



Money Laundering and Financing of Terrorism in Pakistan

Muhammad Zubair

Department of Law, at Abdul Wali Khan University, Mardan, K.PK, PAKISTAN

Available online at: www.isca.in

Received 24th May 2013, revised 5th June 2013, accepted 12th June 2013

Abstract

This article examines money laundering and financing of terrorism in general and from Pakistan's perspective. Historic evolution of money laundering along with the three steps involved in this process has been discussed here as well. Here an evaluation of the various legislations dealing directly or indirectly with money laundering in Pakistan has been discussed.

Keywords: Money laundering, financing of terrorism, banking, legislation, Pakistan

Introduction

Probably money laundering is as old as money itself, but nobody looked at it as a crime in the past, as such. It is about 20 years ago that it became one of the top priorities of the world policy makers when they realised that money laundering and financing of terrorist activities poses a great threat to the world's socio-economic framework. The process through which proceeds of illegal activities is transformed into legitimate capital is known as Money laundering. In principle, any financial transaction could be an act by which unlawfully acquired money is laundered. Therefore, the sudden acquisition of a large sum of money without explanation creates suspicion that an illegitimate business may be involved there and the term money laundering is used to describe for such process that disguises the (usually criminal) source of earning. The term 'Money Laundering' originally came from United States of America, describing the Mafia's attempt to "launder" illegal money via cash-intensive washing salons, which were controlled by company acquisitions or business formations¹. Therefore the method of funds (legal or illegal) submission to a process with the intention to makes it impossible for the law enforcement agencies, tax officials, creditors or anybody else to trace their original source, is known as money laundering². Consequently, there are an infinite number of mechanisms whereby money, commonly, is laundered³.

In 1980s, it was the rise in World-wide drug-trafficking that prompted law enforcers to focus on the money laundering process itself, and on those involved in it, in an attempt both to stop criminals profiting from their crimes and to trace back those proceeds in order to catch the original wrongdoers⁴. But after the 9/11 attacks, the United States of America with the support of the World community led the efforts against money laundering and financing of terrorism in-order to take a combine tougher stand against this menace which could be used for the financing of international terrorism. Therefore under the

prevailing situation, the World Bank (WB) and the International Monetary Fund (IMF) with the support of the Financial Action Task Force (FATF), launched a joint program in early 2002; with the names of 'Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)', where countries anti-money laundering (AML) framework evaluations were undertaken by the FATF and a host of FATF-style regional bodies (FSRBs) -- the IMF and the WB will also conduct such assessment with the help of those external expert, possibly affiliated to FATF/FSRBs (e.g.: APG, CFATF, EAG, ESAAMLG, GAFISUD, MENAFATF, Moneyval)⁵.

Methodology

The following three stages are involved in the process of money laundering:

The first stage is the 'placement' when the proceeds of the crime, usually in cash, are 'placed' into the financial system.

The second stage is the 'layering', whereby the proceeds are moved, usually through a series of transactions perhaps involving different entities, different assets and different jurisdictions, so as to sever any audit trail and hence make tracing their origins harder.

The third is 'integrating' stage, when the criminal resumes control of the proceeds, free from any link to their criminal source⁶.

Without the support and facilitation of the banking and financial institutions network, the three stages of money laundering would largely be impossible.

Therefore due to their strategic position the banking and other financial institutions are always at the forefront of the drive to combat money laundering⁸.

