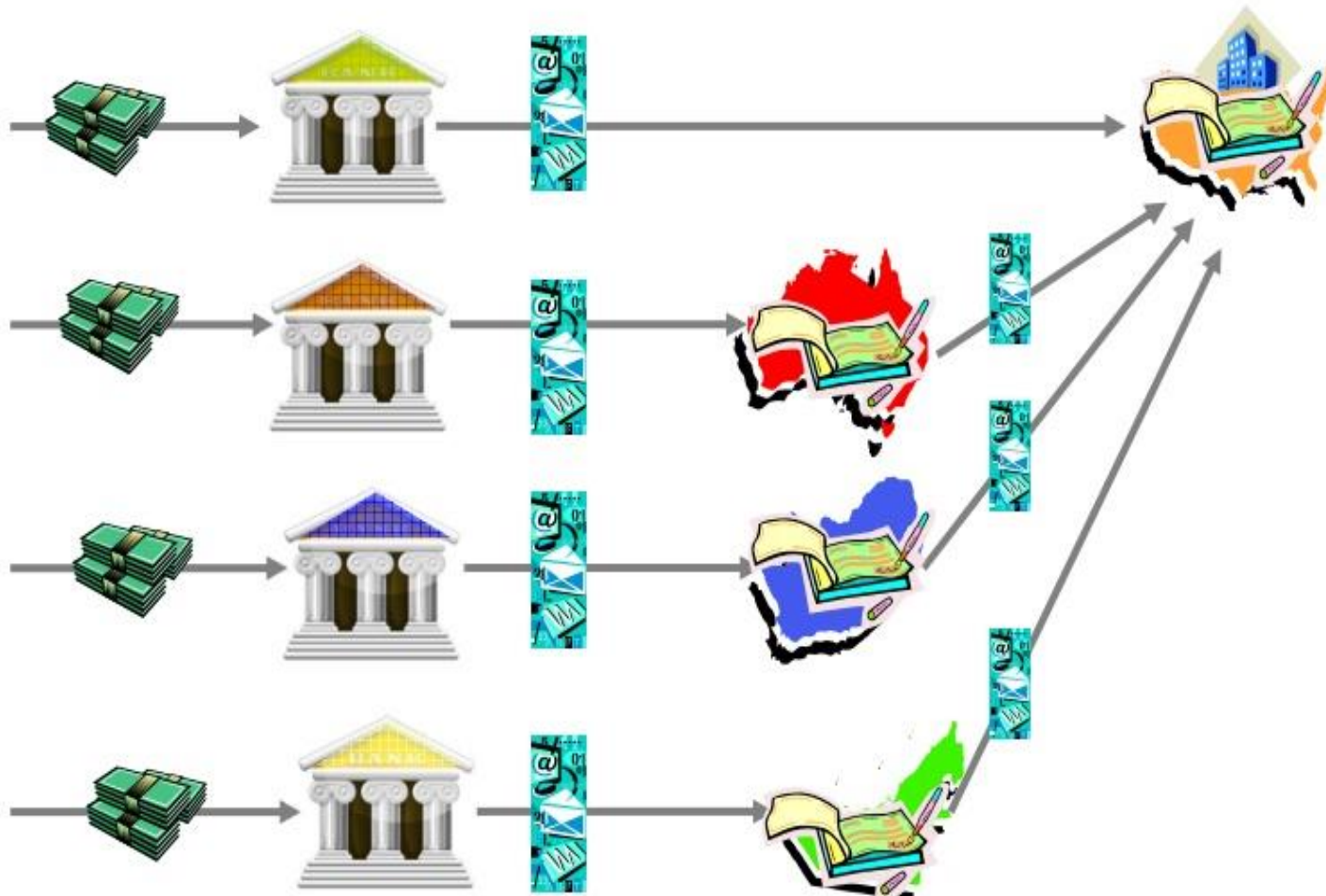
Layering

- ▶ To conceal the illegal origin of the placed funds and thereby make them more useful, the funds must be moved, dispersed and disguised.
- ▶ The process of distancing the placed funds from their illegal origins is known as 'layering'.
- ▶ At this stage, money launderers use many different techniques to layer the funds. These include using multiple banks and accounts and having professionals act as intermediaries.

