TRAINING MODULE

Anti-Money Laundering and Countering the Financing of Terrorism
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Training Module: Anti-Money Laundering and Countering the Financing of Terrorism
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SECTION 01
Overview

LEARNING OUTCOMES

- Understanding the meaning of terrorism financing.
- Understanding the meaning of money laundering.
- Identifying the process of money laundering.
- Understanding the difference between money laundering and terrorism financing.
- Understanding the linkage between money laundering and predicate offences in addition to recognizing proceeds of crime.
1.1. What is Money Laundering?

Money laundering is most notably defined in the UN Convention against Transnational Organized Crime (UNTDOC). Article 6 of the Convention identifies four actions that constitute money laundering:¹

- Conversion or transfer of crime proceeds for the purpose of concealing their illicit origin;
- Concealment or disguise of crime proceeds;
- Acquisition, possession or use of crime proceeds; and
- Contributing indirectly to the commission of the offences outlined above, including participation in and conspiring or attempting to commit the offences in question.

To convert and conceal are essential elements of the laundering process; however, it is important to note that “laundered funds” never become legitimate.² Such funds only have the appearance of legitimacy on account of a complicated and obscured money trail that would otherwise point towards the illegal source of origins of the funds.³

In simpler words, criminal activities, such as drug trafficking, smuggling, human trafficking, and corruption amongst others, tend to generate large amounts of profits for criminals and criminal groups. However, by using funds from such illicit sources, criminals may risk drawing attention to the underlying criminal activity and therefore exposing themselves to criminal prosecution. In order to benefit freely from the proceeds of their crime, they must therefore conceal the illicit origin of these funds, or in other words, engage in money laundering.

1.1.1. The Money Laundering Process

Money Laundering generally consists of three distinct stages: placement, layering and integration.

The first stage, placement, involves the placing of dirty money into the legitimate financial system. Criminal money is moved away from the illegal source, making it appear as though it came from a legitimate source.

² Ibid.
³ Ibid.
This can be accomplished through the smuggling of currency across borders, the usage of an accomplice banker or broker accepting illicit deposits, the blending of legal and illegal funds through cash-heavy businesses, and through the creation of false invoices. These possible avenues of placement are by no means exhaustive, and criminals find new and inventive means of ‘placing’ dirty money all the time.

The second stage, layering, involves the obscuring of laundered funds through the legitimate financial system. Criminals enter into a complicated web of financial transactions, often across multiple jurisdictions, in order to complicate the trail leading back to the initial illicit activity.

The third stage, integration, involves the absorption of dirty money into the legitimate economy, such as through the purchase of real estate, securities investment, luxury items, and so on. Integration is done very carefully from legitimate sources to create a plausible explanation for where the money has come from.

At this stage, it is very difficult to distinguish between legal and illegal wealth. The launderer can finally use his or her ill-gotten wealth without fear of getting caught, and the process of money laundering is complete.

Legislation aimed at curbing money laundering, such as Pakistan’s Anti-Money Laundering Act 2010 (AMLA 2010), aims to target actions that can fall into any of the above three stages. Therefore, acquiring, converting, possessing, using, and transferring of money or property knowing or having reason to believe that such property is the proceeds of crime is an offence under AMLA 2010. Similarly, concealing or disguising the true nature, origin, location, disposition, movement, or ownership of property knowing or having reason to believe that it is the proceeds of crime is also an offence under AMLA 2010. Even the act of holding or possessing on behalf of another any property which one knows or has a reason to believe is the proceeds of crime would suffice for the offence of money laundering under Pakistani law.
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Case Study

Adeel is a narcotics dealer but uses a jewelry business as his “front”. His arrangement with Waqas, who is a jewelry exporter in Faisalabad allows him to sell overvalued jewelry in Dubai.

Adeel utilizes the services of Banks, Cash Couriers & Alternative Remitters (hawala operators) for receiving and moving large sums of money derived from sale of narcotics to Dubai. He transfers the money through a number of countries and splits up bulk cash into smaller amounts. To remit part of the proceeds of crime to his home in Faisalabad, he has made an arrangement with Waqas who overvalued the artificial handmade jewelry exports. Adeel then opened a jewelry store in Dubai to purchase the overpriced exports.

1. Identify the placement, layering and integration by Adeel.

Answer:

- **Placement**: Using banks, cash couriers and hawala operators for receiving and moving illicit proceeds from narcotics.

- **Layering**: Moving large sums of money through different countries in smaller amounts.
1.1.2. What is a Predicate Offence?

A predicate offence is a crime that is a component of another crime. In the case of money laundering, a bank robbery or kidnapping someone for ransom would, as an example, be the predicate offence. The money obtained from this criminal activity would be the proceeds of crime and the attempts at hiding their illegal origin would be money laundering or the primary offence.

For us to understand what a predicate offence is in the Pakistani context, we have to delve into the specifics of what the Anti-Money Laundering Act, 2010 (AMLA 2010) tells us about this concept.

Predicate offences are defined as offences specified in Schedule 1 of the AMLA 2010. The designation of offences under AMLA is in line with the FATF definition of designated categories of offences as provided in its Assessment Methodology adopted in 2013. When deciding on the range of offences to be covered as predicate offences under each of the categories listed by FATF, each country may decide, in accordance with its domestic law, how it will define those offences and the nature of any particular elements of those offences that make them serious offences.

1.1.3. What are proceeds of crime?

To arrive at an actual definition, we instead must understand what proceeds of crime are. The definition of this can also be found in the AMLA 2010, which states that proceeds of crime means any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious crime. The term “property” here is meant to include all property and assets of any description whether moveable or immoveable, tangible or intangible, including deeds and instruments that express ownership of any such asset and cash and monetary instruments. All property involved in money laundering or gained through criminal activity constitutes proceeds of crime.

In the AML/CFT regime, the categorization of the proceeds of crime is critical since such proceeds will be subject to confiscation and can be attached, deposited, forfeited, and seized by law enforcement agencies during the investigation and prosecution of AML/CFT cases.

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4 Anti-Money Laundering Act 2010, s 2(r)
The offence of money laundering is defined within the AMLA 2010 as the acquiring, conversion, disguising, possession, or use of property, where one knows or has reason to believe that such property is proceeds of crime.

As a result, when we tie all of these concepts together, we can say that predicate offences are those offences, which a) are listed in Schedule 1 of the AMLA 2010, b) generate proceeds of crime, and c) serve as foundational offences for the offence of money laundering.

1.2. What is Terrorism Financing?

In order to understand what ‘terrorism financing’ is, it is important to understand its components, namely what qualifies as an ‘act of terrorism’, who qualifies as a ‘terrorist’, and what qualifies as a ‘terrorist organization’.

The Financial Action Task Force (FATF) Recommendations define a ‘terrorist’ as:

Any natural person who:

(i) Commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully;
(ii) Participates as an accomplice in terrorist acts;
(iii) Organizes or directs others to commit terrorist acts; or
(iv) Contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.5

‘Terrorist organization’ carries the same definition, with the replacement of ‘natural person’ with ‘organization’, which refers to a ‘group of terrorists.’

The FATF Recommendations define an ‘act of terrorism’6 as:

- Any act, which constitutes an offence under [any of the stated ten international] treaties;7

6 Ibid.
7 The treaties specified are as follows: (i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970); (ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); (iii) Convention
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- Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

Collectively, we can then say that ‘terrorism financing’ is the financing of ‘acts of terrorism’, and of ‘terrorists’ and ‘terrorist organizations’. In other words, the provision of money, property or services for the benefit of a terrorist, terrorist organization, or for the purposes of terrorism will be ‘terrorism financing’.

In Pakistan, while there is no explicit definition of terrorism financing, the Anti-Terrorism Act 1997 (ATA 1997), criminalizes several types of activities which amount to terrorism financing. The ATA 1997 criminalizes:

- the raising of funds for a terrorist organization (Sec. 11-F(5)),
- inviting another to provide funds or other property for terrorism (Sec. 11-H(1)),
- receiving funds or other property that will or may be used for terrorism (Sec. 11-H(2)),
- providing funds for the purpose of terrorism (Sec. 11-H(3)),
- using money or other property for the purposes of terrorism (Sec. 11-I(1)),
- possessing money that may be used for the purposes of terrorism (Sec. 11-I(2)),
- entering or being concerned with any arrangement as a result of which money or other property is made available to another for the purposes of terrorism (Sec. 11-J),
- facilitating the retention or control for another person of property which has been derived from terrorist acts or which will be used for the purposes of terrorism (Sec. 11-K).

As can be noted from the above, the ATA 1997 aims to curb the entire process by which terrorists, terrorist organizations, or the facilitators of such persons or entities acquire, alter, change, transfer, or use money or other property to commit
terrorism. The penal sections relating to the above offences are Sec. 11-F(6) and 11N of ATA 1997.

1.2.1. What is the Difference Between Money Laundering and Terrorism Financing?

Money laundering is the process by which proceeds of crime are disguised to conceal their illicit origin. Terrorism financing, on the other hand, involves the solicitation, collection, or provision of funds with the intention that they may be used to support terrorist acts or organizations. Such funds may stem from both legal and illegal sources.

Similar methods are used for both money laundering and the financing of terrorism. In both cases, the actor makes an illegitimate use of the legitimate financial sector. The techniques used to launder money and to finance terrorism are very similar and, in many instances, identical.

This is also often where confusion between the two concepts tends to arise, since they both involve similar methods, the strategies used by authorities to combat the two tend to converge. Both are aimed at attacking the criminal or terrorist organization through its financial activities and involves the usage of the financial trail left behind to identify, prosecute, and convict components of the criminal or terrorist enterprise.

The origin of the funds is the main distinction between money laundering and terrorism financing. Terrorism funding involves the obtaining of funds to sustain terrorist acts, meet their technical needs, and cover the cost of promoting related beliefs, amongst others, whereas money laundering is simply a procedure employed by criminals to make their unlawful gains seem legitimate.

Although terrorism financing raises funds for illegal purposes, the source of these funds is not always illegal. Terrorists can raise money through corporate donations, gifts, and even through genuine commercial ventures. Money laundering, however, always entails that initial seed of criminality: an illicit source of funding.
1.2.2. Terrorism Financing as a Predicate Offence for Money Laundering

In domestic legal systems, terrorist-financing offences can also be included as predicate offences for money laundering. In Pakistan, terrorism financing offences are dealt with under the ATA 1997 and such offences have also been included in the list of predicate offences in the AMLA 2010. For example, the crime of kidnapping for ransom for the purposes of financing terrorist activity would constitute the predicate offence for money laundering.

Where the offence of money laundering is connected with a terrorist financing offence, it may be tried in the Anti-Terrorism Court\(^8\) (ATC - a specialist court established under the ATA 1997, in order to deal with terrorism-related offences) rather than the Court of Session (where money laundering offences are usually tried).

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\(^8\) Anti-Money Laundering Act 2010, s 20 (a)
SECTION 02

Global Legal Framework on AML/CFT

LEARNING OUTCOMES

- Understand the interplay of international obligations in relation to AML/CFT.
- Describe the actions that are expected of criminal justice actors in order to be compliant with the FATF Recommendations.
- Broadly understand how the FATF Evaluation takes place.
- Learn about Pakistan’s recent departure from the grey-list and its obligations going forward.
2.1. **International Conventions**

The current international AML/CFT framework is a product of treaty law, namely, instruments that are binding under international law signed by two or more states. Treaties signify that the parties intend to create rights and obligations that are enforceable under international law upon each other, and endeavor to enact legislation in their domestic jurisdictions to honour their treaty obligations. Therefore, it is important to understand how treaty law governs AML/CFT, and how the FATF further reinforces key tenets of international law.⁹


The United Nations (UN), through its Drug Control Program, initiated an international agreement to combat drug trafficking and counter money laundering. Although the convention does not explicitly discuss the term “money laundering,” it defines the concept and calls upon countries to criminalize the activity. However, the convention does not address preventive aspects of money laundering, and the only predicate offenses for money laundering under the convention are crimes that are related to drug trafficking. This convention, nevertheless, serves as a precursor for several of the FATF recommendations on preventing, detecting, and prosecuting money laundering.

