MODULE

Anti-Money Laundering and Countering the Financing of Terrorism

FOR PROSECUTORS
MODULE
Anti-Money Laundering and Countering the Financing of Terrorism
Module for Prosecutors:
Anti-Money Laundering and Countering the Financing of Terrorism
Anti-Money Laundering and Countering the Financing of Terrorism Training Module: A publication by the Research Society of International Law, Pakistan, with support from the American Bar Association.

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Module for Prosecutors:

Anti-Money Laundering and Countering the Financing of Terrorism
MESSAGE BY THE

Secretary Public Prosecution
Public Prosecution Department, Punjab

MR. MUHAMMAD ZAMAN WATTOO

For a professional it is sine qua non to keep their knowledge updated. For a prosecutor, this is cardinal. Prosecutors work with complex and nuanced cases, effectively paving the way for justice delivery for the public as well as to serve the interests of the state. For that matter the “Module on Money Laundering and Terrorism Financing for Prosecutors” can be very helpful in updating knowledge and sharpening the skill set of public prosecutors. This module caters all the needs of a prosecutor in terms of ML/TF cases, thanks to the combined efforts of RSIL and CPD. It gives me immense pleasure and satisfaction when I look at Center for Professional Development of Public Prosecutors (CPD) progressing slowly and steadily with the contribution of development partners. It is important to lay more emphasis on more cooperation and skill set development and capacity building in future.
In contemporary crime, ML & TF cases have become rampant and are quite intricate in nature to prove and establish. Law enforcement cannot achieve the desired results for deterrence against such offences if the prosecution is weak. PCPS has been dealing with such offences, but a methodical training base was necessary. This comprehensive module on “Anti-Money Laundering and Countering Financing of Terrorism for Prosecutors” has been specially crafted to fulfil the needs of a prosecutor. This module covers many key aspects of ML & TF prosecution including Charging Standards, Investigation, Predicate Offences, Types and Sources of Evidence, Mutual Legal Assistance, Threshold Test, Scrutiny and Case Review etc. The industrious efforts of the module drafters in shape of this module shall enhance the expertise of prosecutors.
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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AML/CFT</td>
<td>Anti-Money Laundering/Combating the Financing of Terrorist Activities</td>
</tr>
<tr>
<td>AMLA</td>
<td>Anti-Money Laundering Act, 2010</td>
</tr>
<tr>
<td>ANF</td>
<td>Anti-Narcotics Force</td>
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<tr>
<td>ATA</td>
<td>Anti-Terrorism Act, 1997</td>
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<tr>
<td>CCTV</td>
<td>Closed Circuit Television</td>
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<tr>
<td>CDD</td>
<td>Customer Due Diligence</td>
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<td>CDNS</td>
<td>Central Directorate of National Savings</td>
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<tr>
<td>CNIC</td>
<td>Citizen National Identity Card Number</td>
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<tr>
<td>CPS</td>
<td>UK Crown Prosecution Service</td>
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<tr>
<td>CRMS</td>
<td>Criminal Record Management System</td>
</tr>
<tr>
<td>CTDs</td>
<td>Counter Terrorism Department</td>
</tr>
<tr>
<td>CTW-FIA</td>
<td>Counter-terrorism Wing - Federal Investigative Agency</td>
</tr>
<tr>
<td>DFIs</td>
<td>Development Finance Institutions</td>
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<tr>
<td>DNA</td>
<td>Deoxyribonucleic acid</td>
</tr>
<tr>
<td>DNFBP</td>
<td>Non-Financial Business and Professions</td>
</tr>
<tr>
<td>FAQs</td>
<td>Frequently Asked Questions</td>
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<tr>
<td>FATF</td>
<td>Financial Action Task Force</td>
</tr>
<tr>
<td>FBR</td>
<td>Federal Board of Revenue</td>
</tr>
<tr>
<td>FIA</td>
<td>Federal Investigation Authority</td>
</tr>
<tr>
<td>FIR</td>
<td>First Information Report</td>
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<tr>
<td>FMU</td>
<td>Financial Monitoring Unit</td>
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<tr>
<td>IMPASS</td>
<td>Directorate General of Immigration and Passport Services</td>
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<tr>
<td>IO</td>
<td>Investigation Officer</td>
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<tr>
<td>IP</td>
<td>Internet Protocol</td>
</tr>
<tr>
<td>IPDR</td>
<td>Internet Protocol Detail Record</td>
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<tr>
<td>JIT</td>
<td>Joint Investigation Team</td>
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<tr>
<td>LEAs</td>
<td>Law Enforcement Agencies</td>
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<td>LLCs</td>
<td>Limited Liability Companies</td>
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<tr>
<td>ML/TF</td>
<td>Money Laundering/Terror Financing</td>
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<tr>
<td>MLA</td>
<td>Mutual Legal Assistance</td>
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<tr>
<td>MOI</td>
<td>Ministry of Interior</td>
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<tr>
<td>MSPs</td>
<td>Merchant Service Providers</td>
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<td>MVTS</td>
<td>Money or Value Transfer Services</td>
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<tr>
<td>NAB</td>
<td>National Accountability Bureau</td>
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<td>NACTA</td>
<td>National Counter Terrorism Authority</td>
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<tr>
<td>NADRA</td>
<td>National Database and Registration Authority</td>
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<tr>
<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<td>NRA</td>
<td>National Risk Assessment</td>
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<td>NTN</td>
<td>National Tax Number</td>
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<td>PACRA</td>
<td>Pakistan Credit Rating Agency</td>
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<td>PCPSA</td>
<td>Punjab Criminal Prosecution Service Act</td>
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<tr>
<td>PI</td>
<td>Public Interest</td>
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<tr>
<td>PITB</td>
<td>Punjab Information Technology Board</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>POS</td>
<td>Point of Sale</td>
</tr>
<tr>
<td>QSO</td>
<td>Qanoon-e-Shahadat Order, 1984</td>
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<tr>
<td>RAW</td>
<td>Research and Analysis Wing</td>
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<tr>
<td>RBA</td>
<td>Risk-Based Assessment</td>
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<tr>
<td>REs</td>
<td>Reporting Entities</td>
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<td>SBP</td>
<td>State Bank Pakistan</td>
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<tr>
<td>SECP</td>
<td>Securities and Exchange Commission of Pakistan</td>
</tr>
<tr>
<td>SIM</td>
<td>Subscriber Identity Module</td>
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<tr>
<td>SMS</td>
<td>Short Message Service</td>
</tr>
<tr>
<td>SOPs</td>
<td>Standard Operation Procedures</td>
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<tr>
<td>SRO</td>
<td>Statutory Regulatory Orders</td>
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<tr>
<td>STR</td>
<td>Suspicious Transaction Report</td>
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<tr>
<td>TF</td>
<td>Terror Financing</td>
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<tr>
<td>TFS</td>
<td>Targeted Financial Sanctions</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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<tr>
<td>UNCAC</td>
<td>United Nations Convention Against Corruption</td>
</tr>
<tr>
<td>UNTOC</td>
<td>United Nations Convention against Transnational Organized Crime</td>
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</tbody>
</table>
List of Legislation

- Anti-Money Laundering Act, 2010
- Anti-Narcotics Force Act, 1997
- Anti-Terrorism Act, 1997
- Anti-Terrorism (Amendment) Act, 2020
- Benami Transactions (Prohibition) Rules, 2019
- Benami Transactions Ordinance, 2019
- Code of Criminal Procedure (Cr.P.C)- Pakistan, 1898
- Constitution of the Islamic Republic of Pakistan, 1973
- Control of Narcotic Substances Act (CNSA), 1997
- Customs Act, 1969
- Foreign Exchange Regulation (Amendment) Act, 2020
- Federal Investigative Agency (FIA) Act, 1974
- Income Tax Ordinance (ITO), 2001
- International Convention for the Suppression of the Financing of Terrorism (ICSFT)
- Investigation for Fair Trial Act (IFTA), 2013
- Mutual Legal Assistance (Criminal Matters) Act, 2020
- National Counter Terrorism Authority (NACTA) (Amendment) Act, 2020
- NACTA SOPs for JITs, 2020
- Mutual Legal Assistance (Criminal Matters) Act, 2020
- Pakistan Penal Code (PPC), 1860
- Prevention of Electronic Crimes Act (PECA), 2016
- Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006
- Punjab Witness Protection Act (PWPA), 2018
- Punjab Forensic Science Agency Act, 2007
- Qanoon-e-Shahadat Order, 1984
- Sales Tax Act, 1990
- United Nations Convention Against Corruption (UNCAC), 2003
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- United Nations (Security Council) Act, 1948
The Financial Action Task Force (FATF) has recommended that Pakistan improve its prosecution and investigation in ML/TF cases after Pakistan was grey listed by FATF in 2018. Therefore, this module has been developed to provide guidance to prosecutors on how to identify elements of ML/TF offences.

Prosecutors should keep in mind the relevant FATF recommendations which provide context for the learning outcomes of this module:

1. Countries should ensure that policymakers, the financial intelligence unit (FIU), law enforcement authorities, supervisors and other relevant competent authorities, at the policymaking and operational levels, have mechanisms which enable them to cooperate and coordinate. (Recommendation No. 2)

2. Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT policies. (Recommendation No. 30)

3. Competent authorities should be able to obtain access to all necessary documents and information for use in investigations and in prosecutions of money laundering, associated predicate offences and terrorist financing. (Recommendation No. 31)

4. Countries should provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions, and related proceedings. (Recommendation No. 37)

5. Countries should ensure that their competent authorities can provide the widest range of international cooperation in relation to money laundering,
associated predicate offences and terrorist financing. (Recommendation No.40)

It is also helpful for prosecutors to be aware of how the FATF has recommended Pakistan introduce changes in the legal system especially with respect to the prosecution and investigation of ML/TF offences. A prosecutor has an effective role during the process of investigation as an investigation officer may seek assistance from a prosecutor. Provinces have special laws to regulate services of prosecutors and by virtue of these laws, prosecutors are obliged to guide investigation officers during the investigation process. The following Action Plan items have been given weightage by the FATF in its evaluations:

1. Demonstrate effectiveness of sanctions, including remedial actions, to curb terrorist financing in the country.
2. Demonstrate effective investigations by Law Enforcement Agencies (LEAs) and convictions in terrorism financing and money laundering cases against banned outfits and proscribed persons.
3. Ensure international cooperation-based investigations and convictions against banned organisations and proscribed persons.
4. Improve domestic cooperation between Financial Monitoring Unit (FMU) and LEAs in investigation of terror financing and money laundering.

This module will assist prosecutors in determining the changes required in their scrutiny, court assessment, understanding of the nature and range of evidences, coordination with investigators, production of evidence in court and how to prepare closing statement/final arguments in Courts.

**Module Purpose and Overview**

The role of prosecutors is crucial in guaranteeing conviction in ML/TF offenses. This module has been carefully drafted to provide specific guidance to prosecutors working in Anti-Terrorism Courts. For effective prosecution, it is important to understand the process of money laundering, financing of terrorism and the scope of the offences under domestic law.

The module discusses the two offences of money laundering and terrorism financing under both the Anti-Money Laundering Act, 2010 (AMLA) and the
Anti-Terrorism Act, 1997 (ATA) to highlight similarities and distinctions in the scope of the two legislations. Broadly, the module examines the following:

- Legislative Developments around ML/TF in Pakistan
- Elements of ML/TF offences
- Investigation techniques in ML/TF cases
- Powers of Investigators
- Identification of Types of Evidence Available to Prosecutors
- Sources of Financial Evidence
- Mutual Legal Assistance
- Confessional Statements, Prosecutorial Witnesses etc.
- Prosecutorial Scrutiny
- Human Rights’ concerns for Defendants

**Learning Outcomes**

By the end of this module, you should be able to understand:

- The recent legislative and administrative developments in Pakistan to meet the FATF standards.
- The elements of Money Laundering and Terrorism Financing offences under AMLA and ATA.
- The Role and Powers of Investigators
- The coordination required between Prosecutors and Investigators
- The Sources of Evidence that can be explored in ML/TF offences.
- What is Mutual Legal Assistance and how it can be utilized in ML/TF offences.
- The three tests under Prosecutorial Scrutiny
- How to record witness and confessional statements.
- The implications of the Punjab Witness Protection Act, 2018
- The importance of Charging Standards
- The rights of defendants for prosecutors and investigators to protect.
Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism

Essential Readings for the Module

STATUTES:

- Anti-Terrorism Act (ATA), 1997
- Anti-Money Laundering Act (AMLA), 2010
- Code of Criminal Procedure (Cr.P.C), 1898
- Foreign Exchange Regulation Act (Amendment), 2020
- Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006
- Qanoon-e-Shahadat Order, 1984
- Mutual Legal Assistance (Criminal Matters) Act, 2020
- NACTA (Amendment) Ordinance, 2020
- NACTA SOPs for JITs, 2020

INTERNATIONAL CONVENTIONS:

- United Nations Convention against Transnational Organized Crime
- United Nations Convention Against Corruption

OTHER:

- FATF Recommendations
- The Punjab Code of Conduct for Prosecutors 2006
- Guide for the Effective Investigation and Prosecution of Money Laundering and Terrorist Financing in Pakistan by the Research Society of International Law, Pakistan
- Toolkit on AML/CFT in Pakistan – Volume 1: Operational Guidelines for the Investigation and Prosecution of Money Laundering & Terrorism Financing Offences in Pakistan by the Research Society of International Law, Pakistan
- Toolkit on AML/CFT in Pakistan – Volume 2: Guidelines on Obtaining and Analyzing Financial Evidence in Money Laundering and Terrorism Financing in Pakistan by the Research Society of International Law, Pakistan
Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism

How to use this Module

The chapters in this module have been drafted in a sequential manner. However, each chapter is also self-contained for ease of reference and revision purposes. The beginning of each chapter contains learning outcomes which must be kept in mind while going through the content. Each section also contains discussion questions and case studies. These are meant to reinforce the learning outcomes and aim to provide an understanding of how theory manifests itself into practice. At the end of each chapter, there are self-assessment questions which should be attempted by the participants after each section is completed to ensure they have fully grasped the content. Furthermore, at the end of the module, there is a practical exercise which will reinforce the prosecutorial skills required for effective ML/TF cases.
SECTION 01
FATF Standards and Pakistan’s Compliance

LEARNING OUTCOMES

• The sources of international standards on Anti Money Laundering and Countering Financing of Terrorism.
• The grounds for Pakistan’s grey-listing by FATF.
• The recent legislative and administrative developments in Pakistan to meet the FATF standards.
1.1. About the Financial Action Task Force (FATF)

The FATF is an inter-governmental policy-making body focused on combatting ML/TF around the globe. It aims to identify legislative and administrative gaps around ML/TF and recommends improvements for an improved prosecution in money laundering and terrorism financing cases. The Task Force’s 40 Recommendations on Money Laundering and 9 Special Recommendations on Terrorist Financing constitute the international standards on Anti Money Laundering and Countering Financing of Terrorism.

1.2. Pakistan’s FATF Status

In June 2018, Pakistan was placed on the Financial Action Task Force (FATF)’s list of “Jurisdictions under Increased Monitoring” (or the ‘grey list’) owing to strategic deficiencies within its Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) frameworks. As part of the evaluation process, Pakistan was asked to implement a 27-Point Action Plan, and later a 7-Point Plan on Money Laundering to improve its compliance with the watchdog agency and exit the grey-list. Key deliverables under the action plans included:

1. Proper identification, assessment, and supervision of terrorism financing risks;
2. The application of remedial actions and sanctions to cases of money laundering and financing of terrorism violations;
3. Coordination between competent authorities to identify and take enforcement measures against illegal money or value transfer services;
4. Identification of cash couriers by authorities and the enforcement of controls on illicit movement of currency and understanding the risk of cash couriers being used for financing of terrorism;
5. The improvement of inter-agency coordination including between provincial and federal authorities on combating financing of terrorism risks;
6. The identification and investigation of financing of terrorism, and prosecution of related designated persons and entities by law enforcement agencies;
7. That prosecution of financing of terrorism results in applicable sanctions and enhancement of capacity and support for prosecutors and the judiciary;
8. Effective implementation of targeted financial sanctions against all designated terrorists;
9. Enforcement against financing of terrorism violations including administrative and criminal penalties and authorities cooperating on enforcement cases; and;
10. Deprivation of facilities, services, and other resources owned or controlled by designated persons.

Other than addressing cavities in the administrative sector, it was recommended that the investigation and prosecution of ML/TF cases be improved, with the FATF requiring Pakistan to demonstrate progress by increasing the number of ML/TF investigations and convictions.

With majority cases leading to acquittal, it is clear that gaps exist in Pakistan’s criminal justice system. Prior legislation also did not provide investigators or law enforcement agencies with the requisite powers to successfully investigate ML/TF cases. Since 2018, Pakistan has passed a number of laws and amendments, including foundational changes to its AML/CFT frameworks, to enhance the powers of investigators. Special powers such as special investigation techniques are now granted to investigators under the recent Anti-Money Laundering Act, 2010 (AMLA) and Anti-Terrorism Act, 1997 (ATA) amendments. Despite the amendments to both the laws, special investigation techniques are rarely used due to a lack of resources and operationalization. It is also important to understand the impact of the FATF grey-listing on Pakistan’s economy, foreign policy and national security and thereby give due weightage to ML/TF cases under domestic law.

1.3. Compliance Efforts

Along with administrative improvements, the Parliament introduced legislative amendments to further strengthen accountability in money laundering and terrorism financing offences. The following legislative amendments are important from a prosecutorial perspective:
The Foreign Exchange Regulation Act (Amendment) 2020:

The Foreign Exchange Regulation Act Act, 1947 governs the movement of foreign currency and other forms of monetary instruments such as securities and bullion. Amendments were made in section 23 of the FERA Bill, strengthening the role of the Tribunal, constituted under section 23 A, with the new addition of sub-section (3B) stating that a Tribunal taking cognizance under subsection (1) will conclude proceedings within 6 months, and extensions may be requested by writing. Provision of a specific timeline is aimed at ensuring that cases are concluded in a timely manner thereby streamlining the prosecution process.

