Mapping Pakistan’s Compliance with FATF Recommendations

Preparing for the October Plenary

18 September 2020
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<tr>
<th>Legal Amendments</th>
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<th>Addresses FATF Effective and Technical Compliance (IOs and Recommendations)</th>
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| Mutual Legal Assistance (Criminal Matters) Act, 2020 | 7 Aug, 2020 | ✔️ ✔️  | Effective Compliance:  
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IO.3 - Supervision  
IO.5 - Legal Arrangements  
IO.6 - Financial Intelligence  
IO.7 - ML investigation and prosecution  
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| Anti-Terrorism (Second Amendment) Act, 2020          | 12 Aug, 2020 | ✔️ ✔️  | Effective Compliance:  
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| Companies Amendment Act, 2020                        | 7 Aug, 2020 | ✔️ ✔️  | Effective Compliance:  
IO.5 - Legal persons and arrangements  
Technical Compliance:  
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Preparing for the October 2020 Plenary –
Mapping Pakistan’s Compliance with FATF Recommendations

FATF and Pakistan

The Financial Action Task Force (FATF) is regarded as a global policy-making body working for countering financing of terrorism and anti-money laundering (CFT/AML). FATF primarily works to set standards and guidelines that promote the implementation of legal, regulatory and operational measures for CFT/AML threats than endanger the global financial system. In light of this, FATF has issued 40 Recommendations to countries as a framework to target TF/ML, and offers services that would enhance technical compliance and effective implementation of laws to member countries.1

In 2018, Pakistan was found lacking in its legislation in terms of criminalizing and targeting terrorism financing and money laundering. As a result of these “structural deficiencies”, Pakistan was placed on the ‘grey-list’ – and instructed to improve its legislative frameworks to align with international standards.2 By October 2019, Pakistan’s impressive progress in overhauling and amending its existing laws was acknowledged by the global community, but it was still kept on the grey list as it was fully compliant with only 5 targets on a 27-target plan, with varying levels of implementation on the remaining targets.3

In February 2020, the FATF had declared Pakistan “fully compliant” on 14 points, with varying degrees of compliance on the remaining targets.4 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.5

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2 FATF Plenary Meetings – Summaries
http://www.fatf-gafi.org/about/outcomesofmeetings/

3 Pakistan Avoids FATF Black List, Express Tribune, October 2019

4 High Risk and other Monitored Jurisdictions as at 21st February 2020 – Financial Action Task Force

5 FATF extends its assessment and follow-up deadlines in response to COVID-19 - Financial Action Task Force
Recent Legislations
With the upcoming FATF plenary in October, RSIL has proactively charted legislative developments onwards from 21st February 2020, when FATF announced its latest decision to retain Pakistan in its list of jurisdictions with enhanced monitoring (‘grey list’), up to the time of writing. These legislative developments include introducing a number of bills to the Parliament that directly address issues arising from FATF Recommendations categorized under Technical Compliance and Effective Compliance.5

This article summarizes fourteen laws, and two proposed bills framed to enhance Pakistan’s AML/CFT frameworks. Phase I maps bills introduced prior to February 2020, which received Presidential assent by July 2020. Phase II focuses on new FATF Legislation, majority of which are amendments to pre-existing Acts to improve existing AML/CFT regimes. Phase III analyzes legislation that was passed during a joint Parliamentary session in mid-September, having been rejected in the Senate prior. Finally, the article concludes with proposed legislation, currently under deliberation in the Parliament at the time of writing.

The laws are categorized into three phases chronologically, for ease of navigation, as follows:

**Phase I (February to July 2020): Prior Bills Receiving Presidential Assent**

1. Foreign Exchange Regulations (Amendment) Act, 2020
2. Anti-Money Laundering (Amendment) Act, 2020
3. NACTA (Amendment) Act, 2020
4. Anti-Terrorism (Amendment) Act, 2020
5. Mutual Legal Assistance (Criminal Matters) Act, 2020

**Phase II: (July - August 2020): New FATF-related Legislation**

6. UN Security Council (Amendment) Act, 2020

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Anti-Terrorism (Second Amendment) Act, 2020
Companies (Amendment) Bill, 2020
Limited Liability Partnership (Amendment) Act, 2020
Islamabad Capital Territory Trust Act, 2020
Control of Narcotics Substance (Amendment) Act, 2020