Pakistan ratified this treaty in October 1995.¹⁰


The Convention contains a wide range of provisions designed to combat international organized crime. Specifically relating to money laundering, it obliges each ratifying country to:

- Criminalize money laundering and include at least all serious crimes (not just drug trafficking) as predicate offenses to money laundering;

- Establish regulatory and supervisory regimes to deter and detect all forms of money laundering;

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¹⁰ The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), United Nations Treaty Collection, UNTC.
• Cooperate and exchange information, both domestically and internationally, and consider the establishment of a financial intelligence unit; and
• Consider the implementation of feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across its borders.

Pakistan ratified this treaty in January 2010.

2.1.3. The International Convention for the Suppression of the Financing of Terrorism (ICSFT)

The ICSFT was adopted by the United Nations General Assembly (UNGA) on 9th December 1999 and entered into force on 10th April 2002. There are currently 188 States Parties to this convention, and its primary aim is to require that ratifying countries criminalize terrorism, terrorist entities, and terrorist acts.

It applies both to direct involvement, as well as complicity, in the provision or collection of funds, whether attempted or otherwise, with the intent or knowledge that any part of the funds may be used to carry out the offenses described in the convention, or any act intended to cause death or injury to any person not actively involved in an armed conflict, with a view of intimidating a population or compelling a government or an international organization to act (or not act, as the case may be) in a certain way.

Such actions would be construed as an offense under the Convention, whether or not the funds gathered are actually used in the carrying out of the proscribed acts. The convention requires each country to take measures, in accordance with their own domestic legal systems, to detect, freeze, and seize funds used or allocated for the purposes of committing the described offenses.

This instrument requires Member States to adopt the below mentioned measures:

• Parties ought to take steps to prevent and counter the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals or those who also engage in illicit activities such as drug trafficking or gun running;
• Commits States to hold those who finance terrorism criminally, civilly or administratively liable for such acts; and
• Requires States to provide for the identification, freezing and seizure of funds allocated for terrorist activities, as well as for the sharing of the
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forfeited funds with other States on a case-by-case basis. Bank secrecy is no longer adequate justification for refusing to cooperate.

Pakistan ratified this Convention in July 2009.

2.2. United Nations Security Council Resolutions

2.2.1. UNSC Resolution 1267

The United Security Council Resolution 1267 was adopted unanimously on the 15th of October 1999, and designated Osama Bin Laden and his associates as terrorists and established a sanctions regime to cover individuals and entities associated with Al Qaeda, Osama Bin Laden, and the Taliban. This regime has since then been reaffirmed and modified by a dozen further UN Security Council Resolutions. Since the US invasion of Afghanistan in 2001, the sanctions have been applied to individuals and organizations in all parts of the world.

Resolution 1267 also established a sanctions committee, known as the “Al Qaeda and Taliban Sanctions Committee”, to fully implement the provisions of Resolution 1267 and document individuals and entities whose assets are to be frozen in light of terrorism financing threats. It is further assisted by a Monitoring Team, based on eight members who have expertise in counter-terrorism financing and arm embargoes, to further improve implementation of sanctions mechanisms as required.

The 1267 Sanctions Committee also identifies, designates and compiles the Al Qaeda Sanctions List of people and entities that have been associated with Al Qaeda or the Taliban, and evaluates laws that ought to be passed within each member nation in order to implement the sanctions. The Committee receives reports from each state as to their progress and is able to vary the conditions imposed on any individual as it sees fit.

2.2.1.1. Domestic Sanctions Implementation

Pakistan is a dualist nation and therefore requires implementation of domestic legislation in order to enforce UNSCRs. As a result, the United Nations (Security Council) Act, 1948 was promulgated. Under this legislation, the Ministry of

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Foreign Affairs (MOFA) issues Statutory Regulatory Orders (SROs) for the implementation of these resolutions.\textsuperscript{13}

The information concerning the 1267 Committee List is received by the National Focal Point established in the MoFA headed by the Additional Foreign Secretary in charge of the United Nations Affairs. Upon revision/updates in the UN Consolidated List, the MoFA under Section 2 of the United Nations (Security Council) Act (1948) issues an SRO on the same day to give legal effect to the update in Pakistan. The SRO is then shared with all concerned focal persons at the Federal and Provincial level.\textsuperscript{14} MoFA uses the MoFA online Sanctions Portal for accurate and quick dissemination of important information to the relevant Federal and Provincial stake holders. MoFA also maintains the updated consolidated list of designated individuals and entities on its official website at the following link: (http://www.MOFA.gov.pk/contentsro.php).

For supporting the implementation framework further, the Federal Government issued the United Nations Security Council (Freezing and Seizing) Order, 2019. The Order has been issued pursuant to Section 2 of the United Nations (Security Council) Act, 1948, and sets out the procedure for freezing of assets under the UNSCR regime.\textsuperscript{15}

A National Committee for overseeing the implementation of sanctions against designated individuals and entities was also established. Guidelines were issued by MOFA to assist stakeholders in various ministries, departments, and agencies at the Federal and Provincial level in understanding the UNSC 1267 Sanctions regime, the domestic legislation implementing it, and the obligations of stakeholders under it.

**Listing of Proscribed Organizations**

The competent authority to enlist an organization/person as a proscribed organization and individual is the MOI. Hence, the MOI enlists the entity on the 1\textsuperscript{st} Schedule of the ATA. Upon proscription of entities under ATA 1997, MOI issues an SRO on the same day to give legal effect to the proscription decision. The SRO is then immediately shared with all concerned focal persons at the Federal and Provincial level.\textsuperscript{16} The updated list of proscribed entities and

\begin{thebibliography}{9}
\bibitem{14} Ibid.
\bibitem{15} Ibid.
\bibitem{16} Ibid.
\end{thebibliography}
individuals is maintained on NACTA website at the following link: (http://www.nacta.gov.pk).

**Listing of Proscribed Individuals**

An individual may be proscribed under the Fourth Schedule of the ATA 1997 on an ex-parte basis if there are reasonable grounds to believe that such person is ‘involved with terrorism or is an activist or office bearer of an organization kept under observation under Section 11D or proscribed under Section 11B’.\(^{17}\)

The ‘reasonable grounds’ may be formed either on the basis of information received from a credible domestic or foreign intelligence source and thus include information received by the MOFA about the 1267 Committee List.

As indicated above, the competent authority to list organizations and individuals is the MOI; however, the MOI\(^{18}\) has delegated the power and functions as specified under Section 11EE read with Schedule 4 of the ATA 1997 (placement of individuals on the proscribed list) to the respective Provincial Home Secretaries and the Chief Commissioner Islamabad Capital Territory.\(^{19}\)

**Process of designation of entities/individuals under the 1267 Regime**

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\(^{17}\) Anti Terrorism Act 1997, Section 11 EE.

\(^{18}\) vide SRO no. (1)/2014, dated 29th October 2014

\(^{19}\) The lists of proscribed persons are updated by the respective Home Departments and can be accessed on NACTA’s website at https://nacta.gov.pk.
Penalties for Sanctions Violations

Section 11000 of ATA 1997 provides penalties for natural, legal persons & public servants for violating UNSC Act 1948 provisions. Under the aforesaid section, any refusal or non-compliance of the order u/s 2 of the UNSC Act, 1948 is a punishable offence. Person found involved or guilty of the offence can be awarded an imprisonment sentence of 10 years, or a fine of 25 million rupees, or both. In case of a legal person or body corporate, the fine would exceed up to 50 million rupees in addition to regular punishment for the director, officer or employee found guilty of the offence. In case any public servant is found negligent in compliance, he/she shall be proceeded under respective service rules for administrative action.

2.2.2. UNSC Resolution 1373

On 11th September 2001, the Security Council unanimously adopted a wide-ranging, comprehensive resolution that outlines strategies to combat international terrorism. In Resolution 1373 (2001) the Security Council also established another committee, known as the United Nations Security Council Counter-Terrorism Committee, which aims to “prevent terrorist acts both within [State] borders and across regions.”

Under Resolution 1373, the Council directed all States to prevent and suppress the financing of terrorism, as well as criminalize the willful provision or collection of funds for such acts. The funds, financial assets and economic resources of those who commit or attempt to commit terrorist acts or facilitate the commission of terrorist acts or are acting on behalf of a proscribed organization or person were required to be frozen without delay.

Under this Resolution, States ought to prohibit their nationals or persons or entities in their territories from transferring funds, financial assets, economic resources, financial or other related services available to persons who commit or attempt to commit, facilitate or participate in the commission of terrorist acts. States are also obliged to refrain from providing any form of support to entities or persons involved in terrorist acts. States also ought to adopt preventive measures against those who finance, plan, facilitate or commit terrorist acts from within its jurisdiction against other countries and its citizens.

The Council further directs the States to use effective methods to trace the exchange of information amongst terrorists and increase the monitoring of

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suspicious transactions including the use of forged documents used to facilitate raising and transferring of funds for terrorist acts. States are also mandated to ensure that before granting refugee status to asylum seekers, appropriate measures are undertaken to verify their identity to rule out their affiliation with any terrorist organization.

The Resolution also highlights the close connection between international terrorism and transnational organized crime, illicit drugs, money laundering and illegal movement of nuclear, chemical, biological and other deadly materials. In that regard, it emphasized the need to enhance the coordination of national, sub-regional, regional and international efforts to strengthen a global response to the threat to international security.

### 2.2.2.1. Domestic Sanctions Implementation

In order to ensure compliance with UNSCR 1373, there are a number of legal provisions in the ATA providing for proscription of organizations, freezing and seizure of assets, criminalizing different forms of terrorist financing, and other required measures.

- Sections 6(7), 11H, 11I, 11J, 11K, and 11N of the ATA 1997 criminalize the offence of terrorism financing, and all these offences have been included in the list of predicate offences in the AMLA 2010.
- Sections 11B, 11D, 11E, 11EE, 11EEEE, 11O, 11OO, 11P and 11U concern procedures for implementation of UNSCR 1373 by empowering Pakistan’s implementation agencies to freeze and confiscate terrorist assets and introduce provisional measures required to be implemented under UNSCR 1373.

The procedure to comply with UNSCR 1373, from the stage of proscription to freezing and seizure of assets, is as follows:

#### Listing of the Organization/Entity

The competent authority, MOI, may include an organization in the First Schedule of ATA 1997 in light of Section 11B of the ATA. The updated list of proscribed organizations can be accessed on the National Counter-Terrorism Authority (NACTA) web portal. For proscription of persons, MOI has

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21 Guidelines on Actions to be taken by Competent Authorities for Implementation of United Nations Security Council Resolution No. 1373, National Counter Terrorism Authority

delegated the power and functions as specified in Section 11E of the ATA 1997 to the respective Provincial Home Departments, which can also be accessed at the NACTA web portal.

**Freezing of Bank and Financial Accounts**

In the case of proscribed organizations, MOI issues the notification to the State Bank of Pakistan (SBP) and the Securities and Exchange Commission of Pakistan (SECP) to freeze the bank accounts or other financial accounts of the entity. In the case of individuals proscribed by the Home Departments or Chief Commissioner (ICT), the notification gets sent to the SBP and SECP for freezing of the individuals’ accounts. In parallel, such notifications are also disseminated online to all respective institutions/agencies for implementation.