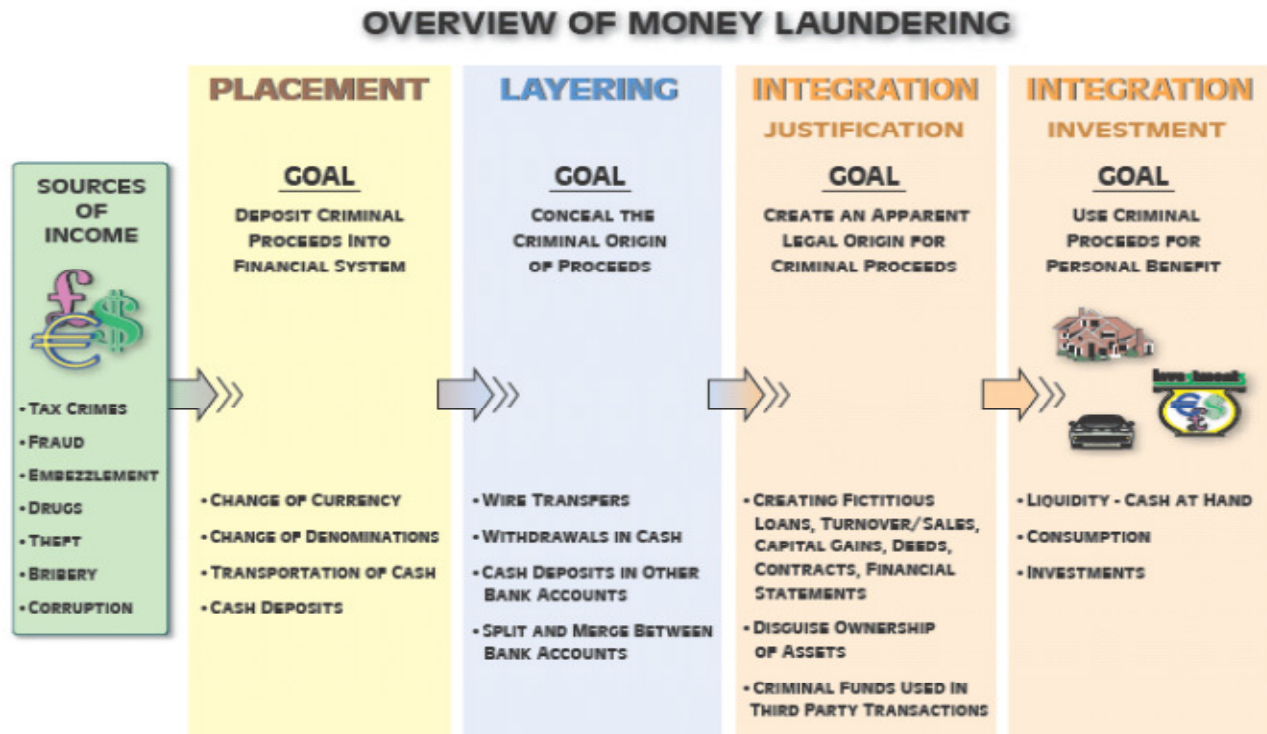


Figure-1
Shows an overview of the three steps involved in Money Laundering⁷

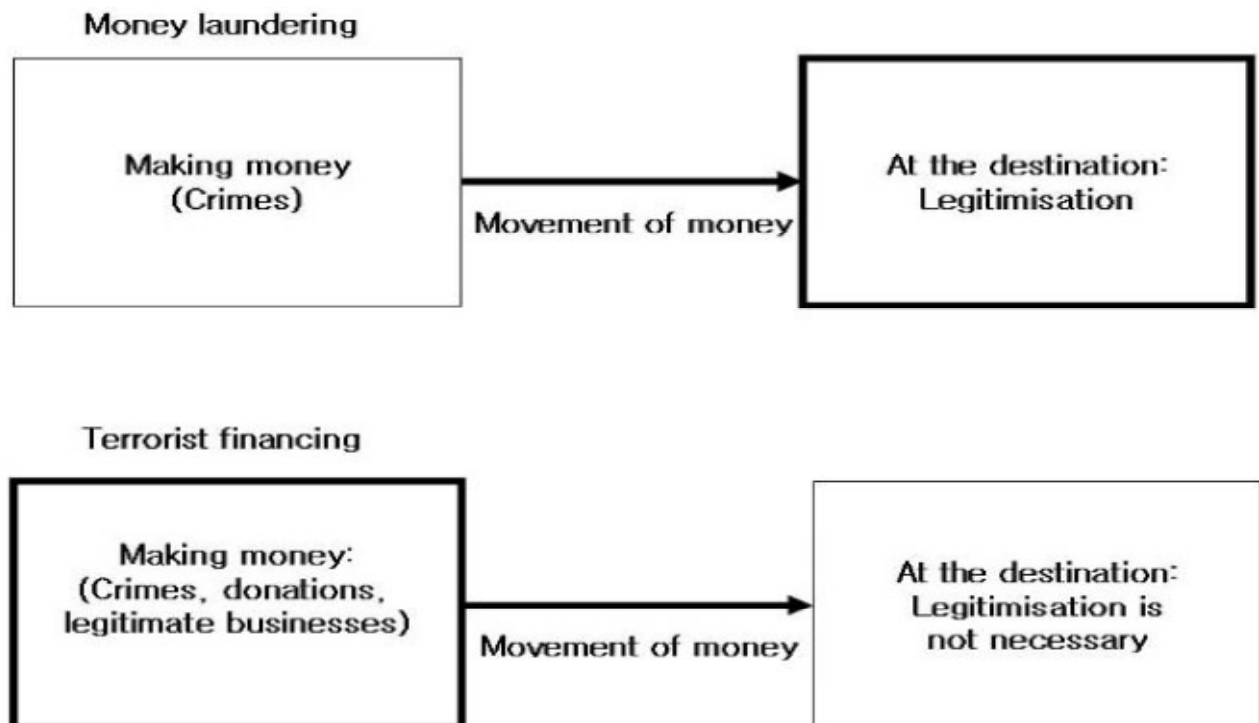


Figure-2
Shows the relationship between money laundering and financing of terrorism¹¹