The Anti-Money Laundering (Amendment) Act, 2020:

This amendment fundamentally governs the money laundering offence. As part of the amendment under section 4, violators of the law would now be subject to greater financial penalties i.e., fines would be increased from 1 million rupees to 5 million rupees, and sentences would be increased from two years to ten years imprisonment.

The AMLA Second Amendment appoints the National Accountability Bureau (NAB) as an “investigating or prosecuting agency” under Section 2(xvii), in investigating ML cases, along with CTDs, FIA and other agencies investigating all other ML cases. Furthermore, functions and powers of AML/CFT regulatory authorities have been clearly defined with powers to issue licenses, regulate and perform other ancillary functions to comply with provisions of the AML Act. Additions were also made to Section 7, with Customer Due Diligence (CDD) mandated, including relying on third parties to ensure CDD. Section 7C specifies the requirement to hold records obtained via CDD for up to 5 years, while 7F mandates the integration of risk-based assessments within organizations. This amendment is a significant step towards criminalising money laundering as it tightens the law enforcement grip, requiring checks and balances. This also means that it acts as an additional source of evidence when prosecution aims to trace financial activity of an accused. Caselaw suggests that financial institutions or brokers that fail to carry out CDD and not establishing a beneficial ownership of their clients are fined by the Court.¹

¹ 2021 CLD 127
Importantly, offences under Section 21 of AMLA would now be considered “cognizable” offences as opposed to “non-cognizable” in line with the recommendations of the Financial Action Task Force (FATF). Section 25 promotes coordination by ensuring cooperation between federal officers and provincial officers.

**Mutual Legal Assistance (Criminal Matters) Act 2020:**

Mutual Legal Assistance is an advanced tool used by States to exchange information/evidence to aid criminal investigations and proceedings. Prosecutors in ML/TF cases can widely benefit from MLA to collect evidence against the accused. The MLA Act 2020 provides the process through which Pakistan can request and provide legal assistance from foreign government.

As per Section 7\(^2\), Pakistan would receive and act upon requests relating to a criminal offence either committed or suspected to have been committed in a foreign country when notified. Section 17\(^3\) stipulates that Pakistan may refuse the request of assistance to a foreign government if it jeopardizes its national security interests, if the request made is contrary to the laws of Pakistan, if it is prejudicial to an investigation or on-going proceedings, or if it violates international conventions of human rights.

**The Anti-Terrorism (Amendment) Act, 2020:**

The anti-terrorism law in Pakistan has been revised several times via legislation and the courts. Under the Anti-Terrorism (Amendment) Act 2020, fines were increased for a violation of seizing, freezing, and detention orders under Section 11O of the ATA. A new provision was added which basically enforces the decisions of UNSC Resolutions pertaining to counter-terrorism measures to check terrorism financing by making and enforcing such provisions in the domestic laws.\(^4\) Accordingly, any refusal or non-compliance with the orders of the Federal Government under Section 2 of the UNSC Act is a punishable offence and the person shall be liable to imprisonment of ten years or a fine of PKR 25

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\(^2\) Section 7, Mutual Legal Assistance (Criminal Matters) Act, 2020  
\(^3\) Section 17, Mutual Legal Assistance (Criminal Matters) Act, 2020  
\(^4\) Section 11O00, ATA.
million, or both.\textsuperscript{5} This not only strengthens sanctions and penalties against violations, but also entrenches compliance with the UNSC Act within the ATA framework.

The Anti-Terrorism (Second Amendment) Act 2020 prohibits the provision of loans or financial assistance to those associated with banned organizations and restricts all banks and financial institutions from issuing credit cards to individuals on the proscribed persons list. It further states that arms licenses already issued to such individuals would be revoked and their weapons confiscated. It also made it an offence for a person to provide money, property or otherwise facilitate the travel of an individual for the purpose of perpetrating, participating in, assisting, or preparing for a terrorist act or for providing or receiving training for terrorist activities.\textsuperscript{6}

Moreover, within 48 hours of any freeze or seizure or any action taken under Section 11O(1)(c), the person carrying out such freeze or seizure is to take steps to ensure that the seized property or assets will not be made available in any way to the proscribed person or organization, or other affiliates and that documentation will be kept to that effect.\textsuperscript{7} Money or other property acting on behalf of or at the discretion of proscribed persons or organizations could be frozen or seized without any prior notice and without delay.\textsuperscript{8} Finally, ATCs have been empowered, where such court is satisfied that property subject to forfeiture under the said section cannot be forfeited, to order the forfeiture of any other property of the accused of an equivalent value to the property subject to forfeiture which stands identified or located in another jurisdiction.\textsuperscript{9}

The Anti-Terrorism (Third Amendment) Act 2020 empowers ATCs to grant permission for 60 days (and to extend such permission) to investigating officers to use special investigation techniques including undercover operations, intercepting communications, accessing computer systems and controlled delivery for investigation of financing of terrorism.\textsuperscript{10}

\textsuperscript{5} Section 11OOO, ATA.
\textsuperscript{6} Section 11J(3), ATA
\textsuperscript{7} Section 11O(1)(d), ATA.
\textsuperscript{8} Section 11O(1)(e), ATA
\textsuperscript{9} Section 11Q(6A), ATA.
\textsuperscript{10} Section 19C, ATA.
Benami Transactions (Prohibition) Act, 2017 and Benami Transactions (Prohibition) Rules, 2019:

Benami is considered one of the simplest and easiest schemes to conceal proceeds of crimes. The Act coupled with the Rules makes it an offence to enter into any benami transaction and provides for confiscation and prohibition on retransfer of benami property.

Other noteworthy changes include the following:

- FBR amended the Income Tax Rules 2002 by adding Chapter VIIA on ‘Online Integration of Businesses,’ which was essentially designed to encourage the use of Point of Sale (POS) devices to limit cash couriers.\textsuperscript{11} The installation of an electronic fiscal device has been made mandatory for certain types of businesses to receive, record, analyze, and store fiscal data to ensure misuse does not occur. Such data can be used by the prosecution as evidence against the accused in ML/TF cases and have an effect on the conviction rate.

- Securities & Exchange Commission of Pakistan (SECP) has issued guidelines on Targeted Financial Sanctions (TFS) obligations, red flags on associates of proscribed entities, the (Risk-Based Assessments) RBA and FAQs (Frequently-asker Questions) on National Risk Assessment (NRA) 2019. In addition, SECP delivered awareness sessions on TFS and TF, conducted compliance forums for senior management and issued letters to REs regarding general feedback on STRs in light of guidance received from FMU. This is particularly important for prosecutors in terrorism financing cases as it can help identify what counts as suspicious transaction/activity for investigation and prosecution purposes.

- Central Directorate of National Savings (CDNS) has issued guidelines on compliance with TFS obligations and delivered awareness sessions on obligations, risks, red flags and reporting and penalties.

\textsuperscript{11} SRO No.779(I)/2020.
• FMU has issued quarterly newsletters on the steps it has taken to improve compliance with AML/CFT requirements, legislative and regulatory amendments/issuances, reporting trends, strategic analysis, typologies, and case studies. FMU also issues statistical reports, typologies reports, strategic and sectoral analysis. FMU’s website also contains a series of in-depth and informative YouTube streams for various sectors. Prosecutors can benefit from these resources since FMU’s quarterly reports provide an overview of legislative amendments in ML/TF laws as well as provide relevant case studies which can help in developing prosecutorial strategies. Prosecutors can view these newsletters for a recap of the amendments and to observe possible overlaps in legislation. Such additional knowledge will aid their proceedings and add value to their court assessments.

• Owing to the amendments in AMLA, the DNFBP sector has a dedicated regulatory authority to monitor and encourage compliance with AML/CFT obligations. This helps inculcate a compliance culture that could benefit the prosecution at the time of evidence collection and the judges at the trial stage. A broken compliance system and loopholes in monitoring may affect the sanctity of evidence and its admissibility in court. These regulatory authorities can also have evidence regarding licensing and registration of DNFBPs that could help trace financial evidence for use in the courts.

1.4. **Summary**

• It is recommended that investigation and prosecution of ML/TF cases be improved, FATF requires Pakistan to demonstrate progress by increasing the number of ML/TF investigations and convictions.

• Legislative amendments have been introduced by the Parliament to strengthen accountability in money laundering and terrorism financing offences. These amendments have resulted in the following statutes:
  - The Foreign Exchange Regulation (Amendment) Act, 2020;
  - The Anti-Money Laundering (Amendment) Act, 2020;
  - Mutual Legal Assistance (Criminal Matters) Act, 2020;
  - The Anti-Terrorism (Amendment) Act, 2020;
  - Benami Transactions (Prohibition) Act, 2017;
  - Benami Transactions (Prohibition) Rules, 2019; and
○ FBR, SECP, CDNS, and FMU have also assisted in complying with Pakistan’s obligations under FATF.

1.5. Self-Assessment Questions

1. Under which amendments have prosecutors been granted powers of employing special investigation techniques?
2. What amendments have been introduced to Customer Due Diligence (CDD) procedure under the Anti-Money Laundering (Amendment) Act 2020?
3. In what circumstances can Pakistan refuse the mutual legal assistance request of a foreign country under Mutual Legal Assistance (Criminal Matters) Act 2020?
4. In what statute is the ambit of benami property defined?
SECTION 02

Elements of ML/TF Offences

LEARNING OUTCOMES

- The definition of Money Laundering under UN Vienna 1988 Convention and UNTOC.
- The definition of Terrorism Financing under ATA.
- The elements of Money Laundering under AMLA and ATA.
- The elements of Terrorism Financing under ATA.
- The process of a money laundering offence.
- What is a predicate offence?
- What are proceeds of crime?
- Common methods used by money launderers to commit the offence.
- What is a terrorist activity and what are sources of terrorist financing?
2.1. Introduction to Money Laundering and Terrorism Financing

2.1.1. Definition of Money Laundering

The UN Vienna 1988 Convention Article 3.1 describes Money Laundering as:

“The conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions”.

Further, Article 6 of the UN Convention Against Transnational Organized Crime identifies four actions that constitute as money laundering:

- Conversion or transfer of crime proceeds for the purpose of concealing their illicit origin;
- Conceal mentor 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.

2.1.2. Definition of Terrorism Financing

To understand the offence of terrorism financing, it is necessary to determine what constitutes as a terrorist activity and who is a “terrorist”.

According to the FATF Recommendations - International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation\textsuperscript{12}, the term terrorist refers to:

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.

\textsuperscript{12} FATF, ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations’ (FATF, October 2018)
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.

A terrorist organization is described in similar terms; however, in the place of natural person; the term "organization" is described i.e., as a "group of terrorists”.

The ATA defines the offence of terrorist financing as “a person commits an offence if he uses money or other property for the purposes of terrorism, or possesses money or other property; and intends that it should be used or has reasonable cause to suspect it may be used for the purposes of terrorism”.

2.2. **Money Laundering**

For Money Laundering to comprise an offence, a criminal act, or proceeds derived from criminal activity need to be identified. The diagram below shows the process of money laundering.

2.2.1. The Process

The money laundering process involves three main stages: placement, layering and integration.

1) **Placement**
   This is the initial stage where the offender inserts the monetary proceeds of his illegal activity into the financial system by purchasing cheques, money orders, etc., to deposit abroad or by breaking up cash into small sums and depositing into various banks in the same country.

2) **Layering**
   The second stage involves the launderer moving around the black money to take it away from its illegal source so that it is not traceable. Wiring the black money to offshore accounts is a common method of distancing the funds from its source. The money is then layered with more funds to not attract suspicion.
3) Integration
In this stage, the launderer aims to make his black money seem white to the authorities. Money is re-entered into the economy, this time to purchase luxury items, etc., or even to show as a loan to the launderer himself.

Discussion
What has been the most common manner of integration in your experience as a Prosecutor?

2.2.2. Money Laundering under AMLA

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).

2.2.3. Money Laundering under ATA

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.

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**Case Study**

Adeel is a narcotics dealer but uses a jewellery business as his “front”. His arrangement with Waqas, who is a jewellery exporter in Faisalabad allows him to sell overvalued jewellery in Dubai. Adeel utilised the services of Banks, Cash Couriers & Alternative Remitters (hawala operators) for receiving and moving large sums of money derived from sale of narcotics. He got such amounts transferred through a number of countries and split up bulk cash into smaller amounts (smurfing). To remit part of the proceeds of crime to his home in Faisalabad, he made an arrangement with Waqas who overvalued the artificial handmade jewellery exports. Adeel then opened a jewellery store in Dubai to purchase the overpriced exports.

- Identify the placement, layering and integration by Adeel.
- **Can Adeel be accused of money laundering? If so, suggest the AMLA sections that Adeel could be charged against?**
- **Can Waqas be charged as an accomplice? Specify the AMLA sections to charge Waqas.**
2.2.4. Proceeds of Crime

Proceeds of crime as under Section 3(a) of the AMLA refers to any property obtained or derived directly or indirectly from the commission of a predicate offence, or a foreign serious offence\textsuperscript{13}.

Property in this context also includes property obtained indirectly through a predicate offence. For example, if a predicate offence of trading narcotics is established, the direct property in this example would be the money paid for the narcotics. If the profits of the crime are used to buy other assets such as a house or a car; these assets would be defined as 'property' as stated. Retaining or controlling does not necessarily mean that the accused owns the property in question. It would be enough if the accused leased the property or owned part of a company through which monies from a predicate offence were transferred. The essential element for control is that the accused was able to manage or handle the property in a way that meant he or she could determine what happened to that property.

According to FATF Recommendation 3 on Money Laundering, "countries should criminalize money laundering based on the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, to include the widest range of predicate offences.”

2.2.5. Common Methods Used by Money Launderers

- Layering and structuring payments to escape reporting restrictions.
- Changing currency denomination: – Changing small notes (PKR 500) into larger notes (PKR 5000)
- Expensive Asset Purchases – Luxury goods, vehicles and property
- Currency Exchange – Purchase of foreign currency
- Hawala
- Wire Transfers or Postal orders
- Mobile banking apps – Easypaisa, Omni UBL

\textsuperscript{13} A 'foreign serious offence' means an offence against the law of a foreign State, which had it occurred in Pakistan would have been a predicate offence. Such offence must be confirmed in a certificate issued by the Government of that State.
• Legitimate Business – Diverting profits by funding terrorist groups.
• Charities and Madrassas – funding terrorist activities by donating to madrassas or other charitable causes which are “fronts” for terrorist groups.

Case Study

A car wash business is run successfully by its owner, Sadiq. Most payments are made in cash. The FBR suspects Sadiq to be evading taxes, as his reported income is higher than the proceeds of sale from this car wash business.

- Could Sadiq be laundering money? If so, list the possible ways he could be laundering money.

Years after he has been running the car wash, the police found Sadiq to be involved in a group that carried out extortion around the neighbourhood.

- Could the car wash business and the extortion be linked? If so, how?
- What sections of the AMLA would be applicable on Sadiq? Please provide advice as a prosecutor to the IO.

A worker at the car wash has revealed to the police that Sadiq has recently been talking with some men on the phone about cash deposits in Dubai. He overheard Sadiq asking about depositing Rs. 20,00,000 at a bank in Dubai. But the worker has shared that the car wash hardly makes annual revenue of Rs. 5,000,000 since 2018 when it started.

- What should be the investigators' course of action?
The following table distinguishes the actus reus and mens rea of a money laundering offence.

### 2.2.6. Elements of Crime

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 and Mens Rea. The following table describes the two components of the offence of money laundering.

<table>
<thead>
<tr>
<th>Section 3 (a) AMLA states that:</th>
<th>Acquiring, converting, possessing, using or transferring property knowing or having reason to believe that it is the proceeds of crime</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Elements of Crime</strong></td>
<td><strong>Purpose</strong></td>
</tr>
<tr>
<td><strong>ACTUS REUS</strong></td>
<td>Acquires, converts possesses, uses or transfers property</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Conceals, disguises the true origin, location, movement</td>
</tr>
<tr>
<td>Transfer of title of property documents, Transfer of shares, offshore companies Gift deeds. Bank transfer records/statements, Sale purchase agreement Investment agreements, trade invoices shell companies' documents, employment records, asset worth etc.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Falsifying activities using fraudulent loans, false invoices, and misleading naming conventions. CCTV footage and other electronic evidence</td>
<td></td>
</tr>
<tr>
<td>Holds or possesses on behalf of any other person</td>
<td></td>
</tr>
<tr>
<td>Witnesses who are acting as intermediaries. partnership deeds that disguise beneficial ownership especially of LLCs asset divisions contracts, trust deeds appointing nominees, power of attorneys, nominee shareholder agreement other electronic evidence</td>
<td></td>
</tr>
<tr>
<td>Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates or counsels</td>
<td>Witnesses who are acting as intermediaries. asset divisions contracts, trust deeds appointing nominees, power of attorneys, nominee shareholder agreement agreement with agent, distribution agreement, NTN numbers, tax records other electronic evidence like CCTV footage and WhatsApp or text messages.</td>
</tr>
</tbody>
</table>

| Knowing or having reason to believe | Retaining control over proceeds of crime | Knowledge or intent will be determined from the factual circumstances. Mere suspicion will not be enough. |

**MENS REA ELEMENT (ONUS TO PROVE IS ON THE ACCUSED)**

*Please refer to Pg. 41 of the Toolkit on RSIL’s Toolkit on AML/CFT in Pakistan Vol. I for a detailed breakdown of the investigation and prosecution process in ML cases.*
2.3. **Terrorism Financing**

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).
- **Section 11 (W)** relates to the printing, publishing, or disseminating of any material that would incite hatred or give projection to any proscribed organization or individual. It is a linked charge that can be connected with terrorism financing when such messaging/projections directly ask for donations to promote the terrorist cause.