The SBP, in its Guidelines on Compliance of Government of Pakistan’s Notifications issued under UNSC Resolutions, stipulates that it circulates the notifications of proscribed entities/individuals to its regulated entities for taking necessary action. These SROs/Notifications, in addition to other requirements, require banks/DFIs/MFBs to, “freeze without delay the bank accounts, funds and other financial assets or economic resources, including funds derived from property owned or controlled, directly or indirectly by a listed/proscribed individual/entity.” SBP also advises its regulated entities to report details of such frozen assets taken in compliance of the relevant SRO/notification to SBP within the stipulated time.

**Freezing of Assets**

UNSCR 1373 requires countries to freeze without delay the funds or assets of proscribed entities and individuals. Section 11O of the ATA 1997 states that money or other property owned or controlled wholly or partly, directly or indirectly, shall be frozen or seized. No person shall use, transfer, convert, dispose of or remove such money or other property without the permission of the court and the law enforcement authorities. Within 48 hours of any freezing or seizure of assets, the concerned person shall submit a report containing details of the property and the person effected by this to the Federal Government.

2.2.3. **UNSC Resolution 2462**

The resolution urges that all countries implement FATF Recommendations, including adopting standards to assess terrorism-financing risks that they face.
The Resolution also requires that countries ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and to additionally ensure that funding support is criminalized, even in the absence of a specific link to a terrorist act.

It further notes that terrorist groups raise funding through a variety of means, inter alia, legitimate commercial enterprises, exploitation of natural resources, non-profit organizations, donations, crowdfunding, and proceeds of criminal activities, and that innovations in financial technologies, in particular new and nascent industries. New industries present avenues for significant economic growth, while also presenting possible openings for terrorism funding, and so states must be vigilant and proactive in regulating such ventures.

2.3. Financial Action Task Force

The FATF is an inter-governmental body established in 1989; its objectives are to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other threats to the integrity of the international financial system. FATF’s forty Recommendations on Money Laundering and its nine Special Recommendations on Terrorist Financing constitute the international standards on AML/CFT. The legal framework for a country’s AML/CFT regime should be largely consistent with the FATF standards.

The FATF recognizes that each State has a unique legal character, and so the solutions must not necessarily be uniform, but instead must be adopted according to the individual legal systems of the State. Accordingly, FATF’s international standards are established as principles, so that each State may adopt laws consistent with its own legal norms, cultural characteristics, and economic circumstances. Hence, in light of the broader legal framework, the countries are mandated to implement the following measures:

- Identify terrorism financing and money laundering related risks, and develop policies and domestic coordination mechanisms accordingly;
- Pursue investigation against money laundering, terrorist financing and the financing of proliferation;
- Apply preventive measures within the financial and other designated sectors;
- Establish roles and responsibilities for the competent authorities (e.g. investigative, law enforcement and supervisory authorities);
• Apply preventive measures within the financial sector and other designated sectors;
• Increase the dissemination of information related to terrorist organizations amongst the legal institutions; and
• Facilitate international cooperation.

2.3.1. FATF Methodology

The FATF methodology assesses jurisdictions in terms of technical competence as well as effectiveness of AML/CFT framework in producing desired results. In its ‘Methodology for Assessing the Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems,’ the FATF assesses the following:

2.3.1.1. Technical Compliance

These relate to the relevant legal and institutional frameworks as well as the powers and procedures of the competent authorities. This is rated in the following way:

<table>
<thead>
<tr>
<th>Compliant</th>
<th>No shortcomings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Largely Compliant</td>
<td>Only minor shortcomings</td>
</tr>
<tr>
<td>Partially Compliant</td>
<td>Moderate shortcomings</td>
</tr>
<tr>
<td>Non-Compliant</td>
<td>Major shortcomings</td>
</tr>
<tr>
<td>Not Applicable</td>
<td>A requirement does not apply due to the structural, legal or institutional features of a country.</td>
</tr>
</tbody>
</table>

---

2.3.1.2. Effectiveness Assessment

It aims to ascertain the extent to which a country has established a robust AML/CFT system and seeks to establish as to what result has been obtained as a result of the technical compliance.

<table>
<thead>
<tr>
<th>High level of effectiveness</th>
<th>The Immediate Outcome is achieved to a very large extent. Minor improvements needed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantial level of effectiveness</td>
<td>The Immediate Outcome is achieved to a large extent. Moderate improvements needed.</td>
</tr>
<tr>
<td>Moderate level of effectiveness</td>
<td>The Immediate Outcome is achieved to some extent. Major improvements needed.</td>
</tr>
<tr>
<td>Low level of effectiveness</td>
<td>The Immediate Outcome is not achieved or achieved to a negligible extent. Fundamental improvements needed.</td>
</tr>
</tbody>
</table>

2.3.2. Asia Pacific Group

The Asia Pacific Group (APG) is part of a global network of similar bodies, referred to as Financial Action Task Force-Style Regional Bodies (FSRBs) and is the largest in terms of membership numbers and geographical size. In order to fulfill its obligation to combat money laundering and terrorism financing, Pakistan joined the APG in May 2000.

The APG summarizes its role and purpose in primarily five functions that have an impact on national AML/CFT frameworks as well as global policy. These include conducting mutual evaluations, providing technical assistance and training, typologies research, global policy development and private sector engagement. In Pakistan’s case, the first three purposes are particularly useful in enhancing its AML/CFT frameworks.
2.4. **Overview of Pakistan’s Compliance**

The main reasons allocated for placing Pakistan on the grey list was that it has “strategic deficiencies” in its efforts towards mitigating the issues of money laundering and terror-financing. The decision was taken based on a monitoring report of the ICRG.\(^2^4\) The ICRG stated four areas of concern:

- Deficiencies in the monitoring of money laundering (AML) and counter-terrorism financing (CFT) regimes,
- Cross-border illegal movement of currencies by terrorist groups,
- Lacking the implementation of UN Security Council Resolution (UNSCR) 1267 and 1373 for mitigating terrorism, and
- Ineffective investigation coupled with prosecution of terror-financing.\(^2^5\)

2.4.1. **Recent Developments**

The Financial Action Task Force has decided by consensus that Pakistan has completed all substantial, technical and procedural requirements of both the 2018 and 2021 Action Plans. As a result, Pakistan has been taken out of the list of jurisdictions under increased monitoring, with immediate effect. This decision was taken during the FATF Plenary meeting held in Paris, France from 20-21 October 2022.

Pakistan has made enormous progress in the Anti Money Laundering and Countering Financing of Terrorism (AML/CFT) domain over the course of fulfilling requirements of both Action Plans. Despite many challenges, including the Covid-19 pandemic, Pakistan continued its reform trajectory and sustained the high-level political commitment of aligning its domestic AML/CFT regime with international best practices.\(^2^6\) Resultantly, Pakistan has developed a strong legal and institutional framework to investigate and prosecute ML and TF activities. On the legal front, Pakistan has introduced legislative amendments to strengthen ML/TF laws. For instance, a number of amendments in various provisions of ATA 1997 have been introduced specifically relating to prohibition

\(^{24}\) Asad Ullah Khan, “FATF Grey List: Time for Pakistan to Take Bold Steps”, ISSI, July 11, 2018
\(^{26}\) “Pakistan Exits FATF Grey List” (Ministry of Foreign Affairs) <https://mofa.gov.pk/pakistan-exits-fatfs-grey-list/#:~:text=As%20a%20result%2C%20Pakistan%20has,National%20FATF%20Coordination%20Committee%2C%20Ms.> accessed February 8, 2023
of funding for proscribed organizations and proscribed persons, punishments of natural and legal persons on TF offences, confiscation of properties on conviction of TF charges, violation of assets freezing obligations, expanded composition of JITs involving co-option of State Bank of Pakistan (SBP), Financial Monitoring Unit (FMU) & Federal Investigation Agency (FIA), provision of basic and extraordinary expenses to proscribed persons, etc. Similarly, on the operational side, efforts are being made to continuously strengthen the capacity of all LEAs investigating TF, improve the inter-agency coordination mechanisms, and to ensure sustainability of these actions through continuous engagement.

**Continuity of Efforts**

As evidenced from Pakistan’s exit from the grey list, Pakistan has shown a commitment to fulfilling the technical requirements of the FATF Recommendations, however, the FATF standards also place criminal justice sector response at the very core of any AML/CFT framework, and so Pakistan needs to demonstrate that the AML/CFT frameworks that it has created continue to produce the desired results and are effective, including in the following three metrics:

- Improved investigations;
- Improved prosecutions;
- And most importantly, higher overall conviction rates in money laundering and terrorism financing cases.
SECTION 03

Domestic Legal Framework on AML/CFT

LEARNING OUTCOMES

- Learn the elements of money laundering under the AMLA 2010 and the ATA 1997.
- Learn the elements of terrorism financing under the ATA 1997.
- Understand the role of law enforcement agencies during investigation.
- Understand and learn about special provisions relating to investigating officers under the AMLA 2010 and the ATA 1997.
- Learn about special investigative techniques and the legal frameworks surrounding them.
- Understand the admissibility and relevancy of confessions, witness statements, financial records, expert analysis, and other types of evidence.
3.1. **Money Laundering under the AMLA 2010**

Under Section 3 of the Anti-Money Laundering Act (AMLA), 2010 a person commits an offence of money laundering if:

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

3.2. **Money Laundering under the ATA 1997**

The ATA briefly describes the offence of money laundering under section 11-K:

1. A person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property:
   
i. By concealment,  
ii. By removal from the jurisdiction.  
iii. By transfer of nominees, or  
iv. In any other way.

2. It is a defence for a person charged with an offence under sub-section (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

It is important to note that while money laundering and terrorism financing are separate offences, ML can sometimes lead to TF. For example, proceeds from a criminal activity can be disguised through formal channels, and could be transferred to terrorist groups or proscribed organizations. In this scenario, proceeds of crime are laundered to promote terrorist activities. However, it is important to note that terrorism financing can also occur without any money
laundering. For example, a bystander donates to a charity box outside a mosque, and the funds are then used for terrorism purposes.

3.3. **Terrorism Financing under the ATA 1997**

The Anti-Terrorism Act (ATA), 1997 incorporates a set of unique offences relating to terrorism financing and money laundering.

- **Section 11 F(5)** relates to soliciting, collecting or raising money or other property for a proscribed organization, or arranging to do the same.
- **Section 11 (H) (1)** relates to the act of inviting another to provide money or other property.
- **Section 11 (H) (2)** criminalizes the offence of receiving money or other property.
- **Section 11 (H) (3)** criminalizes the offence of providing money or other property.
- **Section 11 (I)** criminalizes the use/intention to use/reasonable cause to suspect the use of money or property for a terrorism offence.
- **Section 11 (J) (1)** criminalizes entering or being concerned in an arrangement as a result of which money/property is made available or is to make available to another whilst having reasonable cause to suspect that such money/property may be used for terrorism.
- **Section 11 (J) (2)** criminalizes the provision/availability of money (as a Pakistani national- local or abroad) for the benefit of a proscribed organization or person, knowingly or wilfully, directly or indirectly, wholly or jointly.
- **Section 11 (K)** criminalizes entering or being concerned in an arrangement facilitating retention/control by/on behalf of another person, of terrorist property by concealment, removal from jurisdiction, transfer to nominees or in any other way. (This Section allows for a defence if there was no reasonable cause to suspect).

3.4. **Elements of the Offence**

In order to determine charges for ML/TF offences and to understand what each offence entails, it is beneficial to break it down into the Actus Reus (the act requirement) and Mens Rea (the intent requirement).
3.4.1. Section 3, AMLA 2010

Section 3, AMLA 2010

A person shall be guilty of money laundering, if the person:
   a) Acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime;
   b) Conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;
   c) Holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or
   d) Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates or counsels the commission of the acts specified in clause (a), (b) and (c).