Phase III (September 2020): Bills passed in the Joint Parliamentary Session

Anti-Terrorism (Third Amendment) Act, 2020
Anti-Money Laundering (Second Amendment) Act, 2020
Islamabad Capital Territory Waqf Procedure Act, 2020

Proposed Legislation:

The Modaraba Companies (Floatation and Control) (Amendment) Bill, 2020
Cooperative Housing Society Bill, 2020
These are Bills that were introduced and debated within the Parliament prior to February 2020 – however they received presidential assent during the aforementioned time-frame. RSIL covered these legislations in detail in a prior article before the 21st February Plenary, which can be accessed here.

1. *Foreign Exchange Regulation (Amendment), 2020*\(^7\)

The FERA Act (1947) governs the movement of foreign currency and other forms of monetary instruments such as securities and bullion. The purpose behind the amendment in 2013 was to create a standardised regime allowing the State Bank of Pakistan to act as a regulator in this field and to implement stricter punishments.

Recently, amendments were made in section 23, that further strengthen the role of the Tribunal, with the new addition of sub-section (3B) stating that a Tribunal taking cognizance under subsection (1) will conclude proceedings within 6 months, and extensions may be requested by writing.

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\(^7\) Foreign Exchange Regulation (Amendment) Act, 2020 – The Gazette of Pakistan

Relevance to FATF Recommendations:
This amendment contributes to Immediate Outcome 3 (Supervision) and Recommendation 26 (Regulation and supervision of financial institutions), extending to financial transactions in terms of more stringent oversight and delineated tribunal mechanisms.

2. **Anti-Money Laundering (Amendment) Act, 2020**

In September 2019, the Anti-Money Laundering (Amendment) Bill 2019 was laid in the National Assembly. The purpose of the amendment was to strengthen the current Anti Money Laundering regime in the country with more stringent provisions. Its title was formally changed to Anti-Money Laundering (Amendment) Act, 2020 as deliberations continued into the following year.

According to Section 4, violators of the law would now be subject to greater financial penalties i.e. fines would be increased from 1 million rupees to 5 million rupees, and sentences would be increased from two years to ten years imprisonment. The amended AMLA also equips the investigating officer with the authority to hold a person in remand for up to 180 days, up from 90 days previously (Section 8, subsection 1).

Relevance to FATF Recommendations:

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This amendment contributes to **Immediate Outcome 3 (Supervision), Immediate Outcome 7 (ML investigation and prosecution)** in terms of Effective Compliance. Under Technical Compliance, it complies with **Recommendation 3 (Money Laundering Offence)** by making the ML offence sanctions more stringent, and **Recommendation 31 (Powers of law enforcement and investigative authorities)** by enhancing investigating officer’s remand authority.

3. **National Counter Terrorism Authority (NACTA) (Amendment) Act, 2020**

The National Counter Terrorism Authority (NACTA) Act was amended by way of a Presidential Ordinance, coming into immediate effect on 8th November 2019 for 120 days. A formal amendment bill was later introduced, and has been passed by both houses. These amendments pertain mainly to changes in the hierarchy of governmental actors, streamlining the process of coordination with various law enforcement actors.

According to the Act, the Board of Governors convening NACTA will now be led by the Minister in-charge of Interior Division instead of the Prime Minister (Section 5(1)). Alternatively, Section 5(1) expands membership to the Board of Governors, which now includes Home Secretaries and Inspector-Generals of Police from all provinces, Islamabad Capital Territory, Gilgit-Baltistan and State of Azad Jammu and Kashmir.

In Section 8, changes were made in the membership of the Executive Committee (EC), now admitting Additional Secretaries of relevant ministries to attend the meetings of the EC.

When first introduced, the Act’s statement of objectives stated that amendments are to counter the increased violence and terrorist activities in the provinces of Khyber Pakhtunkhwa and Balochistan. These amendments will therefore allow NACTA as an authority to react more effectively and efficiently to emerging threats.