2.3.1. **Terrorist Activity**

According to the FATF, a terrorist activity is:
1. Any act, which constitutes an offense under [any of the stated ten international] treaties.
2. 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\(^4\).

Terrorism financing applies to all means of funding and is not limited to money. Therefore, provision of any economic resources, shares, dividends, oil etc. may also be considered as ‘financing’.

The mens rea required to prove the offence is not restricted to having the specific knowledge of the terrorist organization/activity. The ATA broadens the scope by deeming mens rea to be “reasonable cause to suspect”.

Reasonable cause to suspect may mean a scenario where objectively, a reasonable person would have suspicion.

2.3.2. Sources of Terrorism Financing

- **Charities/donations:**

  Certain charities via NGOs or Madrassas are ‘fronts’ for collection of funds for terrorist organisations. With most of these charities, the donors are not aware of their true objectives and there is no transparency as to the utilisation of the funds.

- **Self-financing (legitimate income):**

  Individuals from the proscribed organisation may have other legitimate businesses under same or different names that generate money legally. This legally generated money is then poured into the proscribed

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organisation to fund terrorist activities.

- **Funding from supporters of a cause or membership payments:**

  Various propagate their agenda or cause as a humanitarian or a religious one. These organisations ask people to attend sessions, learn and interact with other supports and also financially assist the cause. organisations

- **State/ Intelligence Agency Sponsoring:**

  It is common for countries with heightened animosity to dismantle one and other’s national security. Terrorist organisations are paid or even created by Intelligence Agencies to disrupt law and order i.e., RAW (India) sponsoring terrorist activities in Pakistan.

- **Criminal Activities – Drug Trafficking, Extortion, Robbery & Theft, Smuggling and Counterfeiting:**

  Money obtained illegally from these criminal offences are then used to purchase arms, recruit fighters etc. to run the terrorist organisation.
The table below describes the actus reus, mens rea and evidence required to prove the ATA sections listed above.

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| Solicits, Collects or Raises | | - Witnesses, Confessions,  
- Messages would have to reflect the tacit approval of the offender in soliciting/collecting/raising money or some other property.  
- SMS messages inviting another recovered from the phone.  
- WhatsApp messages  
- Pamphlet  
- Donation (Chanda) receipts  
- Cheque books.  
- Bank Records or financial statements that are reflecting any transfer of money.  
- Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company.  
- Record from FBR of NTN No. Income Tax Returns and Wealth Statements  
- Letter to concerning revenue or excise department for identification of any property associated with the individual or organization if a property is involved. In this case, the title documents of the property would have to be traced. |
### No Mens Rea element defined.

<table>
<thead>
<tr>
<th>[Money or other property] for a proscribed organization</th>
<th>Witnesses, Confessions, Messages would have to show that money, or some other property was requested in the invitation to the other (or was the result of the invitation).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bank Records</td>
</tr>
<tr>
<td></td>
<td>Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company.</td>
</tr>
<tr>
<td></td>
<td>Record from FBR of NTN No. Income Tax Returns and Wealth Statements.</td>
</tr>
<tr>
<td></td>
<td>Letter to concerning revenue or excise department for identification of any property associated with the individual or organization.</td>
</tr>
</tbody>
</table>

### 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.
**Section 11-H (2) – A person commits an offence if he:**

(a) he receives money or other property; and

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| He invites someone else | - Witness testimony  
- Confession  
- SMS messages inviting another recovered from the phone.  
- WhatsApp messages  
- Pamphlet  
- Donation (Chanda) receipt  
- Identity of who was invited is essential. |
| To provide money or other property | - Witnesses, Confessions, Messages would have to show that money, or some other property was requested in the invitation to the other (or was the result of the invitation).  
- Bank Records  
- Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company.  
- Record from FBR of NTN No. Income Tax Returns and Wealth Statements.  
- Letter to concerning revenue or excise department for identification of any property associated with the individual or organization. |
| MENS REA | Intends that it should be used, or For terrorism or by a terrorist or an organization concerned in terrorism | - Specific intent needs to be proven. - Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization. - Establishing links with a terrorist organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc. |
| Has reasonable cause to suspect that it may be used | - Objective assessment: Would a reasonable person in the individual’s position have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc. - Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes. (recklessness); this requires that the suspect “consciously accepts the substantial chance” that funds will serve to offer financial support. |
Section 11 (H) 2 (b) intends that it should be used or has reasonable cause to suspect that it may be used, for terrorism [or by a terrorist or organization concerned in terrorism.

<table>
<thead>
<tr>
<th>ACTUS REUS</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| He receives money or other property | - Witness testimony  
- Confession  
- SMS messages recovered from the phone of the receiver or the sender  
- WhatsApp messages  
- Bank statements or records that are reflecting receipt of money  
- Property details that can include shareholder agreement, bond receipt, property deed. (A Letter to the concerned revenue or excise department for identification of any property associated with the individual or organization must be sent)  
- Cheque  
- Cash  
- Record from FBR of NTN No. Income Tax Returns and Wealth Statements  
- Contracts that are testifying the receipt of other economic resources such as oil, dividends or other natural resources  
- Receipt/ contracts of profits or interest/ benefit accrued from the property. |
<table>
<thead>
<tr>
<th><strong>MENS REA</strong></th>
<th><strong>Intends that it should be used, or</strong></th>
<th><strong>For terrorism or by a terrorist or organization concerned in terrorism</strong></th>
</tr>
</thead>
</table>
| **Has reasonable cause to suspect that it may be used** | - Specific intent needs to be proven by objective factual circumstances.  
- Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization.  
- Establishing links with a terrorist organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc. | - Objective assessment: Would a reasonable person in the individual's position have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc.  
- Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes. (recklessness) This requires that the suspect “consciously accepts the substantial chance” that funds will serve to offer financial support. |
Section 11-H (3) – A person commits an offence if he: -
(a) he provides money or other property; and
(b) knows or has reasonable cause to suspect that it will or may be used, for terrorism [or by a terrorist or organization concerned in terrorism]

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| Provides money or other property | - Witness testimony  
- Confession  
- SMS messages recovered from the phone of the receiver or the sender  
- WhatsApp messages  
- Bank statements or records that are reflecting receipt of money  
- Property details that can include shareholder agreement, bond receipt, property deed. (A Letter to the concerned revenue or excise department for identification of any property associated with the individual or organization must be sent)  
- Cheque  
- Cash  
- Record from FBR of NTN No. Income Tax Returns and Wealth Statements  
- Contracts that are testifying the receipt of other economic resources such as oil, dividends or other natural resources  
- Receipt/ contracts of profits or interest/ benefit accrued from the property. |
| MENS REA | Intends that it should be used | For terrorism or by a terrorist or organization concerned in terrorism | - Specific intent needs to be proven.  
- Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization.  
- Establishing links with a terrorist organization—through intelligence, witnesses’ testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc.  
- Objective assessment: Would a reasonable person in the individual’s position have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc.  
- Since this is an objective test, it is not necessary to prove that the accused suspected that the money or other property might be used for terrorism but rather that a reasonable person with the same knowledge would so suspect. R v. Sally Lane and John Letts [2018 – UK Supreme Court].  
- Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes. (recklessness) |
| --- | --- | --- | --- |
Section 11: A person commits an offence if-
(1) he uses money or other property for terrorism; or
(2) (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 terrorism

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence needed to prove each element</th>
</tr>
</thead>
</table>
| uses money or other property | ACTUS REUS | - Witness testimony  
- Confession  
- SMS messages recovered from the phone.  
- WhatsApp messages  
- Bank statements/financial statements  
- Transfer receipts.  
- Contracts  
- Purchase receipts |
| possesses money or other property | | - Witnesses, Confessions, Messages would have to show that money or some other property was used.  
- Bank Records  
- Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company.  
- Record from FBR of NTN No. Income Tax Returns and Wealth Statements  
- Letter to concerning revenue or excise department for identification of any property associated with the individual or organization. |
### Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism

<table>
<thead>
<tr>
<th>MENS REA</th>
<th>For terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intends that it should be used, or</td>
<td>Specific intent needs to be proven.</td>
</tr>
<tr>
<td></td>
<td>Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization.</td>
</tr>
<tr>
<td></td>
<td>Establishing links with a terrorist organization—through intelligence, witnesses’ testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc.</td>
</tr>
<tr>
<td>Has reasonable cause to suspect that it may be used</td>
<td>Objective assessment: Would a reasonable person in the individual’s position have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc.</td>
</tr>
<tr>
<td></td>
<td>Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes. (recklessness) This requires that the suspect “consciously accepts the substantial chance” that funds will serve to offer financial support.</td>
</tr>
</tbody>
</table>

- Cheque books,
- Transfer of title documents.
- Social media accounts.
Section 11J. (1)- A person commits an offence if he-
(a) enters or becomes concerned in an arrangement as a result of which
money or other property is made available or is to make available to
another; and
(b) has reasonable cause to suspect that it will or may be used for
terrorism.

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACTUS</strong>&lt;br&gt;Enters or becomes concerned in an arrangement</td>
<td></td>
<td>- Witnesses, intelligence, confession,&lt;br&gt;- Trust deeds,&lt;br&gt;- Transfer of title to an NGO,&lt;br&gt;- Donation cheques,&lt;br&gt;- Beneficial ownership certification of legal entities&lt;br&gt;- Details through NADRA verisys&lt;br&gt;- Title of property or contract testifying to transfer of interest/ profit accruing from a property.&lt;br&gt;- Call Data Record, text messages.</td>
</tr>
<tr>
<td><strong>REUS</strong>&lt;br&gt;To make money or property available</td>
<td></td>
<td>- Witnesses, Confessions,&lt;br&gt;- Bank Records reflecting benefit accrued.&lt;br&gt;- Record from FBR of NTN No. Income Tax Returns and Wealth Statements.</td>
</tr>
</tbody>
</table>
### MENS REA

<table>
<thead>
<tr>
<th>Has reasonable cause to suspect that it may be used,</th>
<th>For terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Objective assessment: Would a reasonable person in the individual’s position have a reason to suspect that the money or other property arranged for would or may be used for terrorism.</td>
<td></td>
</tr>
<tr>
<td>- Prosecutors can prove that the offender was aware of a substantial risk that the arrangement would be used for terrorist purposes. (recklessness) This requires that the suspect “consciously accepts the substantial chance” that arrangement will serve to offer support that may be used for terrorism.</td>
<td></td>
</tr>
</tbody>
</table>
Section 11J. (2): Any person in Pakistan or a Pakistani national outside Pakistan shall commit an offence under this Act, if he knowingly or wilfully makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person.]

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| A citizen or national outside Pakistan | To make money or property or services available (Directly or indirectly) (wholly or jointly) | - CNIC, Information from NADRA verisys,  
- Travel tickets/ history  
- Information received from Immigration and Passports Department (MOI) or passport office (IMPASS)  
- Intelligence received from outside Pakistan. |
| ACTUS REUS | | - Witnesses of middleman/ trader  
- Confessions.  
- Messages would have to reflect the tacit approval of the offender in providing money or some other property or the middleman’s communication with the leading financier of the funds.  
- Bank Records or financial statements that are reflecting the transfer of money.  
- Record from SBP if any foreign exchange is involved.  
- Record from FBR of NTN No. Income Tax Returns and Wealth Statements  
- Letter to concerning revenue or excise department for identification of any property associated with the individual or organization if a property is involved.  
- donations cheques/ gift deeds (wholly) |
<table>
<thead>
<tr>
<th>MENS REA</th>
<th>Contract for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism</th>
</tr>
</thead>
<tbody>
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<td></td>
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</tbody>
</table>
| - contracts that are testifying the provision of other economic resources such as oil, dividends or other natural resources  
- Online media activity: Facebook pages being run for the propagation of ideology or recruitment, or business pages being used as a vehicle to secure and send funds to finance food, medical supplies or ammunition  
- Literature available (online or hard copies)  
- Financial documents Partnership deeds/ Contracts  
- Other electronic evidence  

**knowingly, wilfully** For the benefit of a proscribed organization/ individual 

- Specific intent needs to be proven by objective factual circumstances.  
- Specific intent that a proscribed organization or individual will use the money or other property or services. (the proscribed individual or organization needs to be listed on the 4th or first schedule of the ATA).  
- Establishing links with the proscribed organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc.
Section 11K. A person commits an offence
(1) if he enters or becomes concerned in any arrangement which facilitates
the retention or control, by or on behalf of another person, of terrorist
property: -
(a) by concealment;
(b) by removal from the jurisdiction;
(c) by transfer to nominees; or
(d) in any other way.
(2) It is a defence for a person charged with an offence under subsection
(1) to prove that he did not know and had no reasonable cause to suspect
that the arrangement related to terrorist property.

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| Enters an arrangement | Facilitates retention or control of a terrorist property | - Witnesses, confessions  
- Contractual agreements,  
- Property/business address and registration details  
- If MVTS involved, then details from SBP of records.  
- Social media pages  
- Purchase receipts of high-value goods,  
- Predicate crime witnesses  
- Express trusts deeds, foundations, NGOs  
- Other electronic evidence |
| Concealment | | - Witnesses, confession  
- Benami or other bank account details  
- NTN and tax records  
- Transfer of title of property documents,  
- Transfer of shares, Gift deeds.  
- Bank transfer records/ statements,  
- Sale purchase agreement, Investment agreements, trade invoices  
- Shell companies' docs, employment records, asset worth etc.  
- Falsifying activities using fraudulent loans, false invoices, |
| MENS REA | Reasonable cause to suspect | and misleading naming conventions.  
- CCTV footage and other electronic evidence |
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Removal from jurisdiction</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
- Witnesses (brokers/ Hawala Hundi operators)  
- Shipment invoices and re-sale receipts of goods  
- Distribution agreement, bank transfer details and statements  
- Remittance statements  
- International NGO registration certificates  
- MLA request letter for further investigation.  
- Travel history. |
| Transfer to nominees |  
- Witnesses who are acting as intermediaries.  
- Partnership deeds that disguise beneficial ownership especially of LLCs  
- Asset divisions contracts, trust deeds appointing nominees, power of attorneys, nominee shareholder agreement.  
- Other electronic evidence |

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16'Treasurer v. Mohammad Jabbar Ahmad'
Section 11-W: Printing, publishing, or disseminating any material to incite hatred or giving projection to any person convicted for a terrorist act or any proscribed organization or an organization placed under observation or anyone concerned in terrorism.

(1) A person commits an offence if he prints, publishes or disseminates any material, whether by audio or video-cassettes [or any form of data, storage devise, FM radio station or by any visible sign] or by written photographic, electronic, digital, wall chalking or any other method [or means of communication] which [glorifies terrorists or terrorist activities or] incites religious, sectarian or ethnic hatred or gives projection to any person convicted for a terrorist act, or any person or organization concerned in terrorism or proscribed organization or an organization placed under observation: Provided that a factual news report, made in good faith, shall not be construed to mean “projection” for the purposes of this section.

(2) Any person guilty of an offence under sub-section (1) shall be punishable on conviction with imprisonment which may extend to five years and with fine.

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| Prints, publishes, disseminates any material to incite hatred or give projection to proscribed organization | Essential purpose of this clause is to criminalize communications that promote terrorist activities. It can be linked with TF when such messaging/publications outright ask for donations/charity for proscribed entities/individuals. | - Documentary Evidence  
- Messages that reflect the soliciting/collecting/raising money or some other property for the proscribed entity.  
- Interpretation and analysis of the message.  
- Pamphlets.  
- Donation (Chanda) receipts. |
### MENS REA

| No Mens Rea Element defined. | This 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. |

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### Case Study

A young couple has been arrested for possession of cocaine and heroin in the small town of Sibi, Balochistan. Two other men have also been arrested for the regular purchase of these drugs from the couple. According to the couple, the drugs are purchased from a seller in Kabul and then sold at a triple price in Pakistan. All sale and purchase is done in cash. When asked about cash earned from the sale of drugs, the couple informed that they were robbed a month ago.

- **As a prosecutor, how would you want the investigation to be carried out? Can a money laundering case be formed? If so, list three scenarios in this case that could lead the investigator into suspecting money laundering.**

After thorough investigation, the police have linked the couple with a terrorist organisation in Kabul. The organisation seeks revenge on the “War on Terror”, like many other proscribed organisations. It may be that the cash from the sale of drugs is sent back to Kabul to fund the organisation’s terrorist activities.

- **Which sections of the ATA, and AMLA should be applied in this case?**
- **To find a link with other proscribed organisations, how should the investigator lead the investigation?**

Please refer to Pg. 42 of the Toolkit on RSIL’s Toolkit on AML/CFT in Pakistan Vol. I for a detailed breakdown of the investigation and prosecution process in TF cases.
2.4. **Summary**

- The process of money laundering includes the following stages: Placement, Layering and Integration.
- While money laundering and terrorism financing are separate offences, ML can sometimes lead to TF. However, it is important to note terrorism financing can also occur without any money laundering.
- Terrorism financing applies to all means of funding and is not limited to money. Therefore, provision of any economic resources, shares, dividends, oil etc. may also be considered as 'financing'.
- In order to determine charges for ML/TF offences, elements of crime i.e., mens rea and actus reus must be proved.