The following table describes the components of this offence:

<table>
<thead>
<tr>
<th>Ingredients</th>
<th>Act</th>
<th>Intent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3 (a): Acquisition, conversion, possession, use or transfer of property which is proceeds of crime.</td>
<td>Acquires, converts, possesses, uses or transfers property.</td>
<td>With knowledge or having reason to believe that the property is proceeds of crime.</td>
</tr>
<tr>
<td>Section 3 (b): Concealment of or disguising the true origin or ownership of property which is proceeds of crime.</td>
<td>Conceals or disguises the true nature, origin, location, disposition, movement or ownership of property.</td>
<td>With knowledge or having reason to believe that the property is proceeds of crime.</td>
</tr>
<tr>
<td>Section 3 (c): Possession of a property on behalf of any other person, which is proceeds of crime.</td>
<td>Holds or possesses on behalf of any other person any property.</td>
<td>With knowledge or having reason to believe that property is proceeds of crime.</td>
</tr>
<tr>
<td>Section 3 (d): Aiding and abetting the offence of money laundering.</td>
<td>Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates or counsels the commission of acts specified in clause (a), (b) &amp; (c) of Section 3.</td>
<td>With knowledge that an offence under clause (a), (b) or (c) of Section 3 has been committed.</td>
</tr>
</tbody>
</table>

3.4.2. Section 11-H, ATA 1997

Section 11-H, ATA 1997

1) A person commits an offence if he:
   a) Invites another to provide money or other property; and
   b) Intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism [or by a terrorist or organization concerned in terrorism.]

2) A person commits an offence if:
   a) He receives money or other property; and
   b) Intends that it should be used, or has reasonable cause to suspect that it may be used for the purposes of terrorism [or by a terrorist or organization concerned in terrorism.]

3) A person commits an offence if he:
   a) Provides money or other property; and
   b) Knows or has reasonable cause to suspect that it will or may be used for the purpose of terrorism [or by a terrorist or organization concerned in terrorism.]

4) In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.
The following table describes the components of this offence:

<table>
<thead>
<tr>
<th>Ingredients</th>
<th>Act</th>
<th>Intent</th>
</tr>
</thead>
<tbody>
<tr>
<td>11-H (1): Invitation to provide money or property for terrorism</td>
<td>Invitation (through any mode) by a person to provide money or other property. Words used for invitation must contain asking/requesting for finances, description of purpose and the name of the organization.</td>
<td>With an intention that the money or other property should be used or has a reasonable cause to suspect that it may be used for the purposes of terrorism or by a terrorist or organization concerned in terrorism.</td>
</tr>
<tr>
<td>11-H(2): Receipt of money or other property for terrorism</td>
<td>Receives money or other property (possesses property received as a result of invitation, issues acknowledgement/receipt)</td>
<td>With an intention that the money or other property should be used or has a reasonable cause to suspect that it may be used for the purposes of terrorism or by a terrorist or organization concerned in terrorism.</td>
</tr>
<tr>
<td>11-H(3): Provision of money or other property for terrorism</td>
<td>Provides money or other property.</td>
<td>With knowledge or reasonable suspicion that it will or may be used for the purpose of terrorism or by a terrorist or organization concerned in terrorism.</td>
</tr>
</tbody>
</table>
3.4.3. Section 11-I, ATA 1997

A person commits an offence if:
1) He uses money or other property for the purposes of terrorism; or
2) He:
   a) Possesses money or other property; and
   b) Intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

The following table describes the components of this offence:

<table>
<thead>
<tr>
<th>Ingredients</th>
<th>Act</th>
<th>Intent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>11-I (1): Use of money or other property for terrorism</strong></td>
<td>Use of money or other property. The uses of money can be for terrorism/terrorist operations, propagation of ideology, recruitment, training, procurements, managing organizational infrastructure, social services to members, etc.</td>
<td>For the purposes of terrorism.</td>
</tr>
<tr>
<td><strong>11-I (2): Possession of money or other property for terrorism</strong></td>
<td>Possesses money or other property. This includes management of funds in the form of bank accounts, real estate, cash in boxes, gems and minerals, jewelry, front businesses, front NPOs, etc.</td>
<td>With an intention that the money or other property should be used, or has reasonable cause to suspect that it may be used for the purposes of terrorism.</td>
</tr>
</tbody>
</table>
3.4.4. Section 11-J, ATA 1997

Section 11-J, ATA 1997

1) A person commits an offence if he:
   a) Enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another; and
   b) Has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

2) Any person in Pakistan or a Pakistani national outside Pakistan shall commit an offence under this Act, if he knowingly or willfully makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person.

3) A person commits an offence if he knowingly or willfully pays for or provides money or other property or facilitate in any manner the travel of a person anywhere for the purposes of perpetrating, participating in, assisting or preparing for a terrorist act or for the purposes of providing or receiving training for terrorist related activities.

4) The provisions of sub-section (2) shall also apply to:
   a) Organizations owned or controlled, directly or indirectly, by proscribed organizations or proscribed persons; and
   b) Persons or organizations acting on behalf of, or at the direction of, proscribed organizations or proscribed persons.

The following table describes the components of this offence:

<table>
<thead>
<tr>
<th>Ingredients</th>
<th>Act</th>
<th>Intent</th>
</tr>
</thead>
<tbody>
<tr>
<td>11-J (1): Entering into an arrangement for provision of money or other property for terrorism</td>
<td>Entering or becoming concerned in an arrangement as a result of which money or other property is made available or is to be made available to another. This includes front businesses, NPOs, illegal MVTS, cash</td>
<td>With a reasonable cause to suspect that money or other property will or may be used for terrorism.</td>
</tr>
<tr>
<td>Training Module: Anti-Money Laundering and Countering the Financing of Terrorism</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 11-J (2): Assistance/provision of money or other property or services to proscribed persons or organizations, organizations owned by proscribed persons/organizations, and persons/organizations acting on behalf of/at the direction of proscribed persons/organizations | Makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person. This includes associates, front-man, front NPOs | Willfully and with knowledge |

| 11-J (3): Provision of money or other property or facilitation of travel for the purposes of terrorism. | Pays for or provides money or other property or facilitates in any manner the travel of a person anywhere for the purposes of perpetrating, participating in, assisting or preparing for a terrorist act or for the purpose of providing or receiving training for terrorist related activities. | Willfully and with knowledge |
### 3.4.5. Section 11-K, ATA 1997

#### Section 11-K, ATA 1997

1) A person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property:
   1) By concealment;
   2) By removal from the jurisdiction;
   3) By transfer to nominees; or
   4) In any other way.

2) It is a defense for a person charged with an offence under sub-section (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

The following table describes the components of this offence:

<table>
<thead>
<tr>
<th>Ingredients</th>
<th>Act</th>
<th>Intent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>11-K: Money Laundering</strong></td>
<td>Entering into or becoming concerned in an arrangement which facilitates the retention or control of terrorist property by concealment, removal from jurisdiction, transfer to nominees or in any other manner. This includes front-men, front-businesses, front NPOs, DNFBPs, illegal MVTS, cash smuggling, etc.</td>
<td>If the accused proves that he did not know, or had no reasonable cause to suspect that the arrangement related to terrorist property, that is a valid defense. The onus to prove this would lie with the accused.</td>
</tr>
</tbody>
</table>
3.4.6. Section 11-F(5), ATA 1997

Section 11-F(5), ATA 1997

5) A person commits an offence if he solicits, collects or raises [money or other property] for a proscribed organization.

The following table describes the components of this offence:

<table>
<thead>
<tr>
<th>Ingredients</th>
<th>Act</th>
<th>Intent</th>
</tr>
</thead>
<tbody>
<tr>
<td>11-F (5): Soliciting, collecting or raising money or other property for a proscribed organization</td>
<td>Conducting the act of either soliciting or collecting or raising either money or property for a proscribed organization.</td>
<td>An accused can be held guilty of Section 11-F(5) without having any intent for the offence. It is a strict liability offence, meaning that the prosecution is not required to establish intent on part of the accused. To secure a conviction, it will be enough for the prosecution to show that the accused committed the act, regardless of whether he did so intentionally or unintentionally.</td>
</tr>
</tbody>
</table>

3.4.7. Section 11-OOO, ATA 1997

Section 11-OOO, ATA 1997

1) A person is guilty of an offence if he, in any way whatsoever, refuses or fails to comply with the orders of the Federal Government under Section 2 of the United Nations (Security Council) Act, 1948 (XIV of 1948)

2) A person guilty of an offence under sub-section (1), shall be liable on conviction imprisonment for a term not to exceed ten years or with fine not exceeding twenty-five million rupees or both.
3) A person guilty of an offence under sub-section (1), shall be liable on conviction imprisonment for a term not to exceed ten years or with fine not exceeding twenty-five million rupees or both.

4) If a legal person or body corporate, commits an offence under sub-section (1), such person or body corporate shall be liable on conviction to fine not exceeding fifty million rupees and every director, officer or employee of such legal person or body corporate found guilty of the violation shall be liable on conviction to imprisonment for a term not exceeding ten years or with fine not exceeding twenty-five million rupees or with both.

5) Notwithstanding anything contained in sub-section (2) of section 11-OOO, if any public servant is found negligent in complying with the provisions of sub-section (1), such public servant shall be proceeded against under respective service rules for administrative action.

The following table describes the components of this offence:

<table>
<thead>
<tr>
<th>Ingredients</th>
<th>Act</th>
<th>Intent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>11-OOO: Refusing or failing to comply with the orders of the Federal Government under Section 2 of the United Nations (Security Council) Act, 1948 (XIV of 1948)</strong></td>
<td>A person either refusing or failing to comply with the orders of the Federal Government under Section 2 of the UNSC Act. These primarily relate to the UNSC Resolutions (1267 and 1373) on counter-terrorism measures to be taken by the member states in order to check terrorism financing by making and enforcing such provision in the domestic laws.</td>
<td>An accused person, legal person, or body corporate can be held guilty of Section 11-OOO without having the requisite intent for the offence. To the extent of private persons (legal or otherwise), this provision is a strict liability offence, meaning that the prosecution is not required to establish intent on the part of the accused. To secure a conviction, it will be enough for the prosecution to show that the accused failed to comply with the orders of the Federal Government under Section 2 of the UNSC Act, regardless of whether such failure was intentional or unintentional.</td>
</tr>
</tbody>
</table>
3.5. Powers of Investigators in CFT Cases

3.5.1. Overview

Under the ATA 1997, the CTD may also proceed with the investigation (once an F.I.R is lodged) if they receive information from any source or they themselves find an individual or entity engaged in the acts mentioned under Sections 11 F and H-J. The CTD may then execute all the powers authorized to it under the ATA.

Another mechanism is the transfer of a case registered or an investigation already underway pursuant to any law. It is also relevant to note that there are cases where the accused has been released from police custody or is being held in judicial custody, in which case the police may request that they be handed over to them for further investigation in their custody. This mechanism would permit further investigation into the accused’s actions.
3.5.1.1. Lodging of an F.I.R.

The Code of Criminal Procedure, 1898 (Cr.P.C) lays down the procedure for the criminal justice system. It provides a mechanism for, *inter alia*, how to carry out an arrest, an investigation, and a trial. Prior to terrorist prosecution, the first step carried out by the police is the investigation which normally begins after the recording of an F.I.R. in the police station.

An F.I.R is a document, on the basis of which, the police machinery is activated and set in motion for investigation. The purpose of an F.I.R is to set criminal law in motion and to obtain first-hand spontaneous information of an occurrence, in order to exclude the possibility of fabrication, consultation, or deliberation on part of the complainant. The spontaneity of an F.I.R. guarantees truth, and provides a sound basis for carrying out an investigation in the right direction.

