

# Joint Parliamentary Session

16th September 2020

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**FATF Legislation Passed During the  
Joint Parliamentary Session**

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## **FATF LEGISLATION PASSED DURING THE JOINT PARLIAMENTARY SESSION (16.09.2020)**

### **FATF and Pakistan**

As a global policy-making body working for countering financing of terrorism and anti-money laundering (CFT/AML), the Financial Action Task Force primarily works to set standards and guidelines that promote the implementation of legal, regulatory and operational measures for CFT/AML threats. In 2018, Pakistan was found lacking in its legislation in terms of criminalizing and targeting terrorism financing and money laundering, and was placed on the “grey list.”<sup>1</sup>

In February 2020, FATF declared Pakistan “fully compliant” on 14 of 27 points, with varying degrees of compliance on the remaining targets.<sup>2</sup> The AML/CFT watchdog also set a deadline to ensure compliance to the remaining 13 points – ending originally in June 2020, which was later extended to October 2020 in light of the COVID-19 pandemic.<sup>3</sup>

In the past few months, Pakistan has engaged in extensive legislation drafting to finally exit the grey list in October. 11 Acts have been passed, including amendments to key laws. Pakistan is required to submit the progress on laws, as well as other aspects of investigation and prosecution frameworks related to AML/CFT in a report to FATF on September 30, as it prepares for the October plenary.

### **Hindrances in Passage of FATF Bills**

Despite collaborative efforts between the government and the opposition to facilitate the swift passage of FATF laws, certain key pieces of legislation were still outstanding. Most important of these are the Anti-Terrorism (Third Amendment) Bill, 2020 and the Anti-Money Laundering (Second Amendment) Bill, which are critical in enhancing Pakistan’s AML frameworks to further strengthen compliance to FATF Recommendations. Passed within a day in late August in the National Assembly, AMLA (Second Amendment) and ICT Waqf Property Bill, 2020 were promptly rejected by the Senate, owing to lack of debate and other political considerations.<sup>4</sup>

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<sup>1</sup> FATF Plenary Meetings – Summaries

<http://www.fatf-gafi.org/about/outcomesofmeetings/>

<sup>2</sup> High Risk and other Monitored Jurisdictions as at 21<sup>st</sup> February 2020 – Financial Action Task Force

<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html#pakistan>

<sup>3</sup> FATF extends its assessment and follow-up deadlines in response to COVID-19 - Financial Action Task Force

<http://www.fatf-gafi.org/publications/fatfgeneral/documents/mer-postponement-covid-19.html>

<sup>4</sup> Opposition ruled Senate rejects two FATF Bills, DAWN, 26 August, 2020

<https://www.dawn.com/news/1576499>

On September 15<sup>th</sup>, the National Assembly introduced and passed the Anti-Terrorism (Third Amendment) Bill, 2020.<sup>5</sup> This was struck down by the Senate on September 16<sup>th</sup>, making it the third key legislation that failed to clear the upper house to become law.

According to the Constitution of Pakistan, if a bill passed by one house of Parliament is rejected by the other, it can become a law only if it is passed by a joint sitting of the two houses.<sup>6</sup> At the time of writing, a joint-session convened by President Alvi had passed all three outstanding bills<sup>7</sup> in order to bolster Pakistan's AML/CFT frameworks, in time for the deadline set by FATF in late September.

#### 1. *The Anti-Terrorism (Third Amendment) Act, 2020*<sup>8</sup>

Formerly introduced as the *Code of Criminal Procedure (Amendment) Bill, 2020*<sup>9</sup>, this amendment seeks to update investigation techniques, particularly in cases pertaining to ML/TF. The amendment, through the addition of Section 19-C in the Anti-Terrorism Act (ATA) 1997, allows investigating officers to use techniques such as going under cover, intercepting communications, assessing computer systems and controlled delivery amongst others in order to tackle cases involving “financing of terrorism under the law in force.<sup>10</sup>” Such techniques will be in force for 60 days, after which the court can extend it for another 60 days, to be requested in writing.<sup>11</sup>

Furthermore, in subsection 2, the Federal Government is empowered to frame rules to regulate the procedure and execution of order for the purposes of this section.