2.5. **Self-Assessment Questions**

1. What are the three main components of money laundering process?
2. Can money laundering lead to terror financing? If yes, how?
3. What constitutes as “proceeds of crime”?
4. What are some common methods used by money launderers?
5. What are some sources of terror financing?
SECTION 03
Investigation

LEARNING OUTCOMES

- The role of Law Enforcement Agencies (LEAs) during Investigation
- Special Provisions to investigating officers under the AMLA
- Special Provisions to investigating officers under the ATA
- NACTA SOPs for the constitution of and investigation under a JIT.
- Admissibility and recording of confessions.
- The method for conducting an ID Parade
3.1. The Role of Investigation Officers

This section provides important guidance to prosecutors, on the method of investigations in ML/TF cases. It merges both offences where required to avoid repetition but distinguishes between the two in areas where necessary.

3.2. Initial Actions in Money Laundering Investigation

Designated (LEAs) may initiate investigation of an ML offence. 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 ML under S. 25, AMLA 2010. These LEAs include:

1. Federal Investigation Agency
2. National Accountability Bureau
3. Counter Terrorism Department
4. Anti-Narcotics Force
5. FBR – Income Tax
6. FBR – Customs Intelligence

3.3. First Information Report U/S 154 Cr.P.C.

Any of the LEAs listed above may file an FIR after their initial investigation. Typically, these agencies monitor financial activities of suspicious accounts and on finding any evidence against the suspect, it forwards the information to the Police.

3.4. Powers of an Investigating Officer under AMLA

- Power to attach a property (Section 8)
- Power of Survey (Section 13)
- Search and seizure (Section 14)
- Search of Persons (Section 15)

3.4.1. Power of Attachment under AMLA
1. On the basis of the FIR and any initial evidence, the investigating officer follows a line of enquiry.
2. With an order from the Court, he may provisionally attach a property that he suspects is part of money laundering. This order typically expires after 180 days and may be extended at the discretion of the Court.\footnote{Section 8 (1), AMLA 2020}
3. The IO has to submit the court order to the investigation agency within 48 hours of the provision of the notice. This 48-hour update is required of the IO after any disclosure or change in the case.\footnote{Section 8 (2), AMLA 2020}
4. The IO then serves a show-cause notice to the suspect to disclose in not less than 30 days the sources of income, earnings or assets or by which means he/she acquired the property and why the said property should not be forfeited to the Federal Government.
5. This allows the accused an opportunity to explain the money trail for the property and show any documents proving the legitimacy of his/her sources of income.
6. Following the hearing, the investigation continues and IO is required to submit monthly reports to the Court on the progress of the case.
7. It is ideal during this initial investigation that the investigating officer engages with the prosecutor for early advice. From a legal perspective and because he would understand the nature of evidence required for conviction, the prosecutor could guide the investigating officer. However, the prosecutor does not have the mandate to disrupt the investigating officer’s investigation or ‘order’ pursuing a line of enquiry.

In many cases, a prosecutor may have more knowledge regarding the sources of evidence and may be able to suggest improved or new lines of enquiry. For instance, in a TF case a prosecutor may suggest the utilisation of MLA in order to trace a proscribed organisation. During the investigation, the prosecutor may also suggest assistance from different LEAs. The evidence collection from these LEAs may be streamlined with the guidance of a prosecutor and the investigation process may run more smoothly due to such cooperation.

3.4.2. Power of Survey (Section 13, AMLA 2010)
Within the limits of his jurisdiction and with permission from the Court, the IO may carry out inspections, gather and verify information that may be useful for the case. Post-survey, the IO must produce a report and submit to the head of the investigating agency within 48 hours.

3.4.3. Search and Seizure (Section 14, AMLA 2010)

With the Court’s permission, the AMLA also allows the IO to enter and search any building, vehicle etc. via forced entry if required and seize property if he has reason to believe that the accused is involved in the offence of money laundering and is in possession of documents/evidence that may prove his/her culpability. The IO may make an inventory of property as well. The IO then must produce a report and submit to the head of the investigating agency within 48 hours.

3.4.4. Search of Persons (Section 15, AMLA 2010)

If the IO has reason to believe that the accused is concealing information relevant to the investigation, he may search the person, seize the item and record what he has recovered. A report of this recovery and statement of those searched must be submitted to the head of the investigating agency within 48 hours.

3.5. Establishing a Predicate Offence

In order to prosecute the accused for money laundering, it is essential that any predicate offence be investigated. A predicate offence is any criminal conduct that facilitates a more serious offence. In money laundering cases, a predicate offence can often be corruption, bribery, fraud, forgery, counterfeiting, kidnapping and corporate or fiscal offences. The proceeds from the predicate offence typically lead to money laundering offences. For instance, false identification is itself a crime. It may be a predicate offence to commit larceny or fraud if the false identity is used to withdraw money from a bank. The offences listed in the Schedule to the AMLA have been declared as predicate offences.

3.5.1. How the predicate offence works

The following examples help explain what constitutes as a predicate offence:
Scenario 1

An exporter that exports pharmaceutical products to Afghanistan is transporting young women and children through his freight trucks, across the border for prostitution. These women and children are often kidnapped or promised a safe entry into Europe. This offence would be categorised as human trafficking. From the money gained by selling/transporting these women and children to the Afghani ring, the exporter purchases luxury yachts in Dubai.

In this scenario, the offence of selling young women and children to the crime ring is the “predicate offence”.

Scenario 2

A businessman running a successful chain of restaurants evades taxes. He dishonestly reports his annual sales and understates profits. This offence is categorised as tax evasion. The profits that he does not show in his bank statements and tax returns are dumped in an offshore account in Switzerland.

In this scenario, the offence of tax evasion is the “predicate offence”.

However, it is not always necessary to prove a predicate offence in a money laundering case. The prosecution only needs to show that the proceeds of crime have been derived from a criminal offence that is listed as a predicate offence in the schedule to the AMLA, but it does not necessarily need to prove the elements of the predicate offence. Often LEAs conduct a parallel financial investigation to determine the predicate offence i.e. the proceeds of the crime which may be money laundering or terrorism financing.

According to the AMLA, the Sessions Court (within its territorial jurisdiction) can exercise jurisdiction to try and adjudicate the offences punishable under the AMLA. However, if the predicate offence was triable by any other court other than the Sessions Court, the offence of money laundering and all matters connected with it or incidental thereto would be tried by the Court trying the predicate offence. This means that, for example, if an accused is charged for the

19 Anti-Money Laundering Act 2010, s 2(q)
predicate offence of sale and purchase of drugs under the Control of Narcotics Substances Act, (CNSA)1997, the offence of money laundering may also be triable by the Special Court established under the CNSA 1997\(^{20}\).

The **UK Crown Prosecution Service (CPS)** provides guidance to its prosecutors for determining criminal origin of proceeds that may have become the basis for the offence of money laundering. For example:

- The prosecution must focus on proving the unlikelihood of the property being of legitimate origin. Where the prosecution proves that the accused has no legitimate explanation for possessing the property in question, the Court may be willing to draw an inference that it is proceeds of crime (for example if a large amount of cash is found in the home of someone with no visible means);
- Follow and investigate complex audit trails;
- Analyse business accounts or audit records to show excessive or unexplained transactions or profits;
- Circumstantial evidence. This could be social media entries demonstrating a lavish lifestyle which is not supported by legitimate income, or there could be messages and / or pictures stored on digital devices indicating the individual is in possession of high value items (e.g., cars) which are not supported by legitimate income;
- Accomplice evidence (for example evidence provided by criminal associates usually as part of an assisting offender agreement);
- Large amounts of cash concealed in property and vehicles.\(^{21}\)

### 3.6. Methods of Inquiry under Terrorism Financing

<table>
<thead>
<tr>
<th>Overt Methods</th>
<th>Covert Methods</th>
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</thead>
<tbody>
<tr>
<td>1- Arrests under S. 11EEE and S. 11EEEE</td>
<td>1- Undercover operations</td>
</tr>
<tr>
<td>2- Summoning records from financial institution</td>
<td>2- Surveillance</td>
</tr>
<tr>
<td></td>
<td>3- Intercepting</td>
</tr>
<tr>
<td></td>
<td>4- Controlled Delivery</td>
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</tbody>
</table>

It is not common for investigating officers or LEAs to use covert methods in Pakistan. Scarce resources, lack of training and requisite SOPs make it almost

\(^{20}\) 2018 PCr.LJ 837 Balochistan  

\(^{21}\) (Money Laundering Offences | The Crown Prosecution Service, 2021)
impossible for the Police to carry out covert investigations using the aforementioned methods. The Police normally is tipped by an informant or via monitoring of the financial activities of suspects.

3.7. Initiation of Action

Designated LEAs mandated under the AMLA 2010 and the Anti-Terrorism Act, 1997 (ATA) to conduct investigation of Terrorism Financing (TF) offences are:
1- Provincial Police Counter Terrorism Departments (CTDs)
2- Counter Terrorism Wing- FIA

3.8. Powers of an Investigator in TF Offences

1. Restricting Movement (Section 11 EE ATA)

In case of insufficient or no reasonable grounds for suspicion against the accused, and if the accused is proscribed on the Fourth Schedule List of the ATA, then the investigating officer may release him on his executing a bond. This means that the accused will not engage in any act of terrorism or act in a manner that advances the objectives of the organization proscribed. However, if the individual fails to execute the bond, the District Police Officer may detain the 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.

2. Power of Seizure (Section 11O ATA)

During monitoring of suspicious activities, the investigating officer has the mandate to, on reasonable grounds, seize and detain any cash which he believes is intended to be used for the purposes of terrorism, and if it forms the whole or part of the resources of a prescribed organization.

3. Enter and Search (Section 9)

On the basis of reasonable grounds of suspicion, an investigating officer may enter and search a person and may seize material that could potentially be
Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism

evidence of the offence. Section 10 of the ATA further gives the investigating officer the power to forfeit any material identified as part of this entry and search. The investigating officer however must put into writing his reasons for entering and conducting the search. This written statement has to be provided to the suspect upon entry.

4. **Power to Arrest and Detain (Section 11 EEE)**

   The investigator may detain the suspect for up to 12 months, subject to authority.

5. **Preventative Detention for Inquiry (Section 11 EEEE)**

   An investigating officer not below the rank of superintendent or a JIT may detain a suspect for up to 3 months. The suspect however is to be produced before the court within 24 hours.

6. **Prohibition of Disposal of Property (Section 11EEEEE)**

   An investigator not below the rank of superintendent or a JIT may serve notice for the purposes of investigation that a property not be disposed, transferred or sold.

7. **Application of Investigation Technique (Section 19 C)**

   With the permission of the Court and within 60 days of such permission, the investigating officer may use techniques such as undercover operations, intercepting communications, accessing computer systems and controlled delivery for investigation of financing of terrorism under the law in force.

8. **Application to Attach Property (Section 11 P)**

   With the permission of the Court, the IO may attach a terrorist property and any cash retrieved will be added to a profit and loss account. In case the accused is acquitted, the complete amount will be paid back with interest.

9. **Remand (Section 21 E)**
The accused may be detained for 30 days if ordered by the Court and the remand may be extended to 90 days but the accused must be presented in Court within 24 hours of detention excluding travelling time.

10. Power to Call Information (Section 21 EE)

An officer of the rank of superintendent or a JIT may call for information/documents or a person for examination from a bank, an individual or other financial institutions.

3.9. Investigation via Joint Investigation Team (JIT)

In certain TF cases, the government may constitute a JIT. This could be when the case requires more than a single investigating officer, if the case has gotten excessive media coverage, etc. The JIT is constituted on the prerogative of the government and cannot be created by the investigating agency.

NACTA issued Standard Operation Procedures (SOPs) governing JITs in March 2020, explaining how a joint investigation may be carried out.

The Toolkit on AML/CFT Vol I (Operational Guidelines for the Investigation & Prosecution of Money Laundering & Terrorism Financing Offences in Pakistan) provides an overview of the investigation parameters of the JIT and its responsibilities under the SOPs.\(^{22}\)

3.9.1. Key Takeaways for Prosecutors from the NACTA SOPs

For prosecutors, the issuance of these guidelines may not have a direct imposition of responsibility, but it is essential that prosecutors understand the impact of a JIT on their case. Since most of these JITs are created in high-profile cases, the prosecutors must keep track of the lines of investigation and sources of evidence used.

\(^{22}\) See page 41, Toolkit on AML/CFT Vol I
As suggested by the guidelines, the investigation team is required to use multiple sources and carry out investigation on a larger scale. The prosecutor should ideally trace the following:

1- How is the source of funding being traced? Is the investigation factoring in all possible sources?
2- Have all possible financiers been identified and have they been linked to the funding?
3- Has the transnational funding aspect been considered?
4- Have the co-suspects been investigated?
5- Have premises been searched?
6- Does the evidence need forensic analysis?
7- Has a recovery memo been prepared?
8- Which sections from the relevant legislation are applicable in the case?
9- Who have been identified as the prosecution witnesses?
10- Does the case need analysis by financial experts?

Ideally, the questions above are the responsibility of the investigating officer. However, the prosecutor’s guidance in the case early on may set the course of trial in the right direction. The early police-prosecution coordination has been discussed further under Section 5 of the Module.

3.10. Arrest & Detention

Under Section 5 of the ATA, the police, armed forces and civil armed forces are empowered to arrest an individual without issuing a warrant of arrest. However, Section 5(2)(ii) limits this power by requiring the police to make an arrest on the basis of either “credible information” or “reasonable suspicion.” Reasonable suspicion does not mean that a Police Officer can proceed on mere conjectures and surmises. It means that there are some definite facts tending to throw suspicion on person arrested and not a vague inference. In the absence of a reasonable suspicion, arrest would be illegal. Unnecessary haste while making an arrest may also taint prosecution and affect the proceedings in Court.

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24 Waris Ali Raza v. The State and 4 others, 2013 PCr.LJ 267
25 Rasool Bux v. The State, 2005 YLR 915
The procedure of arrest in TF offences is derived from the Cr.P.C.:

- **Section 60 (Cr.P.C.):** the accused arrested without warrant must be presented before the magistrate without “unnecessary delay”.
- **Section 61 (Cr.P.C.):** In the absence of a special order from the magistrate, the accused cannot be detained for more than 24 hours by the investigating officer.

The Constitution of Pakistan also protects the accused rights during arrest under Article 10 (Safeguard as to arrest and warrant). The Article requires that first, any person who is arrested and detained has to be informed, as soon as may be, of the grounds of his arrest and detention and no person can be arrested and detained in custody without complying with this requirement. Second, that no person so arrested or detained can be denied the right to consult a legal practitioner of their choice for their defence²⁶.

Section 11EEE of the ATA empowers the Government to:

- Order in writing the detention of a proscribed person for a period as specified in the order.
- If necessary, extend the period of detention from time to time for a total period not extending 12 months.

However, it is necessary for the prosecution to understand the dire need to use this power. The Constitution (article 10) protects the accused and assures a fair trial. The prosecution must make sure that any extraordinary powers under ATA are balanced against the accused’s right to fair trial as under the Constitution of Pakistan.

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²⁶ PLD 2017 Sindh 243, Shoaib Warsi and another v. Federation of Pakistan
**Case Study**

A suicide attack in a hotel in Quetta killed 50 people, including 5 foreigners. An organisation named “Lashker-e-Deen” claimed responsibility. The organization’s leader, Hafiz-ullah Ameen further sent police authorities a video recording of him “declaring war on all non-muslims”. The police are conducting a search of Hafiz-ullah’s premises. The police uncovered links with a hostile government’s intelligence agency – including call records and bank transfers. It is suspected that the organisation may be funded by the hostile state.

One of the organisation’s workers was captured a week after the attack. He has agreed to assist the police but has asked for anonymity.

- **Given that Hafiz-ullah is arrested, how should the State pursue the case?**
- **Briefly explain the lines of enquiry, the local and international sources of evidence, the actions to be taken by the State and the ideal timeline for the trial of the case.**
- **Keeping in mind the already peculiar security situation in Pakistan, the government has decided to carry out the trial covertly. What measures should the State take?**

### 3.11. Power of Investigation under Special Legislation

The following powers add to the mandate of the law enforcement agencies investigating ML/TF offences:

<table>
<thead>
<tr>
<th>Power</th>
<th>Granting Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1- The investigating officer has the power to obtain and access records held by FIs, DNFBPs and other commercial entities.</td>
<td>Section 5 of the FIA Act 1974.</td>
</tr>
<tr>
<td>2- ANF officers (not below the rank of Inspector) may arrest, without warrant, any person who has committed, or against whom a reasonable suspicion exists that he</td>
<td>Section 6(3) of the ANFA</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>3-</strong></td>
<td>The investigating agency may require FBR-Customs to produce documents, provide information and give them power to examine persons, summon persons to give evidence and produce documents or things, and seize things liable to confiscation.</td>
</tr>
<tr>
<td></td>
<td>FBR-Customs: Sections 26, 165, 166 and 168 of the Customs Act, 1969</td>
</tr>
<tr>
<td><strong>4-</strong></td>
<td>The National Accountability Bureau (NAB) may ask FBR to provide documents relating to ML/TF investigation.</td>
</tr>
<tr>
<td></td>
<td>Section 216(6) of Income Tax Ordinance, (ITO) 2001</td>
</tr>
<tr>
<td><strong>5-</strong></td>
<td>Disclosure of relevant documents for prosecution under the Pakistan Penal Code may be invoked under the exception clause of the ITO.</td>
</tr>
<tr>
<td></td>
<td>Despite the ITO having a non-obstante clause for disclosure, Section 216(3)(n) of ITO 2001 may be used to invoke the exception. Since this provision was never specifically extended to cover Anti-Terrorism Act offences, Sections 109 or 34 of the PPC may be added to the ATA charge to invoke this exception.</td>
</tr>
<tr>
<td><strong>6-</strong></td>
<td>Authorities of the Directorate General, Intelligence &amp; Investigation, Inland Revenue may access computer systems of persons involved in ML and tax evasion.</td>
</tr>
<tr>
<td></td>
<td>FBR-IR: Sections 175 and 176 of the ITO 2001 and Section 38 of the Sales Tax Act (1990)</td>
</tr>
<tr>
<td><strong>7-</strong></td>
<td>Investigators are empowered to call for information and search people and premises.</td>
</tr>
<tr>
<td></td>
<td>NAB: Sections 19 and 27 of the NAO 1999</td>
</tr>
<tr>
<td><strong>8-</strong></td>
<td>The Anti-Narcotics Force (ANF) has the power to search persons and premises, to call information and to secure information from any department/institution.</td>
</tr>
<tr>
<td></td>
<td>Section 6 of the ANFA</td>
</tr>
</tbody>
</table>
3.12. Confessions

The term confession is not defined in the QSO. It has been interpreted by superior courts as an acknowledgment of liability of commission of offence with which a person is charged or is to be charged.