**Relevance to FATF Recommendations:**

This amendment contributes to **Immediate Outcome 1 (Risk, Policy and Coordination)** in terms of Effective Compliance, and **Recommendation 2 (National Cooperation and Coordination)**

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9 National Counter Terrorism Authority (NACTA) (Amendment) Act, 2020 – The Gazette of Pakistan
under Technical Compliance. These amendments ensure that all relevant authorities, including law enforcement agencies and policy-makers, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate and exchange information domestically with each other concerning the development and implementation of policies and activities to combat ML/TF effectively.

4. *Anti-Terrorism (Amendment) Act, 2020*¹⁰

The original penalties already provided in the Anti-Terrorism Act, 1997 were not deemed sufficient for violations of asset seizure provisions in section 11-O and the amount of fine was deemed insufficient as well. The new amendment Act sought to remedy the same.

Section 2 adds to the definition of the person, delineating it as “any natural, legal person or body corporate.” Amendments made in sub-section (2) of Section 11-O, Act of 1997, the “penalty of fine not exceeding Rs10 million” has been substituted with a maximum fine of Rs25 million and the terms on conviction up to 10 years or both. According to amendments made in sub-section (3), the fine has been increased up to Rs25 million, punishment of maximum 10 years on conviction or with both if director, officer or employees were found guilty of the violation.

Addition of Section 11-000, whereby any refusal or non-compliance of the orders of the federal government under section 2 of the United Nations (Security Council) Act 1948 will now be punishable offence under Section 11-00. Violation of the UN Security Council Resolutions - and the person shall be liable to imprisonment of ten years, or a fine of rupees twenty-five million, or both.

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¹⁰ The Anti-Terrorism (Amendment) Act, 2020 – The Gazette of Pakistan
not exceeding Rs10 million” has been substituted with a maximum fine of Rs25 million and the terms on conviction up to 10 years or both.

In sub-section (3), the fine has been increased up to Rs25 million, punishment of maximum 10 years on conviction or with both if director, officer or employees were found guilty of the violation. Further, if any public servant is found negligent in complying with these provisions, the respective authority will take administrative actions against them under the respective service rules.

A new section titled Section 11-OOO is added which enforces the decisions of United Nations Security Council's Resolutions (1267 and 1373), pertaining to counter-terrorism measures to check terrorism financing by making and enforcing such provisions in the domestic laws. According to Section 11-OOO, any refusal or non-compliance of the orders of the federal government under section 2 of the United Nations (Security Council) Act 1948 is a punishable offence and the person shall be liable to imprisonment of ten years, or a fine of rupees twenty-five million, or both. This not only strengthens sanctions and penalties against violations, but also entrenches compliance to the UNSC Act, 1948 within the ATA framework.

Relevance to FATF Recommendations:
This law contributes to Immediate Outcome 1 (Risk, Policy and Coordination), Immediate Outcome 5 (Legal Persons and Arrangements) and Immediate Outcome 10 (TF preventive measures and financial sanctions) in terms of Effective Compliance. Under Technical Compliance, it complies with Recommendation 2 (National cooperation and coordination), Recommendation 6 (Targeted financial sanctions – terrorism & terrorist financing) and Recommendation 35 (Sanctions) by enhancing the definition of legal persons, increasing fines and imprisonment terms for violations as well as making violations of the United Nations Security Council Act, 1948 an offence under the Anti-Terrorism Act, 1997.
5. **Mutual Legal Assistance (Criminal Matters) Act, 2020**

The MLA Act 2020, formalizes the processes of requesting and providing legal assistance to and from foreign governments when investigating criminal conduct. Section 3 of the Act states that the manner of MLA may be provided on the basis of a reciprocal agreement or other arrangements; and if both do not exist, then the provisions of the MLA Act will prevail. Section 4 lays out the functions of central authority in coordinating MLA requests.

As per Section 7, Pakistan would receive and act upon requests relating to a criminal offence either committed or suspected to have been committed in a foreign country when notified. After an MLA request has been sought by Pakistan, the central authority may authorize temporary detention in Pakistan of the offender, if he has been in detention in the sending state.