The detection of money laundering at the 'placement' stage, may lead to the identification of the perpetrators of the so called 'predicate offence' - the offence that generated the proceeds and to the confiscation of the proceeds.

The initial focus of money laundering was the vast sum of money generated from drug-trafficking and dealing, which was later on expanded to include the proceeds of other, such as organised criminal activity and more recent focus has turned to trying to stop the financing of terrorism⁹.

Now in-order to have a complete understanding of the process of money laundering as described by the FATF, the first step is the entrance of the cash into the domestic financial system whether through formal or informal way, which is then sent abroad in the second step to be integrated into the financial systems of regulatory havens and is followed by the repatriation in the third step in the form of transfers of legitimate appearance. Thus, money laundering despite of variations in the definitions can generally be described as a '*legitimation-oriented* concept: from a dark side to a sunny side'¹⁰.

Identification of techniques involved in money laundering:

The identification of the incriminated money's entry into the banking and other financial institutions take place both at the initial point (placement) and other points such as layering and integration of money laundering since infiltrated money is identifiable by paper trail. With the help of various techniques of cash flow analysis, the reconstruction of these money trails is obtained. The examination and comparison of the involved parties and transactions which are already documented, is a direct analyses technique while indirect analyses techniques involves cash flow on the basis of constructing a suspect's financial profile. The execution of the indirect analysis can be made in the form of equity capital analysis, whereby starting from a base year, changes in net assets over a several period of time, are put in relation to known cash inflows and outflows, analyses of expenditure (comparison of cash inflows and outflows of funds) as well as an analysis of incoming payment, with which the sum (disturbance variable validated) of all banking deposits is put in relation to known cash inflows¹².

Pakistan's Efforts to Fight against the Menace of Money Laundering and Terrorism Financing: Currently there are great threats to the survival of Pakistan due to various factors and money laundering and financing of terrorism is one of them. The menace of money laundering and terrorism finance is accomplished in the country due to various factors such as, charitable sector abuse, Hawala, smuggling, trade-base money laundering, physical cross-border cash transfer etc. which has significant and adverse economic and social consequences for the country. Hawala/Hundi is the alternative remittance system, which is greatly used by the people in Pakistan for the informal banking purposes and it is this system which is used by the terrorist for financing of their terrorist activities in the country.

Since 2002, policy makers have focused on this issue by making various efforts, in-order to further strengthen its banking and financial sector regulations to reduce the chances of terrorist to make it use for their nefarious designs. Therefore in-order to detect, prevent and combat money laundering and financing of terrorism both at the formal and non-formal financial sectors, Pakistan has introduced various legislations against money laundering and counter terrorism financing (AML/CTF). These include the registration requirement for all Hawaladars as authorised foreign exchange dealers, criminalization of money laundering and terrorism financing and therefore, have set up a 'Financial Intelligence Unit' in December 2007 which has taken steps to make the FMU operational¹³.

Therefore in-order to further enhance the capabilities of the financial sector to bring it to the international standards to coup up with the challenges and threats currently faced by the country due to money laundering and terrorism financing, the 'Anti-Money Laundering Act, 2010 (AMLA)', was enacted; which comprises of the following measures¹⁴.

Fundamental Measures: In-order to preserve the integrity and sanctity of the banking and financial system, it has always been important to stop the misuse of this sector through various necessary measures for combating money laundering and financing of terrorism. By keeping in view this responsibility, since their inception the State Bank of Pakistan (SBP) has made Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Regulations more comprehensive by revising the existing regulations 'M-1 to M-5 of Prudential Regulations' on Corporate/ Commercial Banking¹⁵. The basic component of the present precautions against money laundering in Pakistan comprises of the so called "Know your Customer (KYC)" principle; which means that Exchange Companies shall take all reasonable steps to make sure to perform KYC/due diligence of their customers to establish and verify their identity. KYC/CDD in broader terms includes: i. Identification and verification of the customer's identity on the basis of data obtained from the documents or information collected from the customer itself or from any other independent and reliable source, ii. Identification of the beneficial owner in case if he/she is not the customer itself, then the Exchange Company should take necessary steps for its satisfaction to identify and verify the beneficial ownership, iii. Collecting information about the purpose of the transaction and their intended nature.