Examples of Layering

- ▶ Funds are telegraphically transferred to multiple financial institutions
- ▶ Funds are used to purchase other securities e.g. shares
- ▶ Accounts held offshore are used to receive or transmit funds
- ▶ Use of online banking to move money

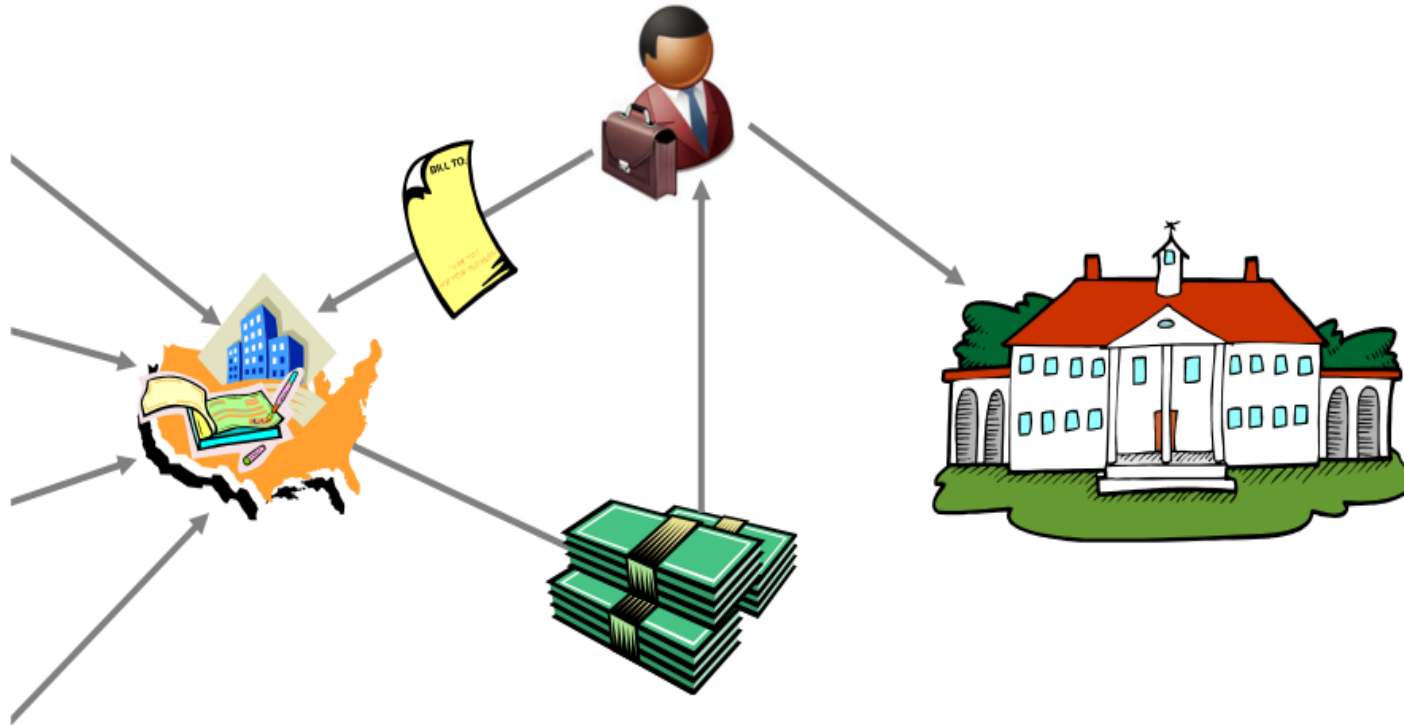
Layering



Integration

- ▶ Once the funds are layered and distanced from their origins, they are made available to criminals to **use and control** as apparently legitimate funds.
- ▶ This final stage is the money laundering process is called 'integration'.
- ▶ The laundered funds are made available for activities such as **investment** in legitimate or illegitimate businesses, or spent to promote the criminal's **lifestyle**. At this stage, the illegal money has achieved the appearance of legitimacy.