The procedure for recording an F.I.R is provided under Section 154 of Cr.P.C., which states that the officer in charge of the police station will produce in writing any information of a cognizable offence and read it out to the complainant and have him/her sign it.

3.5.2. Powers under the ATA 1997

3.5.2.1. Powers under Section 11 EE (Restricting Movement) and 11 EEEEEE (Preventing Transfer or Disposal of Terrorist Property)

If it appears to the investigating officer that there is insufficient evidence or that no reasonable grounds for suspicion against the accused exist, and if such a person has been proscribed on the Fourth Schedule List of the ATA, the officer may, if such person is in custody, as a preventive measure, release him on his executing a bond. The surety requires that the said individual does not engage in any act of terrorism or act in any manner that advances the objectives of the organization proscribed. However, if the individual fails to execute the bond, the District Police Officer may detain said individual and produce him within 24 hours before a magistrate. The magistrate shall then order his detention in prison until he executes a bond.

The police officer may also require the proscribed individual to seek prior permission from the police station of the concerned area before moving from his

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28 Umar Hayat Sajjad v. SHO Police Station Mochi Gate, Lahore, 2005 YLR 1313
29 Code of Criminal Procedure, 1898, Section 154
30 Code of Criminal Procedure, 1898, Section 169 read along with Section 11 EE (2) of the ATA.
permanent place of residence for any period of time. He will also be expected to update the police officer about his daily activities.

The police under Section 11 EE are also empowered to check, probe and monitor the assets, personal belongings or other economic sources of the proscribed person and his family to ascertain whether they are being utilized for any terrorism fund raising activity.

If, during the course of the investigation, the police officer or the JIT believes that the property under inquiry is likely to be sold off/transferred before its seizure, the police officer may direct the owner or individual to not remove, transfer, or dispose of the property in any way except on receipt of an order of the Court.  

3.5.2.2. Power of Seizure under 11 O (Seizure)

Under the 1267 and 1373 regime, read in light with the ATA regime, the police are authorized to conduct ongoing monitoring of the activities of proscribed organizations/individuals to see if they are engaged in fundraising activities. If they see the proscribed entities/individuals engaged in any fundraising activity, they may seize those items. The seized property may, in turn, be used as evidence against the proscribed organizations/individuals.

3.5.2.3. Powers of Arrest

Under the ATA, the police, armed forces and civil armed forces are empowered to arrest an individual without issuing a warrant of arrest. This power of arrest is similar to the provision contained in Section 54 Cr.P.C. whereby an officer may arrest a person without a warrant on nine grounds. It is important to note that under Section 54 CrPC, the wide powers of arrest have been limited by requiring the police to make an arrest on the basis of either “credible information” or “reasonable suspicion”. Similarly, under Section 5 (2)(ii) of the ATA, a reasonable suspicion that a person has committed, or is likely to commit, an act or offence of terrorism has to exist.

Section 60 of CrPC provides that a person arrested without warrant should be produced before a magistrate having requisite jurisdiction without unnecessary

31 The Investigating officer may also apply to the court for an order of attachment (11-P) of the terrorist property
32 Anti-Terrorism Act, 1997, Section 5 — Use of armed forces and civil armed forces to prevent terrorism (2) An officer of the police, armed forces and civil armed forces may-- (ii) arrest, without warrant, any person who has committed an action of terrorism or a scheduled offence, or against whom reasonable suspicion exists that he has committed, or is about to commit, any such act or offence. (iii) enter and search, without warrant any premises to make any arrest or to take possession of any property, re-arm, weapon or article used, or likely to be used, in the commission of any terrorist act or scheduled offence.
delay. Section 61 of the CrPC curtails the powers of a police officer to detain persons arrested for more than twenty-four hours in the absence of a special order from a magistrate under Section 167 of the CrPC.

“Reasonable suspicion” does not mean a vague surmise or inference but rather a bona fide belief on part of the police that an offence has been committed or was about to be committed. Such belief must be founded on some definite assertion of fact or allegations that may create the basis for suspicion of the involvement in the offence of the person to be arrested.\textsuperscript{33} Safeguards in relation to an arrest are laid down in Article 10 of the Constitution of Pakistan, 1973.\textsuperscript{34}

3.5.2.4. Searches under the ATA 1997

Sections 165 and 166 of CrPC and Sections 21-B and 19-A of ATA are the relevant provisions governing searches under the Anti-Terrorism Act 1997. An officer in charge of a police station or the police officer making an investigation must ensure that the place being searched is in the correct jurisdiction.

The officer must record, in writing, the grounds for his belief. Section 165 of CrPC empowers the police officer specified to make a search without warrant subject to certain safeguards. The prerequisites for a search as per this section are that:

- Search must be necessary for investigation;
- The offence must be one that the police officer is authorized to investigate, i.e. a cognizable offence.
- Reasonable grounds must exist for believing that the object required will be found in the place.
- There would be undue delay in getting the object(s) in any other way.
- Grounds of belief as to the necessity of search must be previously recorded by the police officer.

These conditions must be fulfilled and there should not be a misuse of the power, nor should there be any harassment. The perusal of the section leaves no doubt that it does not apply when search is for arrest of the accused. The search envisaged by this section is to be made for a specified thing.\textsuperscript{35}

\textsuperscript{33} Manthar Ali v. S.H.O, 2013 PCrLJ 553.
\textsuperscript{34} Under Article 10 (2), an individual who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest. The Constitution forbids the continued detention of an individual beyond twenty-four hours without the authority of a magistrate.
\textsuperscript{35} Muhammad Bilal v. Superintendent of Police, Dera Ghazi Khan, PLD 1999 Lah 297
Although the provisions of the Cr.P.C. are to apply to searches and arrests made under the ATA 1997, Section 19A of the ATA 1997 makes one particular exception: the inapplicability of Section 103 of the CrPC. In a nutshell, this provision requires that two or more respectable witnesses of the locality be accompanied by the Police and anything that is taken from the search be signed off by those witnesses. However, under section 19A, the police are under no obligation to take witnesses along for searches.

3.5.3. Special Investigative Techniques

3.5.3.1. What are Special Investigative Techniques?

Physical Surveillance

Surveillance is employed to obtain general background and intelligence on individuals and businesses. It aids in deciphering the complexities of the lifestyle, habits, and relationships of suspects. In cases where there is a visible activity, such as the bulk transfer of physical currency, or consistent meetings with an individual, surveillance can be useful in identifying both the modes of perpetrating offences and the individuals involved. This can potentially also include being led to places where financial (and other records) may be stored, thus leading to the discovery of assets.

Surveillance can yield valuable leads and evidence in a money laundering or terrorist financing investigation. It is recommended that the suspect in the investigation, as well as the suspect’s employees or associates, be placed under surveillance.

Surveillance operations should be conducted by trained operatives working in teams. Operatives should be skilled in surveillance techniques. Where possible, physical surveillance should be combined with electronic surveillance of the suspect, couriers, associates, and premises. Vehicles, luggage, and assets purchased with the proceeds of crime should be tracked electronically, if possible. Further, rubbish collections should be examined for disposal of any financial information.

The suspect’s residence and business location are equally important. If a bank or any other financial institution, or remittance agent is suspected of being used for

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36 Shahid Hussain v. The State, 2020 MLD 1248 Lah
38 Ibid.
money laundering or terrorist financing activity, surveillance of the institution can yield evidence of individuals or organizations using the institution to launder money.39

**Controlled Deliveries**

Controlled deliveries refer to the transportation of a delivery (contraband, currency, etc.) to suspected violators, while under either the direction or surveillance of LEA officers. The primary objective of a controlled delivery is to identify suspects, arrest them and have them convicted in order to disrupt and dismantle the organizational structure of a militant organization or, barring that, to expand the scope of an investigation through the identification of additional (and potentially higher level) offenders.

This technique carries with it significant risk, in that evidence can be lost during the controlled delivery. It is therefore necessary that such risks be mitigated with clear policy and procedural guidelines for those implementing it, and with proper oversight from superiors.

**Intercepting Communications**

Electronic surveillance techniques like electronic intercepts of phones and oral communication can be very useful in investigations. It can help identify co-conspirators, provide insight into operational activities of the terrorist organizations, provide real time information/evidence that can be acted upon using other investigative techniques and can lead to the discovery of assets, financial records, etc.

**Accessing Computer Systems**

Access to computer systems can be useful for monitoring the activities and communications of the suspect. Gaining access to messaging systems being used by terrorists can prove imperative in furthering an investigation.

**Undercover Operations**

Law Enforcement Officers, under the direction of a law enforcement agency, may take covert action to obtain evidence. The usage of this technique may allow access to crucial evidence that cannot be obtained by other means. Due to the

39 Ibid.
inherent risks in an undercover operation, it is recommended that such an action only be considered as a measure of last resort.

An undercover operation is the infiltration or joining of a criminal enterprise by an informant or law enforcement officer to secure information or evidence relating to criminal activity.

Undercover operations can aid a criminal investigation by:
- Determining the illegal activity from which money is generated;
- Identifying unknown violators (including money launderers or those who finance terrorist or terrorist organizations);
- Identifying co-conspirators and key witnesses; and/or
- Identifying and tracing the proceeds from crime or funds to be used in financing of terrorism.\(^\text{40}\)

An undercover operation may take one of two forms in a money laundering investigation:
- Law enforcement officers may launder money for a criminal or criminal organization, or
- A money laundering organization may be recruited to launder government money.

The goal of such undercover operations is to gather evidence against the persons handling the money (bankers, attorneys, accountants, or others) or to establish the movement of money (to and from banks, businesses, countries).\(^\text{41}\)

3.5.3.2. Investigation for Fair Trial Act, 2013

Prior to the adoption of the Investigation for Fair Trial Act 2013 (IFTA) there was an absence of a legal framework which could regulate the use of Special Investigative Techniques (SITs)—such as surveillance and interception—by Pakistan’s security agencies and law-enforcement agencies\(^\text{42}\) for certain offences.\(^\text{43}\)

This Act sought to fill this gap by introducing comprehensive legislation that could balance the need for such techniques against the fundamental right to privacy by deploying robust safeguards in order to prevent potential abuses of

\(^{41}\) Ibid.
\(^{42}\) Section 3(a) of the Investigation for Fair Trial Act, 2013
\(^{43}\) Schedule I of the Investigation for Fair Trial Act, 2013
such powers by the authorities through executive and judicial oversight. However, since the Federal Government has not notified any designated agencies under the IFTA, as they are mandated to do through Section 3(e) of IFTA, there is currently no method through which an IO can obtain a warrant under due to procedural blockages.

### 3.5.3.3. Section 19C of the ATA 1997 and Section 9A of the AMLA 2010

Both these sections of law allow for the usage of special investigative techniques such as undercover operations, interception of communications, accessing of computer systems and controlled deliveries for investigation of the offences of terrorism financing and money laundering. However, in the absence of formulation of any rules for either of these sections, there does not currently exist any mechanism that regulates the procedure and execution of orders issued under these laws.

### 3.5.4. Collection of Evidence

#### 3.5.4.1. Confessional Statements

If recorded in accordance with the law, a confession becomes admissible in evidence and a conviction may be based on it. A confession before the police is generally not admissible as evidence, however, under Section 21H of the ATA 1997, conditional admissibility is provided to confessions in front of the police if the evidence produced raises the presumption that there is a reasonably probability that the accused has committed the offence.

The law limits the admissibility of such a confession before the police, stating that there must be additional evidence, including circumstantial evidence, which must adequately connect the accused with the offence.