Section 17 stipulates that Pakistan may refuse the request of assistance to a foreign government if it jeopardizes its national security interests, if the request made is contrary to the laws of Pakistan, if it is prejudicial to an investigation or on-going proceedings, or if it violates international conventions of human rights.

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1) Mutual Legal Assistance (Criminal Matters) Act, 2020 – The Gazette of Pakistan

Section 17 stipulates that Pakistan may refuse the request of assistance to a foreign government if it jeopardizes its national security interests, if the request made is contrary to the laws of Pakistan, if it is prejudicial to an investigation or on-going proceedings, or if it violates international conventions of human rights.

This Act was designed to accommodate international cooperation in criminal matters through mutual legal assistance. In the statement of objectives and reasons, it is mentioned that the Act intends to bridge existing gaps in countries towards effective law enforcement.

**Relevance to FATF Recommendations:**
This Act creates mechanisms for international cooperation by constructively and effectively providing the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions, and related proceedings.

As a result, it contributes to Immediate Outcome 2 (International Cooperation, IO.3 (Supervision), IO.5 (Legal Arrangements), IO.6 (Financial Intelligence), IO.7 (ML Investigation and Prosecution) and IO.9 (TF Investigation and Prosecution) in terms of Effective Compliance. Under Technical Compliance, it adheres to Recommendation 2 (National cooperation and coordination), R.30 (Responsibilities of law enforcement and investigative authorities), R.36 (International instruments), R.37 (Mutual Legal Assistance), R.38 (Mutual legal assistance: freezing and confiscation) and R40 (Other forms of international cooperation).
Phase II: (July - August 2020): New FATF-related Legislation

From the period spanning end of July to end of August 2020, the Parliament convened to facilitate the passage of key “FATF bills,” in a bid to ensure that implementation can be achieved in time for the next plenary. Politically, the move was criticized as the speedy passage of the legislation in the midst of a global pandemic meant that Parliamentary debate was truncated. Despite missing the August 15th reporting deadline, the government continued to introduce key FATF-related legislation in Parliament, most of which were passed with recommendations from the opposition incorporated.


The United Nations (Security Council) (Amendment) Act, 2020 ensures the effective implementation of the resolution of the UNSC. It includes new sections pertaining to indemnity, rule-making and delegation of powers. The 1948 Act did not contain any indemnity clause to provide protection to the persons implementing in good faith. Moreover, the provision for the punishment of the offenders

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was redundant as neither the punishment nor the mechanism for its enforcement was provided under the Act previously.

This legislation seeks to remedy the above. Section 3 has been added to the Act, which states that: “No suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.” According to Section 4, the federal government now has the power to make rules for carrying out the purposes of the Act. As per Section 5, the federal government can also delegate powers to any “Pakistani person, entity or authority” to exercise powers pursuant to the provisions of the Act.

Relevance to FATF Recommendations:
This amendment contributes to **Immediate Outcome 1 (Risk, Policy and Coordination) and IO.5 (Legal persons and arrangements)** in terms of Effective Compliance, and **Recommendation 2 (National Cooperation and Coordination) and R. 35 (Sanctions)** under Technical Compliance. These amendments ensure that all relevant authorities, including law enforcement agencies and policymakers, have effective mechanisms in place which enable them to cooperate, and, where appropriate, coordinate and exchange information domestically with each other concerning decisions issued by the UN Security Council as well as other implementation of policies and activities to combat ML/TF effectively.

7. **Anti-Terrorism (Second Amendment) Act, 2020**

The second amendment to the ATA in 2020 alters Section 11EE-(2) adding a clause that prohibits the provision of loans or financial assistance to those associated with banned organizations and restricting all banks and financial institutions from issuing credit cards to individuals on the proscribed persons list. It further states that arms licenses already issued to such individuals would be revoked and their weapons confiscated. No new licenses will be issued to such people and they will be penalized for carrying weapons.

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14 Anti-Terrorism (Second Amendment) Act, 2020 – The Gazette of Pakistan
According to Section 11-J, a person providing money, property or otherwise facilitating the travel of an individual for the purpose of perpetrating, participating in, assisting or preparing for a terrorist act or for providing or receiving training for terrorist activities, will have committed an offence.