Integration



Anti Money Laundering Law in Pakistan

- ▶ The Anti-Money Laundering Act, 2010 (the Act) is the primary law governing the prevention of money laundering and combatting the financing of terrorism. The Act as federal legislation is applicable all over Pakistan.
- ▶ Section 3 of the Act provides that any person shall be guilty of money laundering if they:
 - ▶ acquire, convert, possess, use or transfer property, knowing or having reason to believe that such property is the proceeds of crime;
 - ▶ conceal or disguise the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is the proceeds of crime;
 - ▶ hold or possess on behalf of any other person any property knowing or having reason to believe that such property is the proceeds of crime; or
 - ▶ participate in, associate, conspire to commit, attempt to commit, aid, abet, facilitate or counsel the commission of the acts specified above.

What are proceeds of crime?

- ▶ The term “proceeds of crime” has been defined in the Act as “any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence.
- ▶ The term “foreign serious offence” has been defined in the Act as an offence:
 - ▶ Against the law of a foreign state
 - ▶ Which had it occurred in Pakistan, would have constituted a predicate offence
- ▶ A “predicate offence” has been defined as an offence specified in Schedule I of the Act.
- ▶ Circa 150 offences have been listed in Schedule I, which also includes “tax evasion” as a predicate offence where tax sought to be evaded is PKR 10 million or more.

Which government authorities tackle Money laundering?

- ▶ A government authority responsible for investigating and prosecuting offences related to money laundering is referred to as an “investigating or prosecuting agency” in the Act,
- ▶ Such authorities include:
 - ▶ National Accountability Bureau,
 - ▶ Federal Investigation Agency
 - ▶ Anti-Narcotics Force
 - ▶ Directorate General (Intelligence and Investigation - Customs)
 - ▶ Federal Board of Revenue
 - ▶ Directorate General (Intelligence and Investigation Inland Revenue)
Federal Board of Revenue
 - ▶ Provincial Counter Terrorism Departments
 - ▶ any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under the Act.
- ▶ All cases of money laundering are tried in the Court of Session under the Criminal Procedure Code, 1908.

Can properties be confiscated or attached?

- ▶ The Act provides for the attachment and forfeiture of property involved in money laundering.
- ▶ An investigating officer may by order in writing, with approval of the court, attach a property he believes in being involved in money laundering for a period not exceeding 180 days.
- ▶ When the person is acquitted, the attachment will cease to have effect.
- ▶ Where it is proved that the property is involved in money laundering by a court, the property may be forfeited subject to the order of the court and the property shall vest in the Federal Government.

What are the consequences of Anti Money Laundering?

- ▶ A person guilty of Money Laundering may be liable to:
 - ▶ Rigorous imprisonment between 1 to 10 years and a fine which may extend to PKR 25 million. The fine may extend up to PKR 100 million in case of a legal person.
 - ▶ The offender shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

Any Questions?

Benami Transactions (Prohibition) Act, 2016

By Syed Anwar Kashif Mumtaz

Background of the Benami Law

- ▶ The purpose of this legislation is to prohibit holding property in 'benami'. The objective of this law is to:
 - ▶ Prohibit holding property in benami;
 - ▶ Restrict the right to transfer benami properties; and
 - ▶ Provide mechanism to confiscate benami properties.
- ▶ Benami transactions are generally undertaken to:
 - ▶ Evade taxes;
 - ▶ Fraud on creditors; and
 - ▶ Avoid social and political risk in holding property.

Why are Benami Transactions undertaken?