#### 3.5.4.2. Prosecution Witness Statements

Witness statements before the courts, if recorded in accordance with the legal formalities, and if it withstands cross-examination, may form the exclusive basis

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44 Under both Section 19C of the ATA and 9A of the AMLA.
46 Abdul Manan v. State, 2017 PCrLJ QHC.
47 This conditional admissibility of confessions made before the police under the ATA 1997 will only apply to offences under the ATA 1997 itself, including Sections 11F(5), 11H to 11K of the ATA 1997.
48 Nadeem Hussain v. the State, 2019 SCMR 1290
49 See Article 3, Chapter IV, Chapter X of QSO and Section 161, 164, Chapter XXV of the Cr.P.C.
for a conviction. Witness statements may be recorded under Section 161 of the Cr.P.C. by police officers, or by the magistrate under Section 164 of the Cr.P.C. With respect to the statements recorded by police officers under Section 161 Cr.P.C, the police officer has to make sure that they ask relevant questions from the witness which can assist in the case later on. The reason for questioning the witness, the questions that will be asked etc. are all to be mentioned in the case diary in accordance with Section 172 Cr.P.C.

Furthermore, when summoning witnesses under Section 160 Cr.P.C (Power of Police Officer to require attendance of witnesses), it should be mentioned in the case diary in accordance with Section 172 Cr.P.C, as to why the witness is being summoned and what the investigation is about. The address, date and time of the recording of the statement under Section 160 should be mentioned and the statement should be reduced into writing under Section 161 Cr.P.C. There should be no signature of the witness on the statement otherwise it will be considered illegal and cannot be exhibited in the court since it creates doubt in the investigation. The IO should sign the statement of the witness and add the date.

In recording statements under Section 161 of the Cr.P.C., the Investigating Officer should take great care to ensure prompt recording of witness statements. A delay in the recording of a witness statement can be damaging to the prosecution of the case. It is important that witness statements are recorded without delay as soon as possible after the registration of the F.I.R. or at the time of recovery or evidence collection, as the case may be. In cases where delay does take place, this should be accompanied by a reasonable explanation duly noted in the case diary. Lacking a reasonable explanation for the delay, the court may view the witness and his/her statement with suspicion which may undermine the entire case.50

It should be noted that any such statement, or any record stemming from Section 161 of the Cr.P.C. cannot be used for any purpose at any inquiry or trial against the accused for any offence under investigation as stated in Section 162 of the Cr.P.C. It can only be used by the accused in order to confront the witness. For this reason, investigating officers should also consider the possibility of recording a statement under Section 164 of the Cr.P.C., which can become evidence during trial even when witnesses resile or retract their statements.

50 Noor Muhammad v. The State, 2020 SCMR 1049; Muhammad Asif v. The State, 2017 SCMR 486
3.5.5. Documentary Evidence

All documents that are critical for the investigation should be produced before the court. Vital documentary evidence can include bank account statements, land agreements, purchase agreements, car documents etc. The documents will need to be exhibited in the court by its author or custodian. If it is exhibited in court by any other person it has the potential to raise questions on the investigation. Either the original document should be produced before the court or the document’s certified copy.

3.5.5.1. Financial Records

All financial institutions, reporting entities, government functionaries, and authorities are required to render full assistance to an LEA for the purpose of an investigation for money laundering under Section 25 of the AMLA 2010. Under the ATA 1997, the superintendent of the police is authorized during an investigation to call for additional records to facilitate the inquiry process under Section 21EE. The police may either call for information from any person or require that person to produce or deliver any document or thing useful or relevant to the ongoing inquiry. After acquiring permission from the court, the CTD is also authorized to obtain information, records, and bank statements from banks and financial institutions. This section is of particular use when investigating terrorism financing offences that have been committed via formal banking channels.

3.5.5.2. Expert Analysis and Findings

Any evidence obtained from modern devices or techniques is admissible as per Article 164 of the QSO. Apart from the conventional oral or documentary evidence required to prove an offence, Pakistan’s criminal justice system has gradually acknowledged the admissibility of evidence that falls within the confines of this provision, such as forensic evidence. Under the QSO, such evidence may constitute documentary evidence within the meaning of Art. 2(1)(b) and (c) of the QSO. Alternatively, the same may be constituted as an electronic document/information under Art. 46-A of the QSO.

Forensic evidence can be submitted in the court after its forensic analysis and the testimony of the forensic analyst also needs to be submitted in the court. The forensic analyst will be called in the court for chief examination and to be cross examined.
3.5.5.3. Additional Evidence Concerning Relationship with Proscribed Organizations

There are certain pieces of evidence which can be used to link the accused to the proscribed organization, and these include, but are not limited to: pamphlets, receipt books, writing instruments, loudspeakers, skin hides, etc., for the collection of donations.

Pamphlets, receipt books, writing instruments can be classified as documentary evidence under the domestic legal framework. Examples of documentary evidence can include photographs or, in a terrorism financing case, can also include the publications, literature or any other material being used by the proscribed entity/individual to commit acts mentioned under Section 11F, H-J of the ATA 1997.

Documentary evidence is required to be proved in accordance with the provisions of QSO. A document, unless proved and exhibited at the trial in accordance with law cannot be termed as evidence. The investigation officer has to take such evidence into possession for it to be used as prosecution evidence.

Pertaining to the other evidence, which can help establish the relationship of the accused with a proscribed organization, such as physical evidence (objects), like loudspeakers, collection of skin hides etc. is classified as circumstantial evidence under the legal framework, which can be used to corroborate or support other direct evidence. All facts, except the contents of documents, may be proved by oral evidence.

3.5.6. Investigation Procedure in a Money Laundering Case

Section 2 (xviii) of AMLA has designated the following agencies to carry out investigations in money laundering cases:

- Federal Investigation Agency
- National Accountability Bureau
- Anti-Narcotics Force
- Provincial Counter Terrorism Departments
- FBR Customs

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51 See chapter V of Qanun-e-Shahadat Order 1984
52 Sahib Dino Alias Saboo v. the State, 2004 PCR.LJ 1765
53 Qari Kafait Ullah v. The State, 2008 YLR 1503
54 Article 70 of the Qanun-e-Shahadat Order 1984
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- FBR Inland Revenue Service

The sources that can help initiate money laundering investigations:

- FMU: A central authority that receives CTRs and STRs from reporting agencies. FMU analyses these reports and converts them into financial intelligence and sends these to one of the six relevant agencies. On the basis of this financial intelligence the agencies can initiate their investigation. Certain agencies have powers to register an enquiry like the FIA, ANF, NAB and can identify criminal activities from the enquiry.
- Credible Informants
- Other Law Enforcement Agencies
- Government Departments
- Private Individuals
- International Requests: For e.g. where a criminal activity by an individual in a foreign country is committed and an MLA request is made by the foreign country.
- Open source information which includes websites, search engines, digital newspapers etc.

Registration of FIR

Once an FIR is registered, the concerned IO will start the investigation and he will initially collect evidence. Evidence can be documentary, oral, digital, or physical forensic evidence. The sole purpose of the investigation by the IO will be to gather evidence regarding the properties that have been acquired by the proceeds of the crime.

If the property has been identified by the IO, it is the duty of the officer to check whether the property is connected with proceeds of the crime and whether it was involved in ML.

Properties involved in money laundering include:

- Properties connected with the proceeds of crime;
- Generated from the commission of money laundering.

After identification of properties connected with proceeds of crime, the IO can apply for an attachment order by the court. The following is required for the attachment of property:
• Property should be connected to the crime;
• Report from the concerned prosecuting agency should be generated;
• The permission of the court is required;
• There should be a written order of attachment.

Once these requirements are fulfilled, the order of attachment is to be issued to the authorities that have a hold on the property or the person who has the property and a copy of the attachment order is to be submitted to the court, as well as the concerned investigation agency. The order of attachment remains valid for 180 days. If the findings of the order are not submitted within these 180 days, the order of attachment will become ineffective.

Once the order of attachment has been issued, within 7 days the accused or the concerned aggrieved party is to be issued with a show cause notice under Section 9 of AMLA. The parties need to be questioned about the source of income, or whether they have sold some other asset to purchase the attached property. The party is to be given a 30-day time period to respond to the notice and give a reason as to why the property should not be forfeited. If the response is not given or if it is unsatisfactory then the property will be forfeited to the federal government. The aggrieved party should also be given the opportunity to argue their case in person.

Section 15 of AMLA states that search of persons is permitted and properties can be seized without the permission of the court. If property is seized under Section 14 of AMLA, the utilization of this provision requires a show cause notice as per section 9.

Findings need to be submitted under Section 9 (2), the requirements are:

• The show-cause notice must have received a reply and the aggrieved party must hear the reply;
• The material evidences that has been collected must help determine that the properties are involved in money laundering;
• If the property is involved, then an application can be made under S. 9 (3) that the property’s attachment needs to be confirmed.

Under Section 9 (3A) the court can hear the aggrieved party and allow them to argue their case. If the property is attached and the property is immovable, the IO is to take the property under his control as per Section 9 (4).
The court shall not take cognizance except upon a complaint in writing by either the concerned investigating officer or the concerned federal investigating officer.
SECTION 04

Coordination and Cooperation between LEAs and Relevant Domestic and International Authorities

LEARNING OUTCOMES

- Understand the role and jurisdiction of NACTA in CTF.
- Conceptualize the mechanisms of inter-agency cooperation through NACTA.
- Understand the relevance of MLA in CTF.
- Learn the aim of mutual legal assistance.
- Learn the international legal framework pertaining to mutual legal assistance.
- Understand the domestic provisions pertaining to mutual legal assistance.
4.1. **NACTA’s Mandate**

NACTA derives its mandate from Article 4 of the NACTA Act 2013. Article 4 of the NACTA Act contains the following functions:

a. To receive and collate data or information, or intelligence and disseminate and coordinate between all relevant stakeholders to formulate threat assessments with periodical reviews to be presented to the Federal Government for making adequate and timely efforts to counter terrorism and extremism;

b. To coordinate and prepare comprehensive national counter terrorism and counter extremism strategies and review them on a periodical basis;

c. To develop action plans against terrorism and extremism and report to the Federal Government about implementation of these plans on a periodical basis;

d. To carry out research on topics relevant to terrorism and extremism and to prepare and circulate documents;

e. To review relevant laws and suggest amendments to the Federal Government; and

f. To appoint committees of experts from Government and non-Government organizations for deliberations in areas related to the mandate and functions of the Authority (NACTA).

4.2. **NACTA’s Efforts and Initiatives**

4.2.1. **National Task Force on Countering Financing of Terrorism**

The National Task Force was established in May 2017 as a platform for relevant stakeholders to coordinate effectively, float policy suggestions, and for the sharing of experience and knowledge. The Task Force includes representation from 28 different stakeholders, including all provincial CTDs and Home Departments, the FIA, FBR, SBP, FMU, MoFA, and MOI. The broader outcomes of the Task Force include awareness and capacity building on CFT matters across all relevant federal and provincial stakeholders, sharing of information, the sharing of best practices (e.g. the sharing of Punjab SOPs on financial investigations) and SOPS, and the monitoring of proscribed individuals under the ATA with other provinces, The Task Force also assesses gaps in the law. Through its work, the Task Force moved for amendment in the law which led to provincial CTDs being added to the AMLA as investigating and prosecuting agencies. Furthermore, the engagement of prosecutors with the IOs, especially in TF cases, was not uniform.
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across the provinces. The Task Force addressed this issue and standardized the practices in the four provinces and dedicated prosecutors were appointed.

4.2.1.1. TF Sub-Committee of Task Force

The TF sub-committee of the National Task Force on CFT was constituted in August of 2018 as an institutional coordination mechanism amongst LEAs to strengthen TF enforcement actions. Various issues such as financial investigations by JITs, federal-provincial coordination on CFT, capacity building of LEAs, TF investigations and convictions, progress on financial investigations by CTDs, and the sharing of case studies on TF sources/channels are deliberated upon in these sub-committee meetings. The TF Sub-Committee of the Task Force oversees issues at an operational level through representation of federal and provincial LEAs.