If the Exchange Companies are unable to complete satisfactorily the required 'KYC/CDD (Know Your Customer/Customer Due Diligence) measures', then they should not proceed with the transaction. However, in case of post transaction scenario, if the circumstances are suspicious, consideration should be given to file an STR (Suspicious Transaction Report) with the Financial Monitoring Unit (FMU)¹⁶.

As per Section 3 of the 'Anti-Money Laundering Act, 2010', "Offence of money laundering covers those persons or entities

who directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property, such person or entity shall be guilty of offence of money-laundering.”

Anti-Money Laundering Act, 2010 determines in Section 4 punishment for money laundering that “whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than one year but may extend to ten years and shall also be liable to fine which may extend to one million rupees and shall also be liable to forfeiture of property involved in the money laundering.

Provided that the aforesaid fine may extend to five million rupees in case of a company and every director, officer or employee of the company found guilty under this section shall also be punishable under this section.”

The aim of the setting laws is to demarcate what is legally permitted and what is not. Since 1990s this method has been employed worldwide to counter money laundering. The gist of the present legislation is that a person is guilty of money laundering if he or she knowingly and willingly performs actions with money or goods that are the direct or indirect proceeds of crime. Making money laundering a punishable offense gives a clear indication to facilitators of what they can expect.

Conclusion

Money Laundering has created a serious threat to the financial system of the world and has led to the destruction of the country's sovereignty and character. There is an urgent need for collective measures to tackle this menace both at national and international levels due to scale of threat that money laundering has posed to the peace and stability of the World. At our national level there is a phenomenal increase in terrorism over the last few years and now has become a serious threat to our existence instead of peace and security, therefore, we have to make effective counter strategies by launching a financial war on terrorism because without solid financing terrorist will be unable to promote their cause. Now we have to understand that this problem has aggravated so much that we have to make combined efforts both at the Government and Public level, therefore, we have to make our public aware of the seriousness of the problem through education. Along with that we have to take various measures in-order to further strengthen our banking and financial sector by focusing on regulations and other measures in-order to reduce its susceptibility to money

laundering and terrorist financing. There is a need for more vigilant and focused mechanism along with the support of the judiciary to send a clear message to the criminals that this menace is no more allowed.

References

1. Compare Ertl, **8,(2002)** and Couvrat and Pless, **171 (1993)**
2. Chaikin David A., Money Laundering: An Investigatory Perspective, 2 Crim. L.F. **467, 467-68 (1991)**
3. Financial Action Task Force, Report on Money Laundering Typologies Paris, OECD, **(2000)**
4. Ellinger E.P., Lomnickal E. and Hooley R.J.A., Ellinger's Modern Banking Law, **4, 94 (2006)**
5. Arnone Marco, Padoan Pier Carlo, Anti-money laundering by international institutions, *Eur J Law Econ* Volume **26(3)**, 361-386 **(2008)**
6. Arnone Marco, Padoan Pier Carlo, Anti-money laundering by international institutions, *Eur J Law Econ* Volume **26(3)**, 361-386 **(2008)**
7. www.americanbar.org/content/dam/aba/.../116.authcheckdam.doc on 02/04/2013 **(2013)**
8. Arnone Marco, Padoan Pier Carlo, Anti-money laundering by international institutions, *Eur J Law Econ* Volume **26(3)**, 361-386 **(2008)**
9. Ellinger E.P., Lomnickal E. and Hooley R.J.A., Ellinger's Modern Banking Law, **4, 95 (2006)**
10. Koh Jae-myong, 'Suppressing Terrorist Financing and Money Laundering' **26 (2006)**
11. Koh Jae-myong, 'Suppressing Terrorist Financing and Money Laundering' **27 (2006)**
12. Schneider Friedrich, Windischbauer Ursula, Money laundering: some facts, *Eur. J. Law Econ*, **26(3)**, 387-404, 396 **(2008)**
13. <http://www.state.gov/documents/organization/100922.pdf> 23/03/2013 **(2013)**
14. <http://www.brecorder.com/articles-a> 26/03/13 **(2013)**
15. <http://www.sbp.org.pk/press/2012/AML-13-Sep-12.09/04/2013> **(2013)**
16. <http://www.sbp.org.pk/epd/2012/FEC3-Annex.8/04/2013> **(2013)**