- ▶ Benami transactions in Pakistan are generally undertaken to park untaxed money.
- ▶ In such cases, the immediate and future, direct and indirect benefit of the property acquired from untaxed money lies with a person other than the person reflected as owner, whereas the consideration for the acquisition of the property is paid out of untaxed money by the person holding beneficial rights other than the person who is reflected as having ostensible right in the property.
- ▶ 'Benami' also includes cases where owner in form is fictitious.
- ▶ In countries like Pakistan where tax compliance is not adequate, benami transactions are used to park untaxed money in the form of benami real estates, bank accounts, stocks & shares and other forms of assets.

The view of the legislature

- ▶ This legislation has been introduced to provide the right to the Government to identify benami transactions and to 'confiscate' the properties held in benami.
- ▶ This is a step to abolish parking space for money generated from untaxed income.
- ▶ In the absence of benami laws, there can be actions against the income that is not taxed, including charge over properties; however, there is no direct right of the State to confiscate the properties held in benami.
- ▶ This step was essential as otherwise the huge quantum of properties created out of untaxed money are held in benami and there is no direct State's right to confiscate such assets.
- ▶ This will assist in Government's efforts to curb tax evasion.
- ▶ It is important to note that under the 'transfer of property' laws, transfer of property in 'benami' is not illegal. This law will have a concurrent application in a particular context.

Who is a benamidar?

- ▶ Benami is a Persian / Urdu language word which means anything 'without name'.
- ▶ The word "Benamidar" has been defined in the Act as a person or fictitious person in whose name the benami property is either transferred to or held.
- ▶ This definition of the word "Benamidar" has been expanded to include within its ambit a person who lends his name.

What is a benami transaction? (1/2)

- ▶ In the context of property, this means use and benefit by the person other than the person who is fictitiously and without substance, in form, reflected as the owner.
- ▶ ‘Benami’ transaction, as per this legislation, means:
 - ▶ A transaction or arrangement where a property is transferred to or held by a person and the consideration for such property have been provided or paid by another person ‘*and*’ the property is held for the immediate or future benefit, direct or indirect, of the person providing the consideration;
 - ▶ Transaction or arrangement in respect of property carried out in fictitious name;
 - ▶ Transaction or arrangement where owner of property denies property’s ownership; and
 - ▶ Transaction or arrangement where the payer of consideration of property is fictitious or untraceable.

What is a benami transaction? (2/2)

- ▶ It is essential in all benami transactions to prove two ingredients.
- ▶ First condition is that the consideration has been paid or provided by a person other than the person who is the legal owner.
- ▶ Second condition is that the immediate or future, direct or indirect benefit from that property lies with the person who has paid or provided the consideration not the person who appears, in form, as the owner.
- ▶ The first part is a question of fact. The second is a difficult question that requires circumstantial evidences.
- ▶ Immediate and future benefits, directly or indirectly will have to be proved to be derived by the person who has provided the consideration not being the person who is owner on record.

What does not qualify as a benami transaction?

- ▶ Following transactions and arrangements have been excluded from the purview of benami transactions and arrangements:
 - ▶ Properties held by a person in fiduciary capacity;
 - ▶ Properties acquired out of the known sources of income by an individual in the name or spouse or in the name of any child of such individual; and
 - ▶ Properties acquired in the joint name of an individual and his brother or sister or lineal ascendant or descendent and acquired from the know sources of income of the individual.
- ▶ Any property held under a benami arrangement or transaction (including proceeds from such property) is treated as 'benami property'.

What is “property” is covered under the benami law?

- ▶ For the purposes of benami law, ‘Property’ means:-
 - ▶ Asset of any kind, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes rights or interest or legal document evidencing ownership of property.
 - ▶ Property in the converted form (if the property in converted into any other form) and also the proceeds from the property.
- ▶ Person holding the benami property is termed as ‘benamidar’ and person for whose benefit such property is held is called ‘beneficial owner’.