4.2.2. The Referral Mechanism: Role of FIA, Customs, ANF and CTDs

The establishment of a referral mechanism was an important step to investigate offences such as *hawala*, narcotics and cash smuggling from the angle of TF under this mechanism. Since 2019, an SOP issued by NACTA requires that where an offence which is initially registered by FIA, ANF, or Customs and has elements of TF present in it should be referred to CTDs for further detailed TF investigations.

4.2.3. NACTA SOPs on Investigators – Prosecutors Cooperation in TF Cases

To standardize the investigator-prosecutor cooperation process across all provinces, NACTA developed and disseminated an “SOP on Investigator-Prosecutor Cooperation in TF Cases” in November of 2019 to ensure full engagement of prosecutors with TF investigations from the inquiry and investigation stage and well before the scrutiny of evidence stage at the time of submission of challan to the court.

The primary purpose of these SOPs is to ensure that identical ground rules and consistent practices are followed in all provinces. The SOP sets out clear rules and instructions for the participation of prosecutors in the process of investigation of TF cases from the outset, which ensures the building of strong cases and procurement of all evidence strictly in accordance with the rules and procedures of evidence, leading to a timely and effective trial of TF cases.
All provinces now have special prosecutors attached with ATCs for the prosecution and trial of TF cases. These special prosecutors have been trained in TF investigations, prosecutions, and in prosecutor-investigator cooperation. Furthermore, each province also has dedicated prosecutors attached with the CTDs to provide support during investigations in terms of legal and procedural advice, scrutiny of evidence, trials, appeals, etc., in relation to TF cases.

4.2.4. Inter-Agency Coordination on Narco-Trafficking and Smuggling of Natural Resources

A robust mechanism of inter-agency coordination between provincial CTDs and ANF and Customs has been established, with several meetings of LEAs with provincial departments held, and data related to seizure of narcotics and natural resources obtained and shared to further aid analysis from a TF perspective.

4.2.5. NACTA SOPs Enabling Financial Intelligence Access to CTDs

Previously, while CTDs were the designated LEAs for the investigation of TF provincially, they were not authorized to receive TF disseminations from the FMU, either spontaneously or by request. CTDs were required to seek prior court approval for each request for information submitted to the FMU and vice versa. This was a structural deficiency in Pakistan’s CFT regime that hampered CTDs’ ability to run effective TF investigations.

However, through the establishment of JITs via SOPs issued by NACTA under Section 19(1) of the ATA and facilitated by the MOU signed between the various stakeholder LEAs, the FIA and CTDs can now both access FMU financial intelligence products. Furthermore, NAB, ANF and FBR-IR can also access financial intelligence products as per section 27 of NAO, sections 31, 67 and 69 of CNSA and Section 176 of ITO.

Section 6 of the AMLA relating to the formation of the Financial Monitoring Unit, and Section 25, relating to assistance to authorities, now provide further legal cover to further enhance coordination amongst LEAs and other authorities to facilitate investigations.
4.2.6. NACTA MOU with 25 LEAs to Enhance Coordination

In order to further facilitate inter-agency coordination between the various Law Enforcement Agencies, NACTA has enabled the signing of an MOU\textsuperscript{55} between 25 LEAs, including but not limited to the CTDs, FIA, NAB, ANF, FBR, FMU, and Home Departments amongst others.

The objective of this MOU is to enhance inter-agency coordination and facilitate the timely and effective detention, analysis, and probe of cases, transactions and activities that pertain to AML/CFT. The MOU is also meant to ensure that any such data shared amongst organizations would be used only in an authorized fashion with the strictest confidentiality. Any request for information must be provided with a statement of relevant facts, details of new trends, personal information (CNIC etc..) of suspected persons, and details of assets under investigation. In the MOU, it was agreed that LEAs should investigate all predicate crimes from a CFT perspective and develop their own SOPs to facilitate such investigations. As a reference, it was recommended that LEAs should consider the SOPs issued by NACTA.

4.2.7. NACTA SOPs for JITs (Joint Investigation Teams)

NACTA issued specific Standard Operating Procedures (SOPs) for constitution and functioning of JIT in cases registered under the Anti-Terrorism Act, 1997 ATA, and the same shall be followed by JITs/investigators during the investigation of terrorism cases. This SOP supplements any previous SOPs on the issue which are in field and does not supersede, abrogate, cancel or amend any of those SOPs.

The SOP focuses mainly on the investigations / inquiries into terrorist financing cases which shall be an integral part of the investigations in every terrorism case. The relevant contents of the SOP can also be used for normal financial investigations of the terrorism cases where JITs have not been formed.

A JIT may be constituted by the government in accordance with Section 19(1) of the ATA 1997. A JIT is a five-member grouping, headed by an investigating officer of the police who is not below the rank of Superintendent of Police, with the remaining membership of the JIT being filled by officers of equivalent rank from the intelligence agencies, armed forces, and civil armed forces.

4.2.7.1. Decision-Making and Recording

The JIT shall decide the outline and parameters of a financial investigation and shall thereon supervise the progress of the investigation as it proceeds. In order to carry out the assigned responsibilities, they shall endeavor to always advance the course of the investigation, manage any associated risks, and decide on the allocation and use of resources. All investigation progress and decisions (with reasoning) must be accurately recorded in the case file.

In order to conduct parallel financial investigations in each terrorism case immediately after its registration, the JIT shall launch a prompt and parallel financial enquiry to operate in conjunction with the primary investigation.

4.2.7.2. Parameters of the JIT

- The discovery of sources of funding for terrorist activities, identification of the financiers of terrorism (donors, fundraisers, facilitators, operatives, and any other person with linkages to a terrorist financing activity), and the exploration of linkages between the origins of money, intermediaries, and ultimate beneficiaries;
- Accounting for the terrorist financing risks during the course of an investigation, such as drug trafficking, kidnapping for ransom, extortion from businesses, vehicle snatching, robbery, dealing in foreign exchange, case couriers, hundi/hawala transactions, and the misuse of charities;
- Accessing the widest possible range of financial, administrative, and law enforcement information, including open or public sources and information collected and/or maintained by other departments and organizations;
- Identifying, during the course of investigation for possible action under Section 11O of the ATA 1997, money or other property owned or controlled, wholly or partially, directly or indirectly, by a proscribed person or organization;\(^56\)
- Seeking information about the newest and most innovative modes of funds generation, including the use of crypto-currencies and the internet as a means of terrorism financing; and/or;
- The application of the relevant terrorism financing provisions so as to ensure effective prosecution of the case.

\(^{56}\) Seizure, freeze and detention: Money or other property owned by a proscribed organization shall be frozen or seized. It may not be transferred, and violation of any provisions of this section may incur a fine.
4.2.8. NACTA Guidelines for the Implementation of UNSC Resolution 1373

The NACTA Guidelines on the Implementation of UNSCR 1373 set out the responsibilities of various organizations - including divisions, ministries, agencies, reporting entities, financial institutions and DNFPBs – in observing Pakistan’s responsibilities under UNSCR 1373 as a Member State of the UN. The Guidelines provide both substantive and procedural guidance on certain acts related to countering the financing of terrorism as mandated under UNSCR 1373. This Resolution requires Member States to “put into place mechanisms enabling the designation of terrorist organizations and persons associated with terrorism at the national level and the consequent application of immediate sanctions”. This involves criminalizing and suppressing terrorism financing and related activities, along with asset freezing and confiscation.

UNSCR 1373 is implemented under various provisions of the Anti-Terrorism Act 1997. The Act criminalizes various activities related to terrorism financing and provides a procedural framework for the prosecution of such activities. The key provisions are summarized under the UNSCR 1373 Guidelines. The Guidelines also incorporate relevant FATF Recommendations pertaining to the criminalization of terrorism financing (Recommendation 5) and the implementation of targeted financial sanctions (Recommendation 6). Furthermore, the Guidelines outline the procedural responsibilities of the various federal, provincial and district authorities and reporting entities to comply with UNSCR 1373 and FATF Recommendations 5 and 6.

4.2.8.1. Framework defining Roles and Functions of Entities under UNSC Resolution 1373

NACTA has issued comprehensive directions to entities involved in the CFT legal framework via ‘guidelines’ for effective implementation of the UNSCR 1373. During implementation, these agencies are required to identify additional capacity building requirements and report gaps in legislation and implementation mechanisms to the FMU, MOI and Provincial Home Departments.

4.2.9. NACTA directives on International Cooperation in Terrorist Financing Matters

The National Counter Terrorism Authority (NACTA) in March 2020 issued directives intended to strengthen international cooperation in matters pertaining to terrorist financing. The guidelines find their premise in Pakistan’s National Risk Assessment (NRA) 2019 that emphasize the globalized nature of terror financing threats. Law enforcement agencies in addition to other authorities must analyze international linkages for any terror financing threats and effectively curb them by seeking means of international cooperation, while also responding to incoming requests from foreign countries in a timely manner. The directives called upon authorities to adopt due procedures that are aligned with domestic law as well as international standards to enhance international cooperation.  

4.3. Mutual Legal Assistance

4.3.1. What is Mutual Legal Assistance?

Mutual Legal Assistance in criminal matters is a process by which states seek (and provide) assistance to other states, inter alia, in the servicing of judicial documents and gathering of evidence for use in criminal cases.

International Cooperation between States is governed, primarily, through treaties amongst them. Treaties are the most formal vehicle for States to cooperate in the field of MLA. Such treaties can take the form of multilateral treaties – wherein multiple State parties agree to cooperate with one another. Other agreements take the form of bilateral treaties through which two States tailor the requisite terms and conditions.

4.3.2. What is Pre-Mutual Legal Assistance?

Methods exist whereby cooperation may be done with agencies within different jurisdictions even without the absence of an existing MLA Framework. For instance, police-to-police channels are used to liaise and to request assistance in obtaining evidence or undertaking enquiries abroad. Article 18(4) of the United Nations Transnational Organized Crime Convention and Article 46(4) of the

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United Nations Convention against Corruption\textsuperscript{60} contain spontaneous information provisions which are subject to domestic law. Essentially, these provisions may be relied upon by State authorities to cooperate with one another through information sharing insofar as it can lead to ‘undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this convention.’

This is a speedy, time-saving method. For such coordination and cooperation States tend to also utilize single points of contact such as Interpol National Central Bureaus or rely on Memorandums of Understanding (MOUs) which define the parameters for the sharing of intelligence. Use of such MOUs has also been encouraged by FATF through Recommendation No. 40.\textsuperscript{61}

During the MLA process, the authorities can also rely upon open-source materials that indicate assets or wealth, particularly through websites. Examples of the latter include open-source bank accounts through International Banking Account Numbers (IBAN)\textsuperscript{62} or through publicly available information on companies, information on social media platforms and finally through the Internet Protocol Address that may have been used by persons suspected to be involved in ML/TF offences.

4.3.3. International Legal Framework Concerning MLA

4.3.3.1. United Nations Convention on Transnational Organized Crime

The UNTOC is the broadest instrument for international cooperation provided that there is not a bilateral agreement between States. The object and purpose of the UNTOC is to achieve international judicial cooperation against transnational organized crime. The word transnational connotes something that extends or operates beyond national boundaries. Thus, the UNTOC serves as an effective tool in combating criminal activities such as money-laundering, illicit trafficking and the growing links between the transnational organized crime and terrorist crimes.\textsuperscript{63}

\textsuperscript{60} “United Nations Convention Against Corruption” (UNCAC) <https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf> accessed February 8, 2023

\textsuperscript{61} INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION The FATF Recommendations’ (fatf-gafi, 2019) accessed 26 July 2019 at page 28

\textsuperscript{62} Ibid.