A statement that falls short of making an unconditional acknowledgement of commission of offence in question falls outside the definition of confession although an inference of guilt can be drawn from it.\(^{27}\)

It is necessary to prove that confessional statement was made during the investigation. The investigation normally commences on the registration of FIR and ends when the police report is submitted in court.

The confession made before the registration of FIR will be covered if investigation has started.\(^{28}\)

3.12.1. Admissibility

A confession made to a police officer or in his custody is inadmissible unless it is made to a Magistrate (Article 38, & 39 of QSO). In TF cases a confession made to a Police officer of the rank of Superintendent of Police is admissible subject to the satisfaction of the court.\(^{29}\)

1. The evidence of a confession is inadmissible in the following circumstances:

   a. If obtained by inducement, threat or promise from a person in authority that causes the maker to believe that he will gain any advantage or avoid any evil (Article 37 QSO).

   b. If made to a police officer, it cannot be used against a person accused of any offence (Article 38 QSO). Such a confession, on the principle of

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\(^{27}\) PLD 1982 Lahore 180  
\(^{28}\) 2000 YLR 1428  
\(^{29}\) Section 21 H of The Anti-Terrorism Act 1997
inculpation, is not only irrelevant but also inadmissible in evidence. It can therefore not be used against the person making it as the Articles of QSO command\textsuperscript{30}

c. If made in the custody of a police officer unless in the immediate presence of a Magistrate, it cannot be proved against the maker (Article 39 QSO). A confession made in this manner, in the absence of any strong corroborative piece of evidence, is of no legal value\textsuperscript{31}.

d. If obtained in breach of the procedure for recording of confession\textsuperscript{32}. For instance, undue delay in the recording of a confession may adversely affect its credibility in court\textsuperscript{33}. Other examples of serious breaches of the confession procedure include:

- Failure to inform the suspect of his rights before recording confession
- The test of existence of reasonable ground of belief that the confession is voluntary is not satisfied
- The confession is recorded on solemn oath contrary to the Oaths Act 1873\textsuperscript{34}

2. Conditional Admissibility under Sec 21-H of Anti-Terrorism Act 1997

Under the normal trial process, confessions made in front of the police are not admissible. However, these confessions have conditional admissibility under the Anti-Terrorism Act 1997 (“ATA”) if the evidence produced raises the presumption that there is a reasonable probability that the accused has committed the offence.

The conditional admissibility of confessions made before police under the ATA will only apply to offences under the ATA itself, including Section 11-F (5), 11-H to 11-K of the ATA. A recent Supreme Court judgment, \textit{Nadeem Hussain and others v. the State} held that the statements given by suspects to

\textsuperscript{30} 2011 YLR 543 Muhammad Aslam v. The State
\textsuperscript{31} 2008 YLR 990, Javed Sabir alias Pappu V. The State
\textsuperscript{32} PLD 1956 SC 420
\textsuperscript{33} 2020 PCr.LJ 533, Akhtar Muhammad alias Ghani and others v. The State
\textsuperscript{34} PLD 2007 SC 202
the police are excluded under section 21-H of the Anti-Terrorism Act, 1997 in all cases of terrorism. 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 individual with the claimed offence. Conditional admissibility of a confession before the police is contingent upon the availability of some other evidence linking the accused person with the alleged offence, but in the present case, all other pieces of evidence relied upon by the prosecution against the appellant had utterly failed to do so.

In *Muhammad Latif v. The State*[^35], the Court held that since there was no hinderance in the chain of custody of circumstantial evidence and since the extra-judicial confession was credible, the extra-judicial confession corroborated the circumstantial evidence and consequently the plea by the accused was dismissed and the death penalty was upheld by the Supreme Court.

In this case, the evidence against the accused was deemed sufficient to convict him and the Court held that “the extra-judicial confession made before those whom the accused considered to be valuable persons for his assistance could not be disbelieved. In fact, the disclosure by the accused had led to other corroborate and cogent evidence proving the commission of offence”.

This case is an important judgement for the purposes of admissibility of extra-judicial confession. Typically, Courts regard the same as suspicious evidence which could be procured at any time during the investigation whenever direct evidence was not available to prosecution.[^36] Extra judicial confession of an accused, arrested and in handcuffs, recorded by an IO does not have credibility in the eye of law.[^37] However, there is no legal bar to convict an accused based on an extra judicial confession it it meets the conditions of admissibility.[^38]

[^35]: PLD 2008 DC 503, Muhammad Latif v. The State
[^36]: 2022 YLRN 1 LHC, Sanwal V. The State
[^37]: 2021 SCMR 381, Gul Muhammad v. The State
3. **A Confession may be Considered Circumstantial Evidence against Co-Accused.**

In *Mobashar Ahmad vs. the State*, the Supreme Court held that in a joint trial, if a confession of one accused was proved under Art.43 of the QSO, the same might be taken into consideration as circumstantial evidence against the co-accused. The conditions necessary for the application of Article 43 of QSO are:

- the accused and co-accused must be jointly tried for the same offence.
- the joint trial must be permissible by law.
- Both accused and co-accused must be affected by the confession.

However, before relying on the statement or confession of a co-accused, the court should corroborate it with other evidence available on record.

4. **Conviction may rest solely on judicial confession.**

Section 164 of the Cr.P.C. empowers a Magistrate to record any statement or a confession made to him in the course of the investigation. In *Tanveer Ahmed vs. The State*, the High Court held that if a judicial confession is honest and is voluntary it can be made the sole basis for a conviction. Furthermore, such a confession does not lose its evidentiary value even if the same is retracted if it gets independent corroboration from a direct and indirect source of evidence.
Case Study

Sikander is the sole proprietor of Quality Productions, a fabric design business for both ladies and gents. For sales tax registration, Sikander provided the address of Plot 10, Saggiyan Road, as the place of business. The police was tipped off and a survey revealed that several power looms are installed and owned by different persons at the address and none is operated by Quality Productions. The workers in the area confirmed that they did not know Sikander and had never rented out their facilities to him.

It is alleged that Sikander imported fabric for Rs. 1,60,00,00 as a manufacturer for in-house consumption at the rate of zero percent as per SRO 1125(1)/2011. However, this fabric was sold to customers through Quality Productions. Thus, he has evaded taxes totalling Rs. 1,60,00,238/- and VAT of Rs. 44,23,000. It is also alleged that Sikander imported finished taxable goods and avoided paying tax of Rs. 40,00,000/-. The police traced Sikander’s income and tax records to Munawar, Sikander’s tax consultant. Munawar admitted to the police that he has been getting monetary benefits from Sikander in exchange- a 10% of the tax invaded money. has now filed a complaint alleging that he was a tax consultant for Sikander and helped him evade taxes. However, Sikander’s financial records do not show that Munawar had received these funds.

- Briefly explain how Munawar’s confession may be used, if at all.
- Use case law to support your answer.

3.12.2. Recording

The procedure to record confessions is provided in section 164, 364 of the Cr.P.C., High Court Rules Chapter 13 Vol. III, Police Rules 25.27, Police Rules 25.29 and Appendix No. 25.27 of Police Rules.

Broadly, the procedure suggests the following:

a. The IO should request the Magistrate to record the confession as soon as the suspect informs of his intention to confess (Rule 2 of Chapter 13 Vol. III High Court Rules and Orders).
b. Magistrate should explain the process and the purpose of the confession procedure to the suspect(s) before starting it.

c. Every confession should be recorded separately.

d. The confession should be signed or thumb marked by the maker/suspect.

e. The officers investigating the case should not be allowed to attend the confession proceedings.

f. When the confession is not made or does not amount to admission of guilt, the remand in custody of the suspect should not be given to police.

g. The magistrate should proceed to record the confession if he is satisfied on reasonable grounds that the confession is voluntary.

h. A suspect who has made a confession should be kept separate from other prisoners in the judicial lock up.

i. A memorandum of confession should be prepared and signed by the Magistrate in accordance with the instructions in Rule 5 of the High Court Rules and Order Chapter 13 Vol. III. The confession should be signed or thumb marked by the maker/suspect.

j. Magistrate should inform the suspect that-

- he is not bound to make a confession
- the confession can be used as evidence against him.
- his custody will not be handed over to police

The prosecutor must carefully determine how to use the confession. In money laundering cases, and terrorism financing cases, a confession may reveal information about accomplices or whereabouts of the criminal ring. Section 4 of this module also explains how suspects should be protected post-conviction under the Witness Protection Act 2017, to avoid obstruction of justice.

According to Article 91 of QSO, it will be presumed that the confession taken down was in accordance with law and all legal formalities have been complied with, the confessional statement is authentic and bears the genuine signatures of the suspect, the magistrate has held the enquiry and is satisfied that the confession is voluntary.
The court can rely on the evidence of confession even if it is subsequently retracted and can base the conviction on it and it is corroborated by independent evidence.\textsuperscript{39}

3.12.3. ID Parade

An ID parade is relevant when an eyewitness(s) has observed the involvement of a person in a crime or in any other circumstances which can prove or disprove the involvement of a person in a crime.

It is important that an eyewitness can attribute a role to this person at the time of commission of the offence to ensure the accused’s participation is clear. For example, an eye witness may have glanced at a co-worker concealing undeclared bank notes at their place of work, and during investigation when the police retrieve the currency notes, the eye witness could be used to identify the suspect.

To ensure that the eyewitness has the optimum chance to identify the person, the ID parade should be carried out as soon as possible after the arrest of the suspect(s). the IO may coordinate with the prosecutor for guidelines on the parade. The prosecutor may suggest a few questions that the IO could ask the witness during the ID parade. These could include:

- The description of the person(s) involved in the criminal act in as much detail as is possible, i.e. skin colour, height, clothing, style of walking, any distinct marks etc
- The time and duration of the observation including, distance, weather etc.

3.13. Summary

- Designated LEAs for investigation of a money laundering offence are: Federal Investigation Agency, National Accountability Bureau, Counter Terrorism Department, Anti-Narcotics Force, FBR – Income Tax, and FBR – Customs Intelligence.

\textsuperscript{39} 2000 SCMR 785
• It is not always necessary to prove a predicate offence in a money laundering case. The prosecution only needs to show that the proceeds of crime have been derived from a criminal offence.
• Overt and Covert methods are used as tools of inquiry in investigation terrorism financing.
• A Joint Investigation Team (JIT) is constituted on the prerogative of the government and cannot be created by the investigating agency.
• The Constitution of Pakistan provides safeguards as to arrest and warrant under Article 10.
• It is necessary to prove that confessional statement was made during the investigation. The prosecutor must carefully determine how to use the confession.
• An ID parade is relevant when an eyewitness(s) has observed the involvement of a person in a crime or in any other circumstances which can prove or disprove the involvement of a person in a crime.

3.14. Self-Assessment Questions

1. Can you name the designated LEAs tasked with initiating investigation of an ML offence?
2. What is a predicate offence?
3. Can a Joint Investigation Team be constituted by an investigating agency?
4. Is a confession made to a police officer admissible?
SECTION 04
Types and Sources of Evidence

LEARNING OUTCOMES

- The Importance of the Types and Sources of Evidence
- What are the main Sources of Financial Evidence
- What is Tracing
- Utilizing Surveillance and Interception
- Use of Modern device evidence for ML/TF offences
- Use of Forensic evidence for ML/TF offences
- Types and sources of financial evidence
4.1. Importance of the Types and Sources of Evidence for Prosecutors

Given the complexity of Money Laundering and Terrorism Financing cases, the types of evidence that can be used to prosecute such offences as well as the various sources from which this evidence can be obtained gain greater importance. Key sources of evidence will include government institutions which hold data as well as financial institutions such as banks. There are legal requirements which must be met by the investigator to access this type of evidence stored with these entities. At times court orders will be required. In other situations, a senior police officer will be empowered to seek such information directly. In any case, it is important that prosecutors are familiar with the various types of evidence and the sources from which they can be obtained so as to:

A) Advise and guide investigators different stages of the investigation process;
B) Better understand the origin of the evidence so as to present it in court in the most effective manner; and
C) To be able to defend the veracity of such evidence against challenges by defence counsel at trial.

4.2. Types of Evidence

In the Toolkit Vol.1 (page 20) you will find various types of evidence which have been categorized for ease of reference into the following categories:

1. Confessional Statement
2. Prosecution Witness Statements
3. Financial Records
4. Personal Profiling Record
5. Expert Analysis and Findings
6. Additional Evidence concerning Relationship with Proscribed Organizations.

While there are numerous other types of evidence as well, the aforementioned categories contain some of the most effective types of evidence in proving ML/TF offences.
These categories can contain the following types of evidence:

<table>
<thead>
<tr>
<th>Confessional Statement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecution Witness Statements</td>
<td></td>
</tr>
<tr>
<td>Financial Records</td>
<td></td>
</tr>
</tbody>
</table>
|   • Bank Record 
|   • Bank Locker Record 
|   • Income Tax Returns 
|   • Wealth Statements 
|   • Record of Immoveable Properties 
|   • Branchless Banking Records 
|   • Excise Department Records 
|   • NPO Registration Authority Records 
|   • DNFBPs Record 
|   • National Savings etc. |
| Personal Profiling Record |  
|   • Verisys and Family Tree - NADRA, 
|   • Passport Record - Directorate General of Immigration and Passports 
|   • Ground Verification 
|   • Travel History Record from FIA IBMS |
| Expert Analysis and Findings |  
|   • Interception and Surveillance 
|   • Digital/Cyber Evidence 
|   • Digital Equipment like Computer and Mobile Data 
|   • Call Detail Record (CDR) and SIM Registration 
|   • Record from Social Media Companies/Apps 
|   • Audio Video Recording 
|   • Digital Forensics and Evidence 
|   • Forensics: Fingerprints and Handwriting |
| Additional Evidence concerning Relationship with Proscribed Organizations. |  
|   • Pamphlets 
|   • Receipt Books 
|   • Writing Instruments 
|   • Loudspeakers 
|   • Skin Hides, etc. (Collection of Donations) |
## 4.3. Sources of Evidence

The Sources from which the aforementioned evidence is obtained is equally important to understand. Confessional Statements come from the accused and Prosecution Witness Statement will come from various witnesses to the crime and therefore these categories do not require further explanation. Evidence that is sent for Expert Analysis or evidence concerning the relationship of an individual or entity with a proscribed organization can be obtained from numerous sources. Usually such evidence is in the possession of the accused and can therefore be directly traced to him/her. In ML/TF cases, a critical piece of evidence can often be the Financial Records of individuals or organizations. Financial records can be obtained from a finite number of entities (sources) in Pakistan or abroad. The following is a non-exhaustive list of sources and the types of evidence or information that they can retain or provide:

<table>
<thead>
<tr>
<th>Source</th>
<th>Information Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Monitoring Unit</td>
<td>• Currency Transaction reports&lt;br&gt;• Wire transfers&lt;br&gt;• Cross-border reports&lt;br&gt;• Suspicious Activity Reports.&lt;br&gt;• (Information from the FMU is not typically a part of police database and therefore may offer valuable insight that may be hidden from the police)</td>
</tr>
<tr>
<td>FIA</td>
<td>• Suspicious Transaction Report&lt;br&gt;• Cash Transaction Report&lt;br&gt;• International Request&lt;br&gt;• Border Control Authority referrals&lt;br&gt;• NCB and Interpol referrals.&lt;br&gt;• Federal Government referrals&lt;br&gt;• Whistle-blowers</td>
</tr>
<tr>
<td>Credit Reference Agencies (PACRA)</td>
<td>• Hire/Purchase car agreements.&lt;br&gt;• Electoral roll data.&lt;br&gt;• Insurance information&lt;br&gt;• Financial history etc.</td>
</tr>
</tbody>
</table>
### Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism

| Debriefing Prisoners | - Debriefing the terrorist in custody may help understand the overall operation of the group.  
- Cellmates of the terrorist may have information.  
- Visitors of the terrorist in prison may have information. |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Informants</td>
<td>- Recruited by the police, these informants can be tasked with engaging with the terrorist organization to obtain financial information.</td>
</tr>
</tbody>
</table>
| Police Intelligence Reports | - Initial line of enquiry.  
- Connection with other illegal organizations.  
- Information from other intelligence agencies/stakeholders. |
| Arrest Report        | - Nature of the offence  
- Others arrested at the same time.  
- Property in possession at the time of arrest |
| NADRA                | - Information recorded for the purposes of an ID card.  
- Family tree  
- Addresses and contact number. |
| Banks/Financial Institutions | - With a court order, the bank can provide account information, monitor activity on the account, examine sources of income etc. |
| Anti-Narcotics Force | - A terrorist organization’s crossover with drug trafficking may be possible and hence liaison with the ANF may be helpful. |
| Border Authorities   | - Information regarding movement of suspect and their property. |
| Merchant Service Providers (MSPs) | - Bank account information of the suspect  
- Address and contact numbers.  
- IP addresses |
<table>
<thead>
<tr>
<th>Immigration</th>
<th>Other Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Passport number</td>
<td>• Facebook</td>
</tr>
<tr>
<td>• Address</td>
<td>• Twitter</td>
</tr>
<tr>
<td>• Family tree</td>
<td>• CCTV footage</td>
</tr>
<tr>
<td>• Travel history</td>
<td></td>
</tr>
</tbody>
</table>

It is worth mentioning here that a financial investigation involves the collection, collation, and analysis of all available information with a view towards assisting in the prosecution of crime. The major goal of a financial investigation is to identify and document the movement of money during criminal activity. The link between the origins of the money, beneficiaries, when the money is received and where it is stored or deposited can provide information about and proof of criminal activity. Tracing is conducted to identify the various financial or other similar assets of an accused. Tracing can be done for various types of assets and can reveal important information and evidence useful to the investigation.
Tracing:

- **Bank accounts**: Personal bank accounts may contain information such as addresses, opening deposit, security data, etc. Business accounts typically have agreements attached to authorize drawers and therefore might be useful for tracing the source of income.
- **Cancelled cheques**: The cheque normally shows account number, concerned bank and the name of the payee.
- **Loan Records**: Loan application contains financial statements, summary of assets and bank statements. This may be helpful in identifying hidden assets.
- **Credit Card Records**: The level and nature of expenditure may be identifiable by monitoring the credit card usage.
- **Calculating Net Worth**: This is an indirect method of tracing. It can be calculated by comparing the subject’s net worth at the beginning and end of a period- shows the increase or decrease in net worth. It is useful when assets or liabilities have changed-no financial records.
- **Locating Hidden Assets**: Money laundered may be hidden in someone else’s name, underneath pay down debt, transferred to tax havens or trusts or used on insurance products.
- **Assets Abroad**: Money laundered and dumped abroad may require Mutual Legal Assistance (MLA) between countries to request and provide assistance in law enforcement matters and enforcing foreign orders and judgements.