Penalties under section 11-N are made further strict as purported: “If a legal person commits an offence under sections 11H to 11K such person shall be liable on conviction to a fine not exceeding fifty million rupees.” Every director, employee or officer of such a person found guilty of the same will be fined up to twenty-five million rupees and/or imprisonment between 5-10 years.

Changes have also been made to Section 11-O, with clause (d) further strengthening freezing and seizure of assets, by ensuring within 48 hours that the seized property or assets will not be made available in any way to the proscribed person or organization, or other affiliates – and that documentation will be kept to that effect. Money or other property acting on behalf of or at the discretion of proscribed persons or organizations will be frozen or seized “without delay” (S.11-O(e)).
The state is also empowered to freeze the accounts and travel documents of those found to be involved in terrorist activities.

Moreover, in Section 11-OO(1), the ambit of necessary medical, educational and subsistence allowances has been considerably expanded to include basic expenses, foodstuffs, rent/mortgage, medical treatment or medicines, taxes, insurance premiums, public utility charges, reasonable professional fees, service charge for frozen funds or such money as may be required for meeting “extraordinary expenses.”

A new sub-section (6A) adds to Section 11-Q, whereby courts are empowered to forfeit any other property of the accused in the event that the initial property in question cannot be forfeited. In Section 19, it is recommended that members of the JIT be able to co-opt any additional person from Federal or provincial institutions to aid in investigations.

Lastly, failure to observe the clauses in Section 21-EE (Power to call information), will now result in harsher punishments, up to three years imprisonment and/or fines of up to one million rupees (up from two years imprisonment and fine of one hundred thousand rupees prior).

**Relevance to FATF Recommendations:**
This law contributes to **Immediate Outcome 8 (Confiscation) and Immediate Outcome 10 (TF preventive measures and financial sanctions)** in terms of Effective Compliance. Under Technical Compliance, it complies with **Recommendation 6 (Targeted financial sanctions – terrorism & terrorist financing)**, **Recommendation 7 (Targeted financial sanctions – proliferation)**, **R.10 (Customer Due Diligence)**, **R.13 (Corresponding Banking)** and **R.35 (Sanctions)**. It makes the provisions of governing UNSC Resolutions 1267 and 1373 further stringent by criminalizing violations particular to these, and broadly enhances sanctions and punishment frameworks with harsher fines and imprisonment terms.
8. **Companies (Amendment) Act, 2020**

The Companies Act has been amended to ensure companies policies are in alignment with FATF standards. A new section (60A) has been introduced, which delegitimizes practices involving bearer shares, stating “no company shall allot, issue, sell, transfer or assign any bearer shares, bearer share warrants or any other equity or debt security of a bearer nature, by whatever name called, and any allotment, issue, sale, transfer, assignment or other disposition of any such bearer shares or bearer share warrants or any other equity or debt security of a bearer nature, shall be void.” Furthermore, subsections of 60A which require either registration or cancellation of such shares, as well as subsections which introduce a penalty of up to one million rupees for a person, or ten million rupees for a company upon failure to comply.

As well, section 123A has also been introduced, which makes it compulsory for companies to retain information and records of their ultimate beneficial owners, and to maintain a register of their particulars and any changes therein. Failure to comply with this can result in a penalty of up to one million rupees for a person, or ten million rupees.

Finally, amendments have been made to section 431 pertaining to the disposal of books and papers of a company. Hereby, it is stated that no responsibility will fall on the company or the liquidators or anyone managing the books once five years have lapsed from the dissolution of the company (increased from three years).

**Relevance to FATF Recommendations:**

This Act contributes to **Immediate Outcome 5 (Legal Persons and Arrangements)** in terms of Effective Compliance, as well as **Recommendation 11 (Record-keeping)**, **R.24 (Transparency and Beneficial Ownership of Legal Persons)** and **R.25 (Transparency and Beneficial Ownership of Legal Arrangements)** under Technical Compliance. It creates provisions pertaining to ownership, ensuring that ownership records are transparent and the money trail can be traced to the rightful owners, curbing down benamidaars and misuse of beneficial ownership.