What is mechanism adopted under the law? (1/2)

- ▶ A three tier process has been laid down for initiation and confiscation of benami properties.
- ▶ The process is:
 - ▶ Identification of benami properties and notice and action against the benamidar resulting in a reference to the 'Adjudicating Authority' by the 'Initiating Officer'. This action is hereinafter referred to as 'Reference';
 - ▶ Proceeding by the Adjudicating Authority being the order for confiscation of the benami property. This act is hereafter as 'Confiscation Proceeding';
 - ▶ Possession of confiscated property by the Administrator.
- ▶ Adjudicating Authority under the Act that shall consist of a Chairman and at least two Members to be appointed by the Federal Government.
- ▶ Initiating Authority shall be Deputy Commissioner Inland Revenue appointed under Section 208 of the Income Tax Ordinance, 2001. Approving Authority shall be the Commissioner Inland Revenue as defined under Section 2(13) of the Income Tax Ordinance, 2001.

What is mechanism adopted under the law? (2/2)

- ▶ Administrator shall be the Assistant Commissioner of Inland Revenue appointed under Section 208 of the Income Tax Ordinance, 2001.
- ▶ All benami transactions will be punishable crime in the manner laid down in the Act and all benami properties can be confiscated by the Federal Government, after due process of law.
- ▶ There a be prohibition on the re-transfer of benami property held by benamidar to the beneficial owner.
- ▶ The action of the Adjudicating Officer can be challenged before the Federal Appellate Tribunal formed under the Act.
- ▶ The Tribunal shall, in principle, operate in the manner similar to the Tribunal dealing with the case of Inland Revenue and the departmental representative shall be termed as 'presenting officer'.
- ▶ A Chartered Accountant shall inter alia be entitled to appear before the Federal Appellate Tribunal. Order of the Federal Appellate Tribunal can be challenged before the High Court.

What are the consequences of violation of the Benami law?

- ▶ The Adjudicating Authority has the right to confiscate the benami property, provided that a due notice to the concerned person has been given for them to be heard.
- ▶ Confiscation shall also be subject to the order of the Tribunal where an appeal has been filed against the aforesaid confiscation.
- ▶ Any person found guilty of offence of benami transaction or holding benami property shall be liable to a minimum of one year rigorous imprisonment and a fine which may extend to 25% of the fair market value of the property.
- ▶ Any person who provides false information or document shall be liable to six months rigorous imprisonment and a fine which may extend upto 10% of the fair market value of the property.

Any Questions?

Designated non financial business and profession

BY SYED ANWAR KASHIF MUMTAZ

What are designated Non financial business and professions?

- ▶ Designated Non-Financial Businesses and Professions (DNFBP) is a classification used by the Financial Action Task Force (FATF) denoting non-financial sector businesses that pose a money laundering and terrorism financing threat.
- ▶ The term DNFBP was introduced in the late 1990s as a response to the changing methodologies of financial criminals who sought to avoid increased AML/CFT scrutiny by using non-financial businesses to launder money.
- ▶ FATF recommended that DNFBPs be subject to the same risk-based AML/CFT compliance regulations as banks and other financial institutions, including transaction monitoring, reporting, and record-keeping obligations.

What business does the FATF designate as DNFBP?

- ▶ The following businesses and professions are subject to DNFBP FATF recommendations:
 - ▶ Auditors, external accountants, and tax advisors
 - ▶ Casinos and other gambling service providers
 - ▶ Company service providers
 - ▶ Dealers in precious metals
 - ▶ Dealers in precious stones
 - ▶ Lawyers
 - ▶ Notaries and other independent legal professionals
 - ▶ Real estate agents
 - ▶ Trusts