### 4.4. Methods of Collecting Initial Evidence

It is important to understand the various methods of collective evidence. At an initial stage of investigation (as well as at more advanced stages), it may be important to be take steps without alerting the suspect being investigated. There are numerous reasons for this but the most important is that once alerted to the investigation, the suspect could attempt to destroy, move, or conceal valuable evidence. In such situation the investigating officer should utilize powers available to them which do not alert the suspect. These include:

1. **Interception and Surveillance:**
**Interception:** includes e-mails, SMS, IPDR (internet protocol detail record) or CDR and any form of computer based or cell phone-based communication and voice analysis. It also includes any means of communication using wired or wireless or IP (internet protocol)-based media or gadgetry.

**Surveillance:** includes data, information or material in any documented form, whether written, through audio visual device, CCTV, still photography, observation or any other mode of modem devices or techniques obtained under this Act. It can further include documents, papers, pamphlets, booklets’

Ways of Surveillance:

1. Intercepting the suspect’s phone calls.
2. Time of phone calls may be monitored.
3. Tracking Devices to trace a suspect’s movement and whereabouts.
4. CCTV for tracing the suspect’s visits and interactions.

Section 19-C of the ATA [introduced through the ATA (Third Amendment) Act, 2020] empowers investigating officers to employ a myriad of techniques, including undercover operations, intercepting communications, assessing computer systems and controlled deliveries to tackle cases involving “financing of terrorism under the law in force.”

Similarly, Section 9-A of the AMLA [introduced by the AML (Second Amendment) Act, 2020] promotes the usage of the same to investigate money laundering, predicate offence and terrorism financing offences.

The evidence gathered during such investigations can be crucial in proving the elements of the crimes of TF/ML and other predicate offences, as relevant, resulting in higher chances of successful convictions as purported in the Action Plan.
The Investigation for Fair Trial Act 2013 (IFTA) allows authorized officers of the Services Intelligence Agencies and the police\textsuperscript{40} to file for a warrant of surveillance if the applicant believes that a person is engaged in any suspicious conduct that may result in a scheduled offence being committed.\textsuperscript{41}

Actions that may be taken under the warrant:

The judge may authorize the officers to take the following measures against the suspects under the warrants, including but not limited to: interception and recording of telephonic conversations of the suspect with any person; video recording of persons, premises and events; interception of electronic transactions such as m-emails, SMS etc.; collection of evidence through any modern device; and use of human intelligence, covert surveillance and property interference. Taking over of electronic equipment that can be used in communication shall be allowed only when the authorized officer discloses a substantial threat or possibility of an attempt to commit the scheduled offence.\textsuperscript{42}

Process to be followed once it is established that the scheduled offence was likely to be committed:

If the data collected via the warrant reveals any elements of any scheduled offence (under the PPC or ATA), the applicant may immediately proceed to register a FlR under Section 154 of CrPC and hand over all the obtained evidence to the Investigation Officer. If the data collected is insufficient to lodge an FlR, it will be kept in custody and shall not be used without the court's permission.\textsuperscript{43}

The aforementioned provisions are much needed and vital for investigations, however, the rules have not yet been notified under this area.

2. Checking Assets without Notification to the Owner:

In some limited cases, i.e. those that fall within the ambit of the Prevention of Electronic Crimes Act, 2016 (PECA), the Court may issue an order to a law enforcement agency to search and seize (without the production of a

\textsuperscript{40} Section 3(a) of the Investigation for Fair Trial Act, 2013 (IFTA)
\textsuperscript{41} Section 5 of the Investigation for Fair Trial Act, 2013 (IFTA)
\textsuperscript{42} Section 16 of IFTA.
\textsuperscript{43} Section 22 of IFTA.
warrant) any data that may reasonably be required for an investigation. For more information see Sections 30-33 of PECA.

4.5. Mandate For Evidence Through Modern Devices

- Any evidence obtained from modern devices or techniques is admissible as per Art. 164 of the QSO.
- Section 27-B of the ATA allows convictions to be based on electronic evidence alone, provided that the Court is satisfied with its genuineness.
- Section 9-A of the AMLA Allows for the usage of modern investigative techniques in the investigation of financing of terrorism.

Although evidence obtained through modern means is admissible under the law, investigative tools in Pakistan are not always up to date with scientific developments and investigators may lack the know-how to obtain or analyse such evidence.

In cases tried by the ATC under provisions of ATA, the “court may convict the accused on the basis of electronic or forensic evidence or such other evidence that may have become available because of Modern devices or techniques.”

The (QSO), Article 164 states that information may be extracted from modern devices if the court deems it appropriate. Along with audio-visual evidence, this provision extends to evidence from cellular devices, computers and various other modern techniques or devices that could be used for digital storage. Evidence samples of this sort are collectively referred to as digital evidence. Due to the importance of digital evidence in ATA cases, maintaining the chain of custody for evidence is crucial for an investigation and admissibility greatly depends on it. In this context, a consideration for the Court is whether or not there is evidence to support the fact that the digital evidence collected has been maintained and stored in safe custody.

4.5.1. Types of Modern Devices and Potential Evidence

Closed Circuit Television (CCTV)

Sikandar Ali Lashari v. The State, 2016 YLR 62, [7]. Read with Section 27-B of the ATA.
With regard to (CCTV) footage, it has been held that, pursuant to the insertion of Article 164, the evidence collected through modern devices is admissible as valid. However, the mere production of CCTV footage as a piece of evidence in Court is not sufficient for the Court to rely upon that evidence unless it is proved to be authentic. In order to prove the authenticity of such footage, it is incumbent upon the prosecution to examine the person who recorded or downloaded the footage\textsuperscript{45}.

**Call Data Record (CDR)**

According to Article 164 of the QSO, production of evidence through modern devices or techniques can be used as circumstantial evidence if the court deems it to be appropriate. In the case of *Abdul Razzaq vs. The State*, the Court held in this case that “petitioner/accused had every right to prove himself innocent by making use of the very same call data record”. In the case of *Arsalan v. the State*\textsuperscript{46}, the pivotal pieces of evidence obtained were SIMs and Call Data Records of the accused, which corroborated the accused’s statements.

### 4.5.2. Evidentiary Value of Calls/Text Messages from the Accused’s Phone

Jurisprudence of the superior judiciary highlights the issues relating to using CDR as evidence against the accused. Some cases also elaborate upon how the accused can utilize CDR to their benefit to discredit the case of the prosecution.

**2018 YLR 1092 KHC (Salman Alias Lamba and Another vs. The State)**

The evidence collected by the Investigating Officer included CDRs of the mobile phones of the accused and SIMs and National Identity Cards. However, the evidence of police officials was deemed not trustworthy because no recovery memos were presented to satisfy that the recovered cell phone SIMS were kept in safe custody. Records also showed that there was no verification from the mobile companies as to the identities of those to whom such SIMs were issued.

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\textsuperscript{45} Asfandyar vs. Kamran, 2016 SCMR 2084.

\textsuperscript{46} Arsalan v. The State, 2018 MLD 894 Karachi.
Furthermore, since the evidence did not have any corroborative value, it weakened the case of the prosecutor.

Forensic Evidence

Forensic evidence is a crucial form of evidence and constitutes a link in the chain of evidence that is used to prove the guilt of an accused beyond a shadow of doubt.\textsuperscript{47} Forensic evidence is evidence arrived at by scientific or technical means, such as ballistic or medical evidence. Forensic science deals predominantly with the recovery and analysis of latent evidence such as fingerprints, DNA analysis, autopsies, pathologies, etc.

Under domestic law, the only definition available for forensics is found in the Punjab Forensic Science Agency Act (2007), where forensic material is defined as a ‘document, material, equipment, impression or any other object connected with the commission of an offence, a civil cause or any other proceedings.’\textsuperscript{48}

One field of forensic science, forensic accounting, refers to the analysis of financial information, including all transactions, past records and tracing source of transfers, etc., of the accused individual or entities, to reveal important information that can aid in legal proceedings especially in cases of financial crimes. Forensic accounting is particularly useful for tracing TF activities and tracing back money trails to the original sources of income, such as donations made to terrorist organizations, or money made from drugs trafficking.

Electronic Records as Evidence

With the use of information technology, the police department has started storing information pertaining to investigation in computers. The computer stores criminal records conveniently and efficiently. One consequence is making it easier for police to collect and process information, eliminating the duplication of paper and electronic records and the multiple entries of same data.

\textsuperscript{48} Punjab Forensic Science Agency Act 2007, Section 2(g).
For example, the Punjab Information Technology Board (PITB) has done massive revamping of the outdated criminal record management system (CRMS) of the Punjab Police. “Previously it was a lengthy and tedious process to retrieve records of the individual criminals based on name, father’s name, caste and address. It was almost impossible to identify criminals of each district because there was no comprehensive and integrated criminal record system.”

The PITB has developed the CRMS based on Citizen National Identity Card Number (CNIC). It is a digitized system that contains personal details such as CNIC, appearance, phones, etc. of criminals. The idea is to maintain a comprehensive database containing complete criminal profiles, including personal information, physical appearance, modus operandi, gang, criminal history, fingerprints and photographs that can be easily retrieved via the biometric data. Moreover, the manual fingerprint record is successfully digitized and available in the CRMS database with a complete profile of individual criminals. A system like CRMS can be utilized in various ways to investigate a case. “If a victim of a mobile phone snatching incident reports in a police station and he remembers some details of the snatcher, an officer can apply all the known filters and search the criminal in his own district and the Punjab server.” Additionally, the Criminal Record Identifier (CRI), an application in the CRMS, also utilizes the fingerprints to identify criminals by matching the fingerprints stored in the “Megamatcher Fingerprints Matching Library that has a matching speed of 20 million fingerprints per second.” Moreover, on average, 50 to 60 criminals are being identified per day from different stations across Punjab due to this application.

Electronic records maintained by banks, DFIs and other financial institutions can also be used to trace evidence related to terrorism financing. In fact, the FMU is obliged under the law to maintain electronic records of the STRs received by the financial institutions. After receiving an STR, if the FMU suspects that the act is related to terrorism, it may forward the case for further investigation to the CTW of the FIA. These investigations may, however, run parallel to the investigation run by the CTD of the Police if the police discover a financial trail to the terrorism act.

50 Ibid.
51 Ibid.
4.6. Evidence from Proscribed Organisations

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.

4.6.1. Evidentiary Value and Relevancy

As per Section 2 (c) of the QSO, “evidence” includes all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; and all documents produced for the inspection of the Court; such documents are called documentary evidence.

- 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
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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. Therefore, such evidence must be exhibited and the testimony of witnesses can be used to admit such evidence.

- Article 164 read with Article 59 of the QSO allows modern forensic science to enter courts through the credible and valued scientific opinions of experts as evidence, in order to arrive at the truth. The testimony of a skilled witness is an important source of circumstantial evidence which is admissible under Article 59 of QSO. Furthermore, Section 510 Cr.P.C. allows reports of certain listed experts to be admitted into evidence.

- The knowledge, intent or purpose behind an offence if not proved through oral or documentary evidence may be proved through inference drawn from facts/circumstances of each case in accordance with rules regarding relevancy of facts provided in the Qanun-e-Shahadat Order, 1984.

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**Case Study**

A prominent businessman’s daughter, Hiba has been arrested at the Lahore Airport with a bag full of cash worth USD 400,000. Hiba’s father, Mr. Abrar runs a construction business. Following the general elections, the new government has been probing Mr. Abrar for his money trail.

Upon arrest, Hira claimed that she was unaware of any limit on the amount of cash one can carry. She claims that the money is her own and not her father’s and that she intended to purchase a villa in Dubai with the money. Upon interrogation, she did not state which villa she intended to purchase or which locality she had in mind. She claimed that she had not made up her mind yet.

Two weeks ago, Hiba was seen at a jewellery store, where she sold jewellery worth USD 100,000. The store owner says that Hiba claimed the jewellery to be her wedding present from her ex-husband. Meanwhile, Mr. Abrar and his remaining children have fled from the country. His assistant has told the police that Mrs. Abrar has a serious heart surgery pending in the UK.

- **List down the possible evidence and lines of enquiry an investigator should pursue.**
4.7. Summary

- Knowledge of the types and sources of evidence will allow Prosecutors to better advise investigators as well as be more effective at trial.
- There are numerous types of evidence, but the most important types are contained in the following categories:
  - Confessional Statement
  - Prosecution Witness Statements
  - Financial Records
  - Personal Profiling Record
  - Expert Analysis and Findings
  - Additional Evidence concerning Relationship with Proscribed Organizations.

- Tracing is the process of identifying the assets of a suspect.
- Methods of collecting initial evidence include,
  - Interception and Surveillance
  - Checking assets without notification to the owner

- The QSO, Article 164 states that information may be extracted from modern devices if the court deems it appropriate.
- Forensic evidence is a crucial form of evidence and constitutes a link in the chain of evidence that is used to prove the guilt of an accused beyond a shadow of doubt.
- A financial investigation involves the collection, collation and analysis of all available information with a view towards assisting in the prosecution of crime.

4.8. Self-Assessment Questions

1. What are some ways of surveillance?
2. Is evidence obtained through Modern Devices admissible in Court? If so, under what provision is it admissible?
3. What are some types of modern devices and potential evidence?
4. What are some forms of evidence that can link the accused to a proscribed organization?
SECTION 05
Mutual Legal Assistance

LEARNING OUTCOMES

- What is Mutual Legal Assistance (MLA)
- International legislation mandating/supporting MLA
It is essential to look for potential avenues for international assistance when investigating and prosecuting an ML/TF offence.

5.1. Mutual Legal Assistance

For mutual legal assistance, the investigating agency must ensure:

1. Sufficiency of evidence;
2. Dual/double criminality (the offence or underlying criminality in question being criminalized in both States);
3. Restricting the information to the investigation, proceedings or prosecution at hand.

A Requested State may deny such a request based on:

1. National or public interest
2. Severity of punishment;
3. Political offences
4. Human rights considerations;
5. Double jeopardy;
6. The rights of suspects charged with criminal offences\(^{52}\)

Prior to the promulgation of the Mutual Legal Assistance (Criminal Matters) Act, 2020 (MLA Act, 2020), there was no uniform process whereby requests—both those originating in Pakistan and those from abroad—could be processed, and instead such requests were handled on an ad-hoc basis through multilateral treaties such as the United Nations Convention against Transnational Organized Crime (UNTOC).

5.1.1. The United Nations Convention Against Transnational Organized Crime (UNTOC)

The UNTOC is the broadest instrument for international cooperation provided that there is not a bilateral agreement between States. Article 18(3) of the UNTOC allows for a wide array of cooperation and includes:

\(^{52}\) Manual on Mutual Legal Assistance and Extradition (UNODC)
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.

5.1.2. United Nations Convention Against Corruption (UNCAC)

The UNCAC is capable of regulating MLA requests in the absence of a bilateral treaty amongst States as per Article 46.

5.1.3. 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) of the Convention, which mandates the provision of assistance in criminal investigations in the absence of a bilateral framework or another multilateral framework.

5.1.4. MLA under the Mutual Legal Assistance (Criminal Matters) Act, 2020 (MLAA)

The MLA Act 2020 formalizes the processes of requesting and providing legal assistance to and from foreign governments when investigating criminal conduct. Section 3 of the Act states that the manner of MLA may be provided on the basis of a reciprocal agreement or other arrangements, and if both do not exist, then the provisions of the MLA Act will prevail.
5.1.5. MLA under the Investigation for Fair Trial Act (IFTA) 2013

Section 31 of IFTA states that warrants obtained under the Act shall be executable in both Pakistan and foreign jurisdictions, either by direct approach to relevant service providers, or through a mutual legal assistance mechanism as is agreed upon between Pakistan and the relevant foreign state. Section 31(2) and 32 indicate that warrants (both those initiated domestically and those received from foreign states) shall be processed for execution by the designated agency or body as set out in the Act.

5.1.6. MLA under Section 19 C of the ATA, 1997 and Section 9A of the AMLA, 2010

Section 19C of the ATA and Section 9A of the AMLA provide for the creation of rules to regulate procedure and execution. They, however, do not contain provisions relating to execution of warrants outside of Pakistan.