Initially, the CrPC (Amendment) Bill was referred to the Senate Standing Committee for deliberation and further technical amendments, whereby it sought to amend the Code of Criminal Procedure, and its scope was extended to not just terrorism financing activities, but also to money laundering and “associated predicate offence(s)”.<sup>12</sup>

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<sup>5</sup> Opposition blocks another FATF-related Bill in the Senate, DAWN, September 16, 2020  
<https://www.dawn.com/news/1579992>

<sup>6</sup> Constitution of the Islamic Republic of Pakistan  
<http://www.pakistani.org/pakistan/constitution/>

<sup>7</sup> All 3 FATF-related Bills Passed in Joint Session, Marred by Opposition Protests, DAWN, 16 September, 2020  
<https://www.dawn.com/news/1580007/all-3-fatf-related-bills-passed-in-joint-session-marred-by-opposition-protests>

<sup>8</sup> Anti-Terrorism (Third Amendment) Bill, 2020 – as passed by the National Assembly  
[http://na.gov.pk/uploads/documents/1600179304\\_607.pdf](http://na.gov.pk/uploads/documents/1600179304_607.pdf)

<sup>9</sup> The Code of Criminal Procedure (Amendment) Bill, 2020 - as introduced in the National Assembly  
[http://www.na.gov.pk/uploads/documents/1595864770\\_207.pdf](http://www.na.gov.pk/uploads/documents/1595864770_207.pdf)

<sup>10</sup> Anti-Terrorism (Third Amendment) Bill, 2020 – as passed by the National Assembly  
[http://na.gov.pk/uploads/documents/1600179304\\_607.pdf](http://na.gov.pk/uploads/documents/1600179304_607.pdf)

<sup>11</sup> Ibid.

<sup>12</sup> The Code of Criminal Procedure (Amendment) Bill, 2020 - as introduced in the National Assembly  
[http://www.na.gov.pk/uploads/documents/1595864770\\_207.pdf](http://www.na.gov.pk/uploads/documents/1595864770_207.pdf)

Changed to the ATA (Third Amendment) Bill, this was introduced and passed on September 15<sup>th</sup> by the National Assembly. It was later struck down by the Senate.<sup>13</sup> The Parliament passed this bill with a majority in the joint-session of the Parliament, held on September 16th.<sup>14</sup>

## 2. *Anti-Money Laundering (Second Amendment) Act, 2020*<sup>15</sup>

Amongst the 13 outstanding points on FATF's 27-point Action Plan, Pakistan is required to specifically strengthen its AML regime by ensuring effective domestic cooperation between Financial Monitoring Unit (FMU) and LEAs in investigation of TF/ML, as well as demonstrate effectiveness of sanctions including remedial actions to curb the same.

The AMLA (Second Amendment) Act attempts to particularly address these concerns. In terms of legal clarity, multiple definitions have been amended and enhanced in Section 2. Furthermore, the proposed legislation recommends an enhanced role of the National Accountability Bureau (NAB) in investigating ML cases pertaining to politicians, with CTDs, FIA and other agencies investigating all other ML cases. This has been the subject of heated political debate in house, with fears of it being used to politically target certain individuals holding office. Furthermore, functions and powers of AML/CFT regulatory authorities have been clearly defined with powers to issue licenses, regulate and perform other ancillary functions to comply with provisions of the AML Act. Penalties are also more stringent, with fines increased from 5 to 25 million rupees for money laundering, with the fine for legal persons rising up to 100 million (Section 4).

In terms of ensuring enhanced collaboration between different agencies and authorities, Section 5 establishes the National Executive Committee (NEC). Section 6 further introduces an AML/CFT regulatory authority, as well as mandates international cooperation by regulators while setting up an oversight Body for SRBs (Self-Regulatory Body) for broader oversight.

Additions were made to Section 7, with Customer Due Diligence (CDD) mandated, including relying on third parties to ensure CDD. Section 7C specifies requirement to hold records obtained via CDD up to 5 years, while 7F mandates the integration of risk-based assessments within organizations. Professional training and compliance programs are mandated (7G), and 7I imposes sanctions for reporting bodies not conforming to the new sections.