Federal board of revenue

REGULATIONS ON DNFBP

- ▶ FBR promulgated ‘the Federal Board of Revenue Anti Money Laundering and Countering Financing of Terrorism Regulations for DNFBP, 2020’ (“Regulations”) and as per the Regulations DNFBP are limited to:
 - ▶ Accountants
 - ▶ Jewellers
 - ▶ Real Estate Agents
- ▶ As per the Regulations every DNFBP shall be registered with the FBR by providing requisite information including criminal records of senior management and beneficial owners.
- ▶ The DNFBP shall notify the FBR if it ceases operations within thirty business days after ceasing operations.
- ▶ The DNFBP shall take appropriate steps to identify, assess, and understand their risks for customers, countries or geographic areas, and products, services, transactions or delivery channels.
- ▶ The DNFBP shall make policies, control and procedures to control and mitigate risks and monitor the implementation of those controls and take enhanced measures to manage and mitigate the risks.

Record keeping requirements of DNFBP

- ▶ As per the Regulations DNFBP shall be required to comply with the following as far as their record keeping is concerned:
 - ▶ The record shall be sufficient for reconstruction of each individual transaction.
 - ▶ The record shall be maintained in paper or electronic form or microfilm.
 - ▶ Identifications data shall be maintained for atleast 5 years obtained through Costumer Due Diligence (CDD) and Enhanced Due Diligence (EDD) process.
 - ▶ In case transactions, customers or instruments are involved in litigation, retain records till the disposal of case.
 - ▶ Satisfy any enquiry or order from the Board, designated law enforcement Agencies and FMU.
 - ▶ Copies of documents shall be stamped "Original seen".
 - ▶ Keep a list of all such customers where the business transaction was refused or needed to be closed either on account of failure of the customer to provide the relevant documents or the original document for viewing as required.

Obligations of DNFBP under the regulations (1/3)

- ▶ The DNFBP shall take appropriate steps to identify, assess, and understand their risks for customers, countries or geographic areas, and products, services, transactions or delivery channels.
- ▶ The DNFBP shall make policies, control and procedures to control and mitigate risks and monitor the implementation of those controls and take enhanced measures to manage and mitigate the risks.
- ▶ The DNFBP shall implement the following internal policies for the compliance program:
 - ▶ Compliance management arrangement, including the appointment of compliance officer responsible for the compliance of these regulations
 - ▶ Screening procedures when hiring employees to ensure integrity, skills and expertise
 - ▶ An ongoing employee training program
 - ▶ An independent audit function to test the system

Obligations of DNFBP under the regulations (2/3)

- ▶ DNFBP shall conduct CDD when they engage in the following activities:
 - ▶ Real Estate Agents when they are involved in transactions for a client concerning the buying and selling of real estate.
 - ▶ Jewelers and Dealers in precious metals and stones - when they engage in any cash transaction with a customer or client equal to or above Rs. 2 Million.
 - ▶ Accountants when they prepare for, or carry out, transactions for their clients.
- ▶ The DNFBP shall identify the customer whether entering into a business relationship or conducting an occasional
- ▶ transaction, and verify the customers identity using reliable, independent sources documents, data or information.
- ▶ The DNFBP shall also identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner.
- ▶ In case the customer is represented by agent, identify every person who acts on behalf of the customer and verify the authority of that person to act on behalf of the customer.

Obligations of DNFBP under the regulations (2/3)

- ▶ The DNFBP shall develop mechanisms for screening and monitoring customers and potential of customers to detect any matches with the list issued by Ministry of Foreign Affairs or National Counter Terrorism. If potential match is found, the DNFBP shall report to the FBR and shall:
 - ▶ freeze without delay
 - ▶ not provide any services or property or any other
 - ▶ related funds reject the transaction
- ▶ The DNFBP shall file Suspicious Transactions (STR) and Currency Transaction (CTR) to FMU, as per requirements prescribed by FMU as per AML Act.
- ▶ The record to be maintained and furnished by the Accountants, Real Estate Agents and Jewelers under these rules shall be subject to inspection by FBR, who may be assisted by other law enforcement agencies.

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Any Questions?

THANK YOU!