5.1.7. MLA National Counter Terrorism Authority (NACTA) (Amendment) Act, 2020

For effective domestic cooperation, the National Counter Terrorism Authority (NACTA) Act was amended by way of a Presidential Ordinance. The amendments mainly concerned changes in the hierarchy of governmental actors in order to streamline the process of coordination with various law enforcement actors.

5.1.8. Securities and Exchange Commission of Pakistan (SECP)

The SECP has issued revised guidelines to bolster the framework of international cooperation that is found under Section 42D of the SECP Act. Broadly, the guidelines contain the following:

1. A definition for public interest (earlier not a part of the guidelines): Public interest means the general welfare of the public that warrants recognition and protection, something in which the public as a whole has a stake especially an interest that justifies governmental regulation.
2. The provision of exchange of information or assistance should not be refused on the grounds that:
   a) the request is also considered to involve fiscal matters;
   b) laws require financial institutions to maintain secrecy or confidentiality;
   c) there is an inquiry, investigation or proceeding underway, unless the assistance would impede that inquiry, investigation or proceeding; and/or
   d) the nature or status (civil, administrative, law enforcement, etc.) of the requesting counterpart authority is different.

Case Study

A local madrassa collected donations for the education and well-being of its students. Supporters gave donations by putting cash in a box placed outside the madrassa. Despite the donations, the children appear weak and sickly, suffering from malnutrition. A year later, the police were tipped that the madrassa is collecting money to fund a terrorist organization operating in Pakistan and Iran. The mufti of the madrassa, Ibad-ullah Khan took 2 trips in the past year to Iran and brought back Islamic texts in bulk for the students at the madrassa. An Iranian organisation, “Allied Mujahideen” provided Ibad with donation worth USD 300,000 allegedly for the well-being of the orphans at the madrassa. One of the mufti’s supporters, Abdullah was previously convicted on aiding a terrorist activity- a suicide attack in a local church. The Police were also tipped that Ibad keeps in touch with Abdullah through letters.

- As a prosecutor, what lines of enquiry would you suggest to the police officer?
- Under Pakistan’s ATA and AMLA laws, what sections can be used to charge Ibad under?
5.2. Summary

- It is essential to look for potential avenues for international assistance when investigating and prosecuting an ML/TF offence.
- The UNTOC is the broadest instrument for international cooperation provided that there is not a bilateral agreement between States.
- The UNCAC is capable of regulating MLA requests in the absence of a bilateral treaty amongst States as per Article 46.
- In the absence of a bilateral framework, States party to the ICSFT convention, including Pakistan, may rely upon Article 12(5) of the Convention, which mandates the provision of assistance in criminal investigations in the absence of a bilateral framework or another multilateral framework.
- The MLA Act 2020, formalizes the processes of requesting and providing legal assistance to and from foreign governments when investigating criminal conduct.

5.3. Self-Assessment Questions

1. What are pre-requisites to be ensured by an investigating agency for mutual legal assistance requests?
2. On what grounds can a requested state deny a mutual legal assistance request?
3. What are some forms of international cooperation provided in Article 18(3) of UNTOC?
4. In absence of a bilateral treaty between states, which instrument regulates MLA requests?
SECTION 06
Prosecution

LEARNING OUTCOMES

- How to carry out prosecutorial scrutiny efficiently.
- The role of Prosecution Guidelines for Punjab Prosecutors.
- The importance and use of early police-prosecution coordination.
- Witness Protection under the PWPA 2018.
- Charging standards for ML/TF offences.
- Court Assessment to be submitted by the prosecutor in ML/TF cases.
- The Prosecutorial Tests for Case Assessment.
6.1. The Predicate Offence

6.1.1. International Best Practice

The Crown Prosecution Service maintains that the prosecution needs, as a minimum, to produce sufficient circumstantial evidence or other evidence from which an “irresistible inference” can be drawn, to the required criminal standard, that the property in question has a criminal origin. In other words, there could be no reason for the circumstances other than a criminal one.\(^{53}\)

This means that the prosecutor prosecuting a money laundering must carefully determine the criminal source. For black money in offshore accounts, the prosecutor must identify the source, the trail of the generation of money leading to the dumping in the offshore accounts.

6.2. Basic Guidelines for Prosecutors

The Prosecutor General Punjab under Section 17 of the Punjab Criminal Prosecution Service Act 2006 (the Act) has issued ‘The Code of Conduct for Prosecutors (Code)’ that provides broad guidance on matters such as the principles relating to the Prosecutors’ coordination with the police, general principles of prosecution, prosecutorial decisions, and relevant tests to be considered by the Prosecutor etc.

6.2.1. Section 9(5) Scrutiny

The Punjab Criminal Prosecution Service (PCPS) Act 2006 determines the role of the prosecutor following an FIR and initial investigation. Section 9(5) of the Act imposes a statutory duty on the prosecutor: “to scrutinise the police report, or he may return it to the police if he finds it to be defective in order that the identified defects are removed. Alternatively, if the prosecutor deems the report fit for submission, he should file it before the competent court”.

While the investigating officer may have completed much of the initial investigation on a ML/TF case, the prosecutor must use his position to point out

\(^{53}\) Money Laundering Offences | The Crown Prosecution Service, 2021
additional lines of inquiry or defects in investigation. Paragraph 4.17 of the Code places a significant responsibility on the Prosecutor; in particular that, “In accordance with the law or the requirements of fair trial, the Prosecutor shall seek to ensure that all necessary and reasonable enquiries are made and the responses taken into account while taking prosecution decisions. This means that the prosecutor is responsible for reviewing the 173 report (Cr.P.C.) and identifying any factors that could weaken the case against the accused.

For example, if a local NGO is accused of money laundering and using the NGO as a front for its criminal activities, the IO may have collected documentary evidence such as Bank account details, account activity, expenditure and license under the SECP. However, the prosecutor may direct the IO to request for mutual legal assistance and look for any assets/bank accounts abroad that are related to the accused. This would strengthen the prosecution’s case as it would now prove that money laundered has been dumped and concealed by the accused.

It is important that the prosecutor views the 9(5) scrutiny as a time-sensitive issue and address it accordingly. With the PCPSA allowing the prosecutor a time of 3 days, the prosecutor should view the 173 report with an aim to point out defects that may have immediate solution and do not delay the prosecution process. This is important because during this crucial stage, the accused may find an opportunity to conceal incriminating evidence, abettors may find an escape and the case may be weakened as a result. Common defects in TF cases’ police reports are:

1. Internal accounts’ record of the proscribed organization not attached.
2. Belated FIRs
3. Land record of the proscribed organization not attached.
4. Registration and history of the organization.

It is important to note here that for many proscribed organizations, retrieving financial records is a lengthy and painstaking process. Most organizations do not have financial records that can be traced via banks or other financial institutions. Prosecutors should ideally help investigating officers pursue alternate lines of enquiry and retrieve financial records from less formal sources.
The prosecutor may want to consider the following factors during his 9(5) scrutiny:

- Format of the 173 report and necessary paperwork
- Has the evidence been gathered in the prescribed manner? Could it affect the admissibility of the evidence?
- Is the FIR written logically and chronologically?
- Have the police investigation decisions been duly authorised by police officers of the required rank? For example, Section 11 (EEEE) of the ATA requires that the investigating officer detaining a suspect for up to 3 months may not be below the rank of superintendent.
- In case of a confession, did the IO arrange it with a magistrate a prescribed under the QSO?
- If an Identification Parade has been held, was the correct procedure followed and recorded?
- Does the suspect or any of the witnesses have previous convictions and what impact will that have on the strength of their account?
- Have the relevant lines of enquiry, as can be made out of the FIR, been followed?
- Does the FIR offer new lines of enquiry that have not been pursued?
- Have potential witnesses been identified out of the recorded S.161 statements? The witness statements could help trace other possible witnesses that should be pursued.
- In TF cases specifically, are internal accounts of the proscribed organization attached?
- Has the registration of the organization been traced?
- Is there evidence from other jurisdictions that needs to be gathered?
- Are there any accomplices that were arrested and then released on bail?
- Are there indications that other suspects were involved and if so, what has been done to locate and investigate them?

6.2.2. Early Advice/Cooperation with the Police:

According to the Code, a prosecutor may direct the Police:

a) To collect additional evidence
b) To follow a line of enquiry
c) To provide additional informational about the collection of evidence

d) To provide additional information about the circumstances of a witness

e) To explain why a key witness was not examined

f) To explain why testimony of a key witness was not recorded early on\textsuperscript{54}

In order to maintain consistent coordination with the Police, the prosecutor can guide the investigating officer as to the investigation strategy. In Punjab, the absence of formal SOPs for coordination between Police and Prosecution for TF offences has at times caused the two counterparts to develop their own SOPs to overcome the lack of sync between the two departments. In TF cases, prosecutors often guide the investigating officer by providing them with a checklist of necessary evidence to be attached with the police report. In particular, they ask the investigating officer to provide:

1. Revenue record
2. Beneficiary record
3. Bank record
4. Registration record

It is advised that prosecutors develop such informal checklists and SOPs to coordinate, until the Departments adopt formal rules for coordination. It is also recommended that prosecutors maintain their investigative advice in writing so as to come to it after defects have been removed by the investigating officer post-scrutiny.

Although not a common practice, preparing an action plan pertaining to the investigation of the case may be beneficial for the coordination between police and prosecutor. The officer may identify the key suspects, witnesses and an informal order of the investigation. For instance, an action plan as to which law enforcement agency e.g., FIA or the State Bank would be contacted first for retrieving financial records which would allow both the prosecutor and the police to streamline the prosecution of the case. The progress review of such an action plan may be conducted via joint review meetings. Under Articles 7, 9 and 12 of the Qanun-e-Shahadat Order 1984 (QSO), the consultation between Police and Prosecution is privileged or confidential information and is therefore protected

\textsuperscript{54} Para 4.16, Code of Conduct for Prosecutors (Punjab)
from disclosure to court or any other authority. In TF/ML cases where the nature and type of evidences is diverse, it would be helpful that both the police and prosecutor carry out consultations discussing the need, complexity and retrieval of the evidences. The minutes of these consultations/meetings should also be documented for the ease of both counterparts.

While much of this coordination is present in JITs by default, it is important to understand the importance of and develop individual investigation officer and prosecutor coordination where JITs are not created.

6.2.3. Witness Protection

It is essential in organized crimes that witnesses be protected by the law enforcement agencies. The criminal justice system of Pakistan places heavy reliance on witness testimony and therefore it is necessary for all criminal justice institutions to protect and assist witnesses who are at risk or have been threatened, intimidated, or discouraged from providing evidence.

Furthermore, in cases of organized crimes, witnesses often have to endure lengthy proceedings, discouraging them to appear in court or assist in an ongoing investigation. In TF/ML cases especially, where larger groups may be involved in the offence, some flee the country whereas others may want to report the group’s activities to the Police hoping for leniency. In such circumstances, the risk of the witness being threatened by the organization is high and the witness would therefore need anonymity and protection for successful prosecution.

6.2.4. The Punjab Witness Protection Act, (PWPA) 2018

The Government of Punjab enacted the Punjab Witness Protection Act, 2018 and notified the Punjab Witness Protection Rules, 2019 to extend protection and assistance to witnesses in cases of terrorism and serious offences.

Broadly, the PWPA established a witness protection unit that assesses the level and nature of threat to the witness and provides appropriate safeguards that are classified as court and non-court measures. These include:

Non-Court Measures
Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism

a) provision of close protection service;
b) lodging in a safe house;
c) temporary or permanent relocation at a safe place;
d) change of identity;
e) concealment of identity of the persons involved in the criminal proceedings; and
f) providing financial assistance to a protected person who is unable to undertake regular employment or when his freedom of movement is severely curtailed as a result of protection to him.

Court Measures

a) Screening a witness
b) Video link
c) Restricted entry to the court room
d) Special Rules of cross-examination barring the accused from cross-examining the witness himself.
e) Anonymity during proceedings
f) Trial in jail

Furthermore, Section 21 of the ATA states that:

a) Screens may be used during the trial to shield witnesses, Judges and Prosecutors from public view;
b) Trial may be held in jail premises or through video link;
c) Witness protection programmes may be established by the Government through law or rules.55

For witness protection to reach the concerned witness, it is necessary that Police and Prosecutor work together in unison. The investigating officer may seek written advice from the relevant prosecutor on the eligibility, nature and extent of measures that may be provided to a witness under the PWPA and upon making an application for witness protection measures, the investigating officer must inform the prosecutor and keep him in the loop through the process of the application.

55 Section 7, The Anti-terrorist (Amendment) Act, 2014
An investigating officer and a prosecutor (individually and otherwise) identifying whether a witness is in need of protection must consider if:

1. The witness is under the age of 16 years
2. Is fearful or threatened.
3. Is intimidated by court proceedings
4. Is mentally or physically disabled.

Additionally, a prosecutor receiving the 173 report must evaluate whether any victim or witness in a case of terrorism or serious offence requires protection or assistance under the Punjab Witness Protection Act, 2018. It is the duty of the prosecutor to apply to the Court for appropriate measures in case the witness protection unit recommends non court measures.

**Case Study**

The Punjab Police has been contacted by a Pakistani woman, who runs a jewellery business in Izmir, Turkey. She claims that a crime syndicate kidnapped her 5-year-old daughter and threatened to kill her if she did not carry funds amounting to 300,000 USD to Turkey. The woman hid the cash in her luggage and was able to smuggle it without incident. The syndicate further issued instructions to deposit the cash in her name/account in a local bank of Turkey. After having deposited the cash, the syndicate has still not returned her daughter and is forcing the mother to work with them if she wants her daughter to return home safe.

- **How should the police move forward with the recording of statement, ID parade and recording of evidence?**
- **How can the Punjab Police collaborate with the police authorities in Turkey to gather more evidence?**
6.2.5. Charging Standards Guidelines

The charges in ML/TF cases should reflect the seriousness/gravity and extent of the accused’s offending, thereby allowing the courts to sentence appropriately. This requires a prosecutor to be aware of the full range of offences available and the realisation that an omission or inappropriate charging may lead to acquittal or inability of the Court to award appropriate punishment.

Taking account of the different elements that the prosecution needs to prove for the various offences under consideration, prosecutors need to carefully assess the available admissible, credible evidence and decide which is the more appropriate charge(s).

Section 233 of the Criminal Procedure Code 1898 (Cr.P.C.) stipulates that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately. However, the Code provides a number of exceptions to this. Sections 234, 235, 236 and 239 of the Code set out the circumstances when this general principle need not be followed. These are significant options available to the prosecutor and should form the basis of scrutiny, and charging decisions, in appropriate cases.

**What is over-charging?**

Overcharging is a prosecutorial practice that involves putting additional or more serious charges than those warranted in the circumstances of the case.

**What is under-charging?**

Undercharging is a prosecutorial practice that involves issuing lesser or non-serious charges than those that are more appropriate to the circumstances of a case.
Money Laundering

Predicate offences sometimes are independent criminal offences and do not lead to the offence of money laundering. Laundering particularly refers to the concept and method of disguising or concealing ill-gotten funds – which constitutes a separate offence. Thus, predicate offences stand as independent offences in cases where proceeds from the offence have not yet been laundered. For example, an accused has extorted money, and thus has illegal monies, but he has not yet placed it through formal channels to disguise its source.

It is also necessary to carefully identify which subsection of Section 3 (AML Act) should be used to charge the accused. For example, if the accused has put in large sums of cash from carrying out organ trafficking into their beauty salon business (front), the correct charge for it should be Section 3 (b): “(b) concealment of or disguising the true origin, location, movement, ownership of the property knowing or having reason to believe that such property is proceeds of crime”, as he is “disguising the true origin which is organ trafficking and concealing it by mixing it with his beauty salon profits.

At the same time, S. 3 (a) could also be used for charging the accused on a secondary level as the subsection requires “acquisition, conversion, possession, use or transfer of property which his proceeds of crime”. In this case, it could be argued by the prosecutor that the proceeds of organ trafficking were converted into salon proceeds to conceal the predicate offence.

Terrorism Financing

It is possible that suspicious activity or movement of money may alarm the LEAs who would want to refer the case to the CTD indicating that the accused is part of a proscribed organisation or is aiding terrorism financing in any other way.

However, it is important for the prosecutor to carefully determine if there is any clear evidence of terrorism. If not, the prosecutor should submit to Court that the offence is not made out for terrorism and the case would then be transferred to the relevant LEAs for a money laundering investigation. In such circumstances, it is important that prosecutors do not charge the accused with TF offences primarily because the LEAs referred it as such. Understanding the elements of the
TF offences, the prosecutors must logically attempt to place the concerned offence within the text of the provision.

**Case Study: Part 1**

An organ trafficking ring has been identified by the police, that kidnaps refugee children and extracts their organs. The police sealed a warehouse in Okara where these illegal organ transplants were taking place.

The police also retrieved informal records of individuals receiving organs. Cash was retrieved worth 3.5 Crore (PKR).

The police further identified and arrested an individual whose daughter received a kidney from a kidnapped child by the ring. The father was identified via a nearby surveillance camera. He was seen carrying his daughter in the direction of the warehouse, visibly distressed.

The warehouse’s guard has been questioned by the Police who has revealed that bags of cash leave the warehouse every two weeks, but he does not know where the bags go.

- **With this information in a 173 report, list possible defects the prosecutor would identify in Section 9(5).**

**6.2.6. Section 9(7) Assessment**

Following the scrutiny of the police report, the Prosecutor is required to submit an assessment of the case to the Court. Section 9(7) of the Act states that: “*The Prosecutor shall submit, in writing, to the Magistrate or the Court, the result of his assessment as to the available evidence and applicability of offences against all or any of the accused as per the facts and circumstances of the case and the Magistrate or the Court shall give due consideration to such submission*”.