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15 Companies (Amendment) Act, 2020 – The Gazette of Pakistan
9. **Limited Liability Partnership (Amendment) Act, 2020**

In line with the Companies (Amendment) Act, the Limited Liability Partnership (Amendment) Act was concurrently introduced in the Parliament, as well as the respective Standing Committee in the Senate. The aim was that jointly, these two legislations will work to ensure transparency in terms of ascertaining ownership, and aid the AML framework in the country by providing effective methods to trace the money trail to the rightful owners, further curbing down benamidaars and money launderers.

Amendments to section 8 make it necessary for partnerships to “obtain, maintain and timely update particulars of ultimate beneficial owner, including any change therein, of any person who is a partner in limited liability partnership in such form, manner and submit such declaration to the registrar as may be specified.” Furthermore, penalties of up to one million rupees for a person, or ten million rupees for a limited liability partnership are introduced upon failure to comply with the requirements of this section.

**Relevance to FATF Recommendations:**

Similar to the Companies (Amendment) Act above, this law contributes to **Immediate Outcome 5 (Legal Persons and Arrangements)** in terms of Effective Compliance, as well as **Recommendation 11 (Record-keeping), R.24 (Transparency and Beneficial Ownership of Legal Persons) and R.25 (Transparency and Beneficial Ownership of Legal Arrangements)** under Technical Compliance. It creates provisions to enable tracing of the money trail to the rightful owners, curbing down benamidaars and misuse of beneficial ownership.

10. **Control of Narcotics Substance (Amendment) Act, 2020**

As per the Mutual Evaluation Report (MER), FATF authorities highlighted a minor deficiency in Section 12 of Control of Narcotics Substances Act 1997 with regards to concealment or disguise by making false declaration. This Act corrects this. As per section 12 (c) of CNS Act 1997, the scope / applicability of the said section has been confined to “making false declaration with regard to ownership, source, location or true nature of assets.”

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Relevance to FATF Recommendations:
This law contributes to **Recommendation 3 (Money Laundering Offence)** under Technical Compliance, by adding ML activities to the ambit of the CNSA Act.

**11. Islamabad Capital Territory Trust Act, 2020**

This Act governs the registration, administration and monitoring of trusts registered within the territorial limits of Islamabad Capital Territory since the Trust Act, 1882 (11 of 1882) does not cater effective administration and financial monitoring and evaluation of trusts presently. The Act also further enhances oversight and trust property management, thereby contributing to FATF Immediate Outcome 3 concerning expanded supervision.

Section 2 defines trust as the “obligation annexed to the ownership of property and rising out of the confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of the beneficiary.” Section 3-11 further lay down rules regarding the validity of trusts, creation of trusts, and who may be eligible to be beneficiaries or trustees.

Section 13 mandates the application for registration of the trust, section 14 discusses the verification of trust application, and section 15 requires registration of all moveable and immovable properties under the name of the trust. Section 16 requires a certificate of registration to be issued to the trustee once all legal requirements have been met under sections 13-15. The registration of the application may be refused if “the purpose of the trust is unlawful or the trust proceeds are suspected to be proceeds of crime.” The director can also refer the application back to law enforcement agencies for legal or other action if any person associated with the trust or exercising effective control over the trust are declared ‘proscribed’ under the Anti-Terrorism Act 1993, or the United Nations Security Council Act, 1948 (S.16(2)).

Moreover, section 17 empowers the director of the trust, or the district magistrate (ICT) or the provincial government to summon any information relation to the trust for any purpose. The director can be fined up to rupees one million if the trustee is found to be in violation of the purpose of the

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18 Islamabad Capital Territory Trust Act, 2020 – The Gazette of Pakistan
trust, or fails to provide information (S.17(3)). According to Section 109, the Chief Commissioner of ICT is also empowered to make rules with regards to the Act within sixty days of its enactment, as required.