\textsuperscript{63} Art. 2(a) of the UNTOC defines organized criminal group it as ‘a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;’
The primary applicability of the UNTOC would be where there is an absence of bilateral MLAT. The operative provisions in this respect include both Extradition[^64] and Mutual Legal Assistance[^65].

Article 18(3) of the UNTOC allows for a wide array of cooperation and includes:

(a) Taking evidence or statements from persons;
(b) Effecting service of judicial documents;
(c) Executing searches and seizures, and freezing;
(d) Examining objects and sites;
(e) Providing information, evidentiary items and expert evaluations;
(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
(h) Facilitating the voluntary appearance of persons in the Requested State Party;
(i) Any other type of assistance that is not contrary to the domestic law of the Requested State Party.

In addition, an MLAR which may be issued under the UNTOC shall contain, as per Art. 18(15):

(a) The identity of the authority making the request;
(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
(d) A description of the assistance sought and details of any particular procedure that the Requested State Party wishes to be followed;
(e) Where possible, the identity, location and nationality of any person concerned; and
(f) The purpose for which the evidence, information or action is sought.

[^64]: Art. 16 of the UNTOC
[^65]: Art. 18 of the UNTOC
4.3.3.2. United Nations Convention against Corruption (UNCAC)\textsuperscript{66}

Another international convention which is integral to international cooperation is the UNCAC, which was promulgated to combat and prevent corruption. It is capable of regulating MLA requests in the absence of a bilateral treaty amongst States as per Article 46. Article 48 encourages States to cooperate closely so as to establish channels between them in order to facilitate the rapid exchange of offences covered by the Convention.

4.3.3.3. International Convention for the Suppression of the Financing of Terrorism (ICSFT)

In the absence of a bilateral framework, States party to the ICSFT convention, including Pakistan, may rely upon Article 12(5), which mandates the provision of assistance in criminal investigations in the absence of a bilateral framework or another multilateral framework.

4.3.3.4. UNSCR 1373

The UNSCR as a binding UN instrument which must be implemented by States in good faith pursuant to Special Recommendation I of the FATF. Operative paragraph 2(f) of the Resolution reads as follows:

\textit{To afford one another the greatest measure in assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings.}\textsuperscript{67}

In addition, the Resolution provides a legal basis for many such actions that can be taken as the legal basis for international cooperation. With respect to the freezing and confiscation of assets as expounded in Special Recommendation V and FATF Recommendation No. 38, the Resolution's Operative paragraph 1(c) may be used as a legal basis by State authorities. However, this obligation is one that is not aimed directly at international cooperation. Rather, international cooperation could be seen as a subset of the broader obligation of freezing and confiscating any and all assets belonging to terrorists or such entities. However, if both operative paragraphs 2(f) and 1(c) are read conjunctively, that


\textsuperscript{67} Article 12 of the International Convention for the Suppression of the Financing of Terrorism states: “States Parties shall afford one another the greatest measure of assistance”; also see article 10 of the International Convention for the Suppression of Terrorist Bombings.
interpretation is capable of constituting a basis for requesting another State for MLA.

Finally, the international cooperation regime must be seen as that which imposes broader obligations which outweigh obligations of a more specific nature. For instance, for the sake of international cooperation, a State should not refuse an MLAR on the basis of the principle of bank secrecy when the request concerns an offence of a grave nature.

4.3.4. Domestic Mutual Legal Assistance Framework

4.3.4.1. Mutual Legal Assistance (Criminal Matters) Act, 2020

The MLA Act, 2020, was promulgated to regulate the procedure for the rendering and solicitation of mutual legal assistance in criminal matters. Any crime that falls within the scope of Pakistan Penal Code 1860 or any other criminal law in Pakistan will be considered a criminal act under the Act. Assistance shall be provided on the basis of either of the principle of reciprocity, or where such reciprocal agreement does not exist, on the basis of a notification issued in the official Gazette, with directions that the provision of the Act apply to a specific country.

Central Authority

The Ministry of Interior is designated as the Central Authority and is authorized to:

- Make requests, on behalf of Pakistan, to an appropriate authority of a foreign country for mutual legal assistance in relation to a criminal offence, in which an investigation has commenced within Pakistan or outside of Pakistan;
- Receive requests from an appropriate authority of a foreign country for mutual legal assistance in relation to a criminal offence in which an investigation has commenced within Pakistan or outside of Pakistan, or

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69 Art. 12(2) of the International Convention for the Suppression of the Financing of Terrorism
70 Art. 13 of the International Convention for the Suppression of the Financing of Terrorism
71 Section 3(2) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
72 Section 3(3) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
73 Section 2(c) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
74 Section 4(2)(a) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
where there are reasonable grounds of suspecting that a criminal offence has been committed either outside or inside Pakistan;\textsuperscript{75}

- Certify, or arrange for the certification of documents or other material supplied in response to a request for assistance;\textsuperscript{76}
- Take practical measures to facilitate the execution of a request for assistance;\textsuperscript{77}
- Make necessary arrangements to transmit evidentiary material gathered in response to an MLA request to the appropriate authority of the Requesting State;\textsuperscript{78}
- Carry out other tasks as provided for in the Act, or which may be necessary for effective assistance to be provided or received.\textsuperscript{79}

The difference between a Central Authority and Appropriate Authority needs to be highlighted. As per the MLA Act the Central Authority is the Ministry of Interior whereas the appropriate authority is the central authority of any jurisdiction. Different countries have different names for their central authorities, however, they all carry out the same functions.

The role of the Ministry of Interior as the Central Authority is to process all incoming and outgoing MLA requests and to transmit them, as well as to acquire an approval from the Cabinet. The Ministry of Interior also ensures that the requests are forwarded to LEAs in Pakistan, checks the accuracy of the process followed and then sends the request to foreign jurisdictions. In the same manner, the incoming MLAs have to be processed and approved by the Cabinet and subsequently, the reply is submitted to the foreign jurisdictions and these are all the responsibilities of the Central Authority which is the International Cooperation Cell of the Ministry of Interior.

### Types of Requests

A request for mutual legal assistance under the MLA Act, 2020, may consist of one or more of the following matters:

- Inquiries about the location and identification of witnesses, suspects, and perpetrators;\textsuperscript{80}
• Gathering of evidence or production of documents;\textsuperscript{81}
• Obtaining search warrants authorizing search for evidence relevant to proceedings in Pakistan or in the Requesting state, and if found, the seizure of said evidence under the domestic law of that country, or those of Pakistan, as the case may be;\textsuperscript{82}
• Freezing or seizing of properties that are subject to the proceedings in Pakistan, or in the Requesting State, in accordance with the domestic legal procedures of that country, or those of Pakistan, as the case may be;\textsuperscript{83}
• Transmission to Pakistan, or to the Requesting State, of evidence, documents, and properties;\textsuperscript{84}
• Transfer of custody to Pakistan, or to the Requesting State, of persons who have consented to assist in the relevant investigation;\textsuperscript{85}
• Serving of judicial documents;\textsuperscript{86}
• Identification of proceeds of instrumentalities of crime, or properties for evidentiary purposes;\textsuperscript{87}
• Facilitating the voluntary appearance of persons required for proceedings in Pakistan or to the Requesting State, as the case may be;\textsuperscript{88}
• Provision of original or certified copies of relevant documents, including government, banking, financial, or business records;\textsuperscript{89}
• Provision of any other types of assistance as may be required, so long as such assistance is in accordance with domestic law in that country, or in Pakistan, as the case may be.\textsuperscript{90}

\textbf{Incoming Requests}

If a foreign jurisdiction wants to request information from Pakistan regarding some crime or wants either document production, transfer of an offender, confiscation of property, data storage etc., the foreign country will send its request to the Ministry of Foreign Affairs which will direct it to the Central Authority on MLA cases i.e. the Ministry of Interior and this is how the process is initiated.

The MLA request will initially be examined and then sent for the approval of the Cabinet. After approval, the request is sent to the LEAs of the relevant province.

\textsuperscript{81} Section 7(b) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{82} Section 7(c) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{83} Section 7(d) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{84} Section 7(e) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{85} Section 7(f) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{86} Section 7(g) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{87} Section 7(h) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{88} Section 7(i) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{89} Section 7(j) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
\textsuperscript{90} Section 7(k) of the Mutual Legal Assistance (Criminal Matters) Act, 2020
or region in order to process it. The relevant authorities send the request back to the Ministry of Interior after completing the process. The Ministry of Interior ensures that the request has been answered properly and sends it back to the Ministry of Foreign Affairs, which then subsequently sends the response back to the foreign requesting jurisdiction. This is considered the Diplomatic Channel. If the foreign jurisdiction is satisfied with the response, the request is said to be complete. If, however, the foreign jurisdiction is of the opinion that the query has not been answered properly, or they need more information, the foreign jurisdiction can make another request which is processed in the same manner.

**Outgoing Requests**

These are requests made by Pakistan to other foreign countries. The region or province where the MLA request is generated sends the request to the Ministry of Interior, after which the Ministry examines it, considering all the legal aspects, and shares it with the Cabinet for approval. Once the request is approved the request is sent to the Ministry of Foreign Affairs which then sends it to the relevant foreign jurisdiction in order to receive an answer.

**The Necessary Details That Need to be Present in the Request**

- The legal basis of the request needs to be correctly addressed and the request should be related to a crime. If the legal points are not properly addressed in an outgoing request it is likely that there may be delay from the foreign jurisdiction or they may even refuse to respond.
- The complete facts of the crime need to be mentioned and all relevant documents need to be attached to the request and the originality of these documents needs to be attested by the authority that is generating these documents.
- It needs to be clarified what sort of information is requested and what will be the appropriate response from the foreign jurisdiction. If there is no clarity regarding what sort of information is needed, there can be a delay in the response.
- The time period within which a response is needed can also be mentioned in the request, although it is not enforceable on the foreign jurisdictions.
- The Central Authority from which we are requesting information should be clear and known.

Normally all the financial expenses including the search warrants, transfer of persons etc. will be borne by the country making the request. Alternatively, the concerned countries can make an agreement and share the costs as well.
Confidentiality is an essential aspect of the mutual legal assistance framework. The names of the officials or law enforcement agencies from areas where the MLA request is generated are to be kept confidential and are not to be shared. All the data in the MLA request is also to be kept confidential and must not be shared with anyone by the officers working on the MLA request.

When a request is made by a foreign country and they receive the relevant information that they needed, they can use that information for that particular case and they cannot use it in any other case.

**Can an MLA Request be Refused?**

- A request can be refused if it can be determined that the request is in contradiction with a law in Pakistan
- If the request is religious based or racially based then it can also be refused
- If the request is devoid of the elements of a crime under any legislation of Pakistan, then it can also be refused
- All NAB matters are also to be dealt by NAB even if they are regarding a crime

**Bilateral Agreements**

It also needs to be ascertained whether there is a bilateral agreement between Pakistan and some other country or not. If there is a bilateral agreement with another country, then it is not necessary to go through the diplomatic channel and the Central Authority can directly make the request. In the absence of a bilateral agreement, all requests are to be sent via the diplomatic channel that is the Ministry of Foreign Affairs in Pakistan. At present Pakistan has bilateral agreements with 4 countries including China, Sri Lanka, Kazakhstan and Tajikistan. Agreements help in expediting the process of MLA requests and more countries are in talks of signing bilateral agreements with Pakistan.

**The Role of Courts in the MLA Requests**

There are some matters that cannot be shared without the permission of the court, for e.g., if a foreign jurisdiction requests that a property in Pakistan needs to be confiscated, then Ministry of Interior will file a case in the court and appeal in the court regarding the confiscation of assets etc. If the court believes that the matter does not fall into this category, then the Ministry of Interior can send a refusal order to the foreign jurisdiction as a response to the request.
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