In simple terms, this ‘assessment’ by the prosecutor determines whether the case is fit for trial. This assessment will be based on the available evidence.
The prosecutor does not need to wait for every line of enquiry to be completed before writing his 9(7) assessment. For instance, if certain financial records have not been retrieved and they are not essential to the prosecution, the prosecutor may move ahead with his assessment based on the evidence available. Of course, it would be the prosecutor’s judgement call as a lawyer to analyse which lines of enquiry are not central to the case.

The Code provides guidance as to the Full Code Test. The Full Code Test is applicable at every stage of the case as per discretion and duty of the prosecutor. The prosecutor can make an assessment regarding applicability of the tests contained in the Full Code Test whenever a new circumstance arises in the cases, this also extends to situations where a case is no longer able to proceed or when there is no material witness. The Full Code Test is applicable till the final pronouncement of the judgement. The two tests contained in the Full Code Test for a prosecutor’s assessment include:

1. Evidential test
2. Public interest test

Based on these tests, the prosecutor will make the assessment on whether the case is fit for trial.

6.2.7. Evidential Test

In Criminal Revision No. 05 of 2022, Justice Amjad Rafiq ruled that prosecutors are required to undertake the assessment of evidence in accordance with the code of conduct issued under section 17 of CPS Act. According to para 5 of the code of conduct for prosecutors, they are required to apply Full Code Test which comprises of Evidential Test and the Public Interest Test. These tests clearly indicate that the constitutional guarantee of equal protection of law and to be treated in accordance with law has well been met in the procedure so as to save the person subject of criminal process from the expected rigors. This procedure should be followed by the prosecutors while submitting their reports u/s 9(7) of CPS Act; they can recommend discharge of an accused against whom evidence is deficient.
While applying this test prosecutor has to analyze the case based on the following aspects:

a) Can the evidence be relied upon?

A piece of an evidence is said to be reliable when during its collection all legal formalities were observed. Oral testimony is said to be reliable when it is truthful and free from any kind of inducement etc., the practice of delay in recording statements of witnesses under section 161 Cr.PC is not appreciated by Superior Courts, hence the same should be recorded promptly, without any delay and in case of delay the reasonable or sufficient cause must be explained behind the delay. The reliability of the witness can be challenged due to a number of factors including as given below:

- Old age, inability to remember past events
- Relationship with the victims and/or the complainant
- Other likely motives for the commission of perjury, financial gain etc.
- Any sort of duress
- Past history of witnesses
- Lack of requisite knowledge or experience etc.

b) Is the evidence sufficient?

The prosecutor after satisfying himself regarding the reliability of the evidence checks its sufficiency as provided under law and Code of Conduct for prosecutors. As we know that prosecution has to stand on its own legs and for conviction the case must be proved beyond any reasonable doubt hence it has to produce evidence on all counts; on each and every fact which it intends to prove before the court of competent jurisdiction. The prosecutor must ensure that all the requisite tests have been conducted for making it admissible before the court of law.

c) The defence perspective

Prosecutor cannot withhold the evidence which might favor the accused person. Instead, under Code of Conduct a line of defence or potential line of defence should be reasonably taken into account by the Prosecutor on the basis of available evidence. Moreover “Code of Conduct for Prosecutors” provides that:
Disclosure

In order to ensure fair trial, the prosecutor must make adequate disclosure to the defence. The rule regarding disclosure is that full disclosure should be made of all material held by the Prosecution including the police that may weaken the case of the prosecution or strengthen that of the defence.”

Paragraph 5.4 of the Code explains the meaning of the evidential test as: “That on an objective assessment of the evidence, including the impact of any defence or any other information that the suspect has put forward or which he might rely upon, the Prosecutor comes to the conclusion that a magistrate or judge hearing a case is more likely than not to convict the accused on the charge. This is a different test from the one that the criminal courts themselves apply, which is that the court must be sure beyond a shadow of doubt that the accused is guilty.”

Paragraph 5.5 of the Code sets out that the circumstances when the evidential test must be applied, which includes the following:

- When a prosecutor receives a police report for assessment
- When investigation against a particular suspect is substantially complete and the prosecutor is satisfied that the broad extent of criminality has been determined
- When in the opinion of the Prosecutor an event has occurred during the judicial proceedings that weakens the case of the prosecution, and
- When a lawful direction is issued to review the case to determine whether the case still complies with the Full Code Test
- When an accused submits an application under section 265-K or section 249-a of the Code of Criminal Procedure

For a well-applied evidential test, the prosecutor has to ensure that it is an objective assessment. In other words, the Prosecutor’s decision has to be a rational and considered one, and not one based on a hunch or personal preferences.

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56 13.1, Code of Conduct for Prosecutors
The magistrate or judge is required to give “due consideration” to the Prosecutor’s submissions. It must therefore be able to withstand the rigors of analysis by the judiciary. The Court may challenge the prosecution’s case in many ways. For example, the authenticity of an informant’s information where such information has become the basis of the investigation and prosecution. The prosecutor must keep in mind the level of effort and range of resources put into the investigation and that in certain circumstances, successful prosecution may be crucial for national security, especially in TF cases. Therefore, aiming for an impenetrable prosecution case, the prosecutor in such a case should always record the informant’s statement under S.164 (Cr.P.C.) and should immediately apply for witness protection.

It is also important to remember that the Prosecutor’s analysis is likely to form the basis of the Court’s perception of the Prosecutor, his command over his case and his legal skills. There is therefore a personal, as well as a professional reason for ensuring the assessment is robust and comprehensive. The prosecutor must apply the evidential test to each suspect individually as evidence not essential to convicting one suspect may be instrumental in convicting his accomplice.

Factors to consider when applying the evidential test are provided in the Code (Paragraph 5.6). Most importantly:

**Reliability of evidence**

For example, if an informant has tipped the LEA, and the prosecutor is provided the evidence for it, the prosecutor must ideally assess if the informant’s information can be backed with evidence other than the one he provides. Corroborative evidence may be key in ML/TF cases.

**Sufficiency of evidence**

In ML/TF cases, the range and nature of evidence is vast. The prosecutor should not be basing his assessment on a single piece of evidence. For a madrassa collecting funds under the name of donations, the prosecutor should look into internal accounts, formal or informal.
Defence’s case

Like any other criminal case, a smart prosecutor will prepare for his own case and for the defence’s. This means that the prosecutor must keep in mind possible pleas, arguments, supposed exculpatory documents that the defence lawyer would be using. In TF cases especially, the prosecutor cannot afford to not prepare for the defence case as in certain cases the matter is of national security.

Admissibility

Even with reliable, strong evidence, prosecutors might not be able to obtain a conviction and often times this is due to the admissibility of the evidence. It is necessary that the prosecutor guides the IO about the sensitivities of certain evidence collection based on the QSO. If the suspect’s confession is obtained under duress or is a result of police brutality, the Court will not accept the confession.

It is important to note that the evidential test is the most important test in a prosecutor’s assessment, the other two are of supplementary nature. Hence, if the prosecutor assesses that under the evidential test the case is not fit for trial, he may not submit an assessment on public interest as well.

6.2.8. The Public Interest (PI) Test

1. According to para 5.9 of the Code, “The test requires that in the assessment of the Prosecutor public interest factors tending against the prosecution outweigh the factors tending in favour of it. All prosecutions are in the public interest unless there are factors that requires a prosecution may not be made”.

2. The prosecutor must consider:

   a) Seriousness of the offence
   b) Culpability of the offender
   c) The impact of the offence on the community

In ML/TF cases, the public interest test will generally be applied. Both offences are of serious nature and they both affect the community. ML affects the
community as such offences hamper the economy’s progression and TF may lead to loss of innocent lives.

6.2.9. Threshold Test

The Threshold Test is applied where all the evidence is not available and a decision is required to be made regarding detention or the start of a prosecution. This test is only applicable at the remand stage.

When should the Threshold Test be applied?

a) The Threshold test may be applied when police seek custody of a suspect for investigation purposes and there is insufficient evidence available to apply the Full Code Test; and

b) When the evidence is substantially but not wholly complete and the seriousness or the circumstances of the case require the taking of a prosecution decision.

There are two parts to the evidential consideration of the Threshold Test:

a) Part One (Threshold Test) – Is there reasonable ground?

Prosecutors must be satisfied that there is at least a reasonable ground that the person to be charged has committed the offence. In determining this, prosecutors must consider the evidence available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:

i) it is relevant; and

ii) it is capable of being put into an admissible format for presentation in court; and
iii) it would be used in the case.

b) Part Two (Threshold Test) – Will further evidence provide a realistic prospect of conviction?

Prosecutors must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that all the evidence together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test. The further evidence must be identifiable and not merely speculative. In reaching this decision prosecutors must consider:

i) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;

ii) the charges that all the evidence will support;

iii) the reasons why the evidence is not already available;

iv) the time required to obtain the further evidence, and

v) Whether any consequential delay is reasonable in all the circumstances?

The threshold test must not be used to take a decision to start a prosecution where evidence on which the criminality of the suspect hinges is in the process of forensic analysis.

If both parts of the Threshold Test are satisfied, prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time. A decision in pursuance of the Threshold Test must be kept under review. The evidence must be regularly assessed to ensure that the decision is still appropriate.
The Full Code Test must be applied as soon as is reasonably practicable.

Moreover, general guidelines\textsuperscript{57} laid down by superior court regarding remand shall also be ensured.

Writ Petition No. 17809 of 2021 and Criminal Revision No. 311 of 2021 pertained to excess of jurisdiction exercised by Anti-Terrorism Court Dera Ghazi Khan. The learned Court encroached upon the powers of the Prosecution Department. By setting the impugned order passed by the ATC judge, Dera Ghazi Khan, the Court outlined the threshold test in accordance with the duties of the prosecutors laid out under Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 (hereinafter referred to as 2006 Act). This test entails that the power to ensure a complete check and balance of the investigating officers is vested in the prosecution department by virtue of Section 13 of the 2006 Act. At the same time, it may choose to formulate an opinion on any of the provisions of the law which is not binding on the Courts as it is within their discretion to agree or disagree with the said opinion. Similarly, while the prosecution is bound to follow the opinion of the court, the courts must not encroach upon the powers of the Prosecutors and observe the principles of judicial restraint, upholding the constitutional principle of trichotomy of powers between the three state organs.

The Code specifies that:

The Threshold Test may only be applied where all the evidence is not available, and a decision is required to be made regarding detention or the start of a prosecution.

The Threshold test may be applied when police seek custody of a suspect for investigation purposes or a bail risk is present and when the evidence is substantially but not wholly complete and the seriousness or the circumstances of the case require the taking of a prosecution decision.

The prosecutor must determine if there is reasonable ground that the suspect has committed the offence and further evidence will provide a realistic prospect of

\textsuperscript{57} Ghulam Sarwar v. The State 1984 P.Cr.L.J 2588 (Lah)
conviction.

Following his assessment, it is up to the Court to accept or reject the prosecutor’s assessment. The prosecutor must ensure that he convinces the Court that his assessment cover all necessary angles of the case and that his recommendation is based in law.

In case the court is not convinced, the prosecutor may withdraw his case in accordance with section 10 (3) (e) of the PCPS Act. The section stipulates that the DPP’s, Prosecutor General’s, or the Government’s prior approval is required. The level of authority is related to the seriousness of the offence.

6.3. Types of Prosecution Witnesses in ML Cases

I. Approvers

In a money laundering scheme, especially ones launched by politically well-connected criminals seeking to launder large quantities of illicit funds, it is inevitable that a large number of accomplices, conspirators, and collaborators will be involved. Such a scheme cannot be adequately investigated unless the concerned LEA, IO, and prosecutor win over some of the accomplices to its side. Depending on the circumstances of the case, an accomplice can provide a valuable insider’s view of the money laundering scheme. In certain cases, failing to win over an accomplice may make it virtually impossible to gather evidence to gain a conviction.

Definition

The formal definition of an accomplice is a person who participates in criminal activity but agrees to cooperate with the prosecution and testify against other defendants. In Pakistan, accomplices who are won over are referred to as “Approvers”.

In money laundering cases, approvers are usually individuals against whom a charge of abetment to the predicate offence and/or money laundering is made out. For example, they could be individuals who knowingly allowed the main defendants to register assets under their names as benamis, employees or
associates who managed the front-business through which illicit funds were laundered, or professionals such as accountants, bankers, lawyers, and tax consultants who assisted in laundering the money. Additionally, an approver can even be a main defendant responsible for generating the proceeds of crime, but who agrees to provide evidence against the hired professionals responsible for carrying out the money laundering. Approvers mostly agree to give evidence for the prosecution in return for leniency in sentencing, immunity from prosecution, or some other benefit. Usually, such approvers are used as informants in long-term investigations. They are expected to appear as prosecution witnesses, give statements, and participate in any other legal proceeding.

**Approver’s Evidence Must be Corroborated**

Pitfalls in the case because of overreliance on the evidence provided by an approver should be avoided at all costs. When relying on the evidence of an approver, a basic principle that must be observed: All evidence from an approver must be corroborated. This is despite the existence of the provision under Article 16 QSO which allows for an accused to be convicted based on an approver's uncorroborated testimony.

Nevertheless, an approver's credibility and the veracity of his evidence must be determined by corroborating it with the statements of other witnesses or through documentary evidence such as records of financial transactions, banking records, digital evidence, call records, emails, or messages.

**II. Independent Witnesses**

Most money laundering or terrorist financing operations maintain a certain level of interaction with independent third parties, such as bankers, accountants, property dealers, businesspeople, lawyers, and government functionaries. These third parties may not necessarily be aware that the organization they are dealing with is a criminal enterprise. They may engage in legitimate business with the money laundering or terrorist financing outfit, especially if it was being run through a front-company or masquerading as a charitable organization. For example, the independent third party may have rented business premises to the outfit, exchanged currency on their behalf, or conducted property deals for them.
Useful material from independent witnesses can be obtained, such as information regarding the persons actively involved in running the criminal enterprise and its employees, its financial or business transactions, documentary records, and other material can be obtained.

Independent witnesses can supply useful and authentic information regarding the criminal organization that can be used as evidence during trial. If they are not criminally associated with the enterprise, they will supply information in routine compliance with the LEA without any ulterior motive.

### III. Informants

Most LEA’s have informants in the criminal underworld who regularly supply useful and credible information in return for compensation or favours. LEA’s maintain links with such informants for intelligence gathering only, not for gathering evidence to be used at trial. Since such informants are keenly interested in maintaining their anonymity, they will not give statements, appear as a witness, or participate in any legal proceedings. Moreover, they may hold back on any useful information that might reveal their identity as the source.

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**Case Study: Part 2**

- Given the evidence provided in Part 1, what would be the prosecutor’s 9(7) assessment?
- Explain how you would apply the evidential, public interest and threshold test with the use of legislation and the Code of Conduct.
6.4. **Summary**

- While the prosecutor is responsible for scrutinising the police report and identifying defects in the investigation/evidence, it may also suggest additional lines of enquiry to the investigating officer.
- It is advised that prosecutors develop such informal checklists and SOPs to coordinate with Police and relevant departments, until the departments adopt formal rules for coordination.
- The charges in ML/TF cases should reflect the seriousness/gravity and extent of the accused’s offending, thereby allowing the courts to sentence appropriately.
- Predicate offences stand as independent offences in cases where proceeds from the offence have not yet been laundered.
- In order to maintain consistent coordination with the Police, the prosecutor can guide the investigating officer as to the investigation strategy.
- The Full Code Test is applicable at every stage of the case as per discretion and duty of the prosecutor, the Full Code Test is laid down in the Code of Prosecutors and consists of the Evidential Test and Public Interest Test.

6.5. **Self-Assessment Questions**

1. What are some common defects in police reports for terror financing cases?
2. What are some factors that a prosecutor may consider during scrutiny under section 9(5) of the Punjab Criminal Prosecution Service Act 2006?
3. In what ways can a prosecutor cooperate with the police during investigation?
4. What are some non-Court measures that can be taken to ensure witness protection?
5. What are the three tests for a prosecutor’s assessment?
SECTION 07

Human Rights’ Considerations

LEARNING OUTCOMES

- The rights of defendants for prosecutors and investigators to protect.
7.1. Defendant Rights

Given that ML/TF cases are presented for trial is a priority for Pakistan, under the FATF Action Plans, it is necessary to ensure human rights considerations of the accused. Ignoring the rights of the accused violates the concept of due process, and also disintegrates public faith in the justice system and rule of law.

The prosecutors must keep in mind the rights of the accused during and prior to trial and should also guide the investigators as to their fulfilment. Following are some important rights that must be protected to ensure due process:

1. Protection against arbitrary or unlawful arrest\(^{58}\).

2. Protection against arbitrary or unlawful searches.\(^{59}\)

3. Protection against “double jeopardy”\(^ {60}\).

4. Protection against conviction or enhanced punishment under ex-past facto law\(^ {61}\).

5. Protection against arbitrary or illegal detention in custody\(^ {62}\).

6. Right to be informed of the grounds, immediately after the arrest\(^ {63}\).

7. Right of the arrested person not to be subjected to unnecessary restraint \(^ {64}\).

8. Right to consult a lawyer of his own choice\(^ {65}\).

9. Right to be produced before a Magistrate within 24 hours of his arrest\(^ {66}\).

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\(^{58}\) Article 9 of the Constitution
\(^{59}\) Sections 93, 94, 97, 100(4) to (8). And 165 of Cr.P.C.
\(^{60}\) Article 20(2) of the Constitution and Section 403 of Cr.PC
\(^{61}\) Article 20(1) of the Constitution
\(^{62}\) Article 22 of the Constitution
\(^{63}\) (Article 10(1) of the Constitution
\(^{64}\) Section 50 of Cr.P.C