Relevance to FATF Recommendations:
This law contributes to Immediate Outcome 3 (Supervision) in terms of Effective Compliance, as well as Recommendations 26 (Regulation and supervision of financial institutions) and R.27 (Powers of supervision) under Technical Compliance. It enhances supervision and regulatory oversight pertaining to properties, including ownership, use and proceeds can be misused for ML/TF purposes. Trust properties presented a grey area in this respect, and bringing this under regulatory supervision addresses some of FATF’s recommendations.
Despite collaborative efforts between the government and the opposition to facilitate the swift passage of FATF laws, certain key pieces of legislation were rejected by the Senate. 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.¹⁹

On September 15th, the National Assembly introduced and passed the Anti-Terrorism (Third Amendment) Bill, 2020.²⁰ This was struck down by the Senate on September 16th, making it the third key legislation that failed to clear the upper house to become law.

¹⁹ Opposition ruled Senate rejects two FATF Bills, DAWN, 26 August, 2020
²⁰ Opposition blocks another FATF-related Bill in the Senate, DAWN, September 16, 2020
https://www.dawn.com/news/1579992
A joint-session convened by President Alvi on September 16th passed these three bills\textsuperscript{21} in order to bolster Pakistan’s AML/CFT frameworks, in time for the deadline set by FATF in late September.

12. The Anti-Terrorism (Third Amendment) Act, 2020\textsuperscript{22}

Formerly introduced as the Code of Criminal Procedure (Amendment) Bill, 2020\textsuperscript{23}, 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.\textsuperscript{24} 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.\textsuperscript{25}

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\textsuperscript{21} All 3 FATF-related Bills Passed in Joint Session, Marred by Opposition Protests, DAWN, 16 September, 2020  

\textsuperscript{22} Anti-Terrorism (Third Amendment) Bill, 2020 – as passed by the National Assembly  

\textsuperscript{23} The Code of Criminal Procedure (Amendment) Bill, 2020 - as introduced in the National Assembly  

\textsuperscript{24} Anti-Terrorism (Third Amendment) Bill, 2020 – as passed by the National Assembly  

\textsuperscript{25} Ibid.
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)”.

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

Relevance to FATF Recommendations:
This amendment contributes to Immediate Outcome 9 (TF Investigation and Prosecution) in terms of Effective Compliance and Recommendation 30 (Responsibilities of law enforcement and investigative authorities) and Recommendation 31 (Powers of law enforcement and investigative authorities) by enhancing investigating officer’s ambit of investigative powers for TF offences.

13. Anti-Money Laundering (Second Amendment) Act, 2020

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.

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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 legislation appoints the National Accountability Bureau (NAB) as an “investigating or prosecuting agency” under Section 2(xvii), in investigating ML cases, along with CTDs, FIA and other agencies investigating all other ML cases. 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 have been made 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 (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. A recent joint-session passed this Bill.

Relevance to FATF Recommendations:
This law contributes to Immediate Outcome 2 (International cooperation), IO.3 (Supervision) and IO.7 (ML investigation and prosecution) under Effective Compliance. Under Technical Compliance, it addresses Recommendation 2 (National cooperation and coordination), R.3 (Money laundering offence), R.10 (Customer due diligence), R.20 (Reporting of suspicious transactions), R.26 (Regulation and supervision of financial institutions), R.27 (Powers of supervision), R.30 (Responsibilities of law enforcement and investigative authorities) and R.31 (Powers of law enforcement and investigative authorities).

This wide-ranging law broadly enhances regulatory oversight, ensuring CDD, verification of customer identity, reporting of STRs as well as the scope of powers afforded to LEAs and other authorities in

30 Opposition ruled Senate rejects two FATF Bills, DAWN, 26 August, 2020
31 All 3 FATF-related Bills Passed in Joint Session, Marred by Opposition Protests, DAWN, 16 September, 2020
investigating suspicious activities. Section 21 citing offences as cognizable is also an imperative development in aligning existing AML frameworks with international standards.


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 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.

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32 Islamabad Capital Territory Waqf Procedure Bill, 2020 – as Passed by the National Assembly
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.33

Relevance to FATF Recommendations:
This law contributes to Immediate Outcome 3 (Supervision) in terms of Effective Compliance, as well as Recommendations 26 (Regulation and supervision of financial institutions) and R.27 (Powers of supervision) under Technical Compliance. Similar to ICT Trust Act, 2020, it enhances supervision and regulatory oversight pertaining to properties, including ownership, use and proceeds can be misused for ML/TF purposes regarding waqf properties, bringing this under regulatory supervision addresses FATF’s concerns.