Importantly, offences under Section 21 of AMLA would now be considered “cognizable” offences as opposed to “non-cognizable” in line with the recommendations of the Financial Action Task Force

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<sup>13</sup> Opposition blocks another FATF-related Bill in the Senate, DAWN, September 16, 2020  
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<sup>14</sup> All 3 FATF-related Bills Passed in Joint Session, Marred by Opposition Protests, DAWN, 16 September, 2020  
<https://www.dawn.com/news/1580007/all-3-fatf-related-bills-passed-in-joint-session-marred-by-opposition-protests>

<sup>15</sup> Anti-Money Laundering (Second Amendment) Bill, 2020 - as Passed by the National Assembly  
[http://na.gov.pk/uploads/documents/1598354531\\_313.pdf](http://na.gov.pk/uploads/documents/1598354531_313.pdf)

(FATF). Section 25 promotes coordination by ensuring cooperation between federal officers and provincial officers.

Finally, schedules were amended and added pertaining to listing Members of National Executive Committee, listing Members of General Committee as well as listing the regulators for AML/CFT regulatory authorities for the purposes of the Bill.

Despite receiving majority in the National Assembly, this bill was rejected by the Senate in late August.<sup>16</sup> The current joint-session passed this Bill, with amendments introduced by the ruling party.<sup>17</sup>

### *3. Islamabad Capital Territory Waqf Procedure Act, 2020<sup>18</sup>*

Introduced jointly with the ICT Trust Property Act 2020, this Bill seeks to enhance the effectiveness of the implementation of the Orders passed by the Federal Government by ensuring proper management, supervision and administration of waqf properties in the territorial limits of Islamabad Capital Territory.

Section 2 defines “waqf property” as property of any kind permanently dedicated by a Muslim for any purpose recognized by Islam as religious, pious or charitable, but does not include property of any waqf such as is described in section 3 of the Mussalman Waqf Validating Act, 1913 (VI of 1913), under which any benefit is for the time being claimable for himself by the person by whom the waqf was created or by any member of his family or descendants.

According to Section 3, the Chief Commissioner, ICT shall appoint a chief administrator Auqaf for the Islamabad Capital Territory (ICT) and may by order, vest in him, the waqf properties situated in the territorial limits of ICT including all rights, assets, debts, liabilities and obligations relating thereto. This will bring waqf properties into administrative control. Section 21 further empowers the chief administrator to issue instructions as required.

Section 6 mandates registration of waqf property and the administrator is required to fulfill all legal requirements pursuant to this. Section 22 states that information will be readily provided to competent authorities, including domestic and international authorities, including but not limited to “beneficial ownership of waqf property, the residences of the staff who have control over the waqf properties, any assets held or managed by a reporting entity in relation to waqf property or any other information relating to the waqf as specified in Anti Money Laundering Act, 2010 (VII of 2010).” According to

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<sup>16</sup> Opposition ruled Senate rejects two FATF Bills, DAWN, 26 August, 2020  
<https://www.dawn.com/news/1576499>

<sup>17</sup> All 3 FATF-related Bills Passed in Joint Session, Marred by Opposition Protests, DAWN, 16 September, 2020  
<https://www.dawn.com/news/1580007/all-3-fatf-related-bills-passed-in-joint-session-marred-by-opposition-protests>

<sup>18</sup> Islamabad Capital Territory Waqf Procedure Bill, 2020 – as Passed by the National Assembly  
[http://www.na.gov.pk/uploads/documents/1598354469\\_547.pdf](http://www.na.gov.pk/uploads/documents/1598354469_547.pdf)

Section 26, failure to comply with the provisions of Act will result in imprisonment of 1-5 years, as well as a fine equivalent of the amount of benefit derived from the waqf property.

This is relevant to FATF Recommendations because it enhances supervision and regulatory oversight addressing effective compliance concerns. Moreover, the question of property management is key in FATF, as properties and the financial arrangements pertaining to properties, including ownership, use and proceeds can be misused for ML/TF purposes. Waqf properties presented a grey area in this respect, and bringing this under regulatory supervision addresses some indicators within FATF's recommendations.

Along with the ATA (Third Amendment) Bill and the AMLA (Second Amendment) Bill, this law too was under consideration, and was passed by both the houses in the joint session.<sup>19</sup>

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<sup>19</sup> All 3 FATF-related Bills Passed in Joint Session, Marred by Opposition Protests, DAWN, 16 September, 2020  
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