Proposed Legislation
Despite these extensive developments, there other ways of enhancing Pakistan’s compliance to FATF’s Recommendations and exiting the grey list. Two bills of interest are currently pending before the Parliament, that can add to Pakistan’s progress. These are summarized as follows:

15 Islamabad Cooperative Housing Societies (Amendment) Bill, 202034

The Islamabad Cooperative Societies (Amendment) Bill, 2020 aims to improve control and transparency in registration/regulations of cooperative societies in Islamabad and control terror financing through this channel.

Additions have been made to Section 2, defining “beneficial owners” in sub-section (a) as well as adding “competent authorities” (e) as defined under the Anti-Money Laundering Act, 2010. This provision means that the Securities and Exchange Commission of Pakistan (SECP), the National Accountability Bureau (NAB), and other prosecution agencies will now be considered within the ambit of this Act, which was previously deficient in recognizing these competent authorities.

33 All 3 FATF-related Bills Passed in Joint Session, Marred by Opposition Protests, DAWN, 16 September, 2020
34 Islamabad Cooperative Housing Societies (Amendment) Bill, 2020 – As Passed by the National Assembly
Sections 20A and 20B have been added to the Act, which necessitate provision of complete information regarding members of the housing society, including but not limited to “beneficial owners, members nominees of members, officers, employees and managing committee of the society.” According to Section 21, record-keeping will also be updated. Finally, according to Section 61A, violations of this legislation will result in an imprisonment term between 3-5 years and a fine up to two million rupees, or both.

The Cooperative Societies (Amendment) Bill 2020 was approved by the National Assembly on September 15, 2020 and referred to the Senate the next day, where it was sent to the Standing Committee on Senate for consideration. 35 It is expected that the Bill now be presented before the Senate for finalization.

Relevance to FATF Recommendations:
This law contributes to Immediate Outcome 3 (Supervision), IO.5 (Legal persons and arrangements), IO.7 (ML investigation and prosecution) in terms of Effective Compliance. Under Technical Compliance, it adheres to Recommendation 11 (Record-keeping), R.24 (Transparency and Beneficial Ownership of Legal Persons), R.25 (Transparency and Beneficial Ownership of Legal Arrangements) and Recommendations 26 (Regulation and supervision of financial institutions). According to the statement of objects and reasons of the bill that the FATF requires to amend, the Cooperative Societies Act, 1925 in order to bring more control and transparency in registration/regulations of cooperative societies broadly. 36 The prime objective of proposed amendment was to control ML/TF through this channel.

16 The Modaraba Companies (Floatation and Control) (Amendment) Bill, 202037
This Bill was laid before the Parliament in July 2020, with the aim of amending the forty-year old Modaraba Companies Act to introduce reforms and make the industry competitive. According to objects and reasons of the bill, it focuses on the growth of the modaraba sector through introduction

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35 Senate body approves Islamabad Cooperative Housing Societies (Amendment) Bill, 2020, THE NEWS, 17 September 2020
36 Ibid.
37 The Modaraba Companies (Floatation and Control) (Amendment) Bill, 2020 – as introduced in the National Assembly
of various reforms such as the concept of establishment of unlisted modaraba, empowerment of the certificate holders through introduction of the concept of annual general meeting to ensure maximum participation of certificate holders in decision making process of a modaraba, and providing enabling environment for ease of doing business.

Upon introduction, this Bill was referred to the relevant Senate Standing Committee – and there has been no movement, nor further deliberation on this bill by either of the houses since.

**Relevance to FATF Recommendations:**

This law contributes to **Immediate Outcome 3 (Supervision) and IO.5 (Legal persons and arrangements)** in terms of Effective Compliance, as well as **Recommendations 26 (Regulation and supervision of financial institutions) and R.27 (Powers of supervision)** under Technical Compliance. Given the outdated Modaraba act, as well as its relevance under the Asia Pacific Group Mutual Evaluation Report\(^{38}\), it was important to reform the Act and update it to counter existing challenges. With regards to FATF, these amendments will ensure better regulation of the industry, reduce operational and structural risks, and make the SECP oversight more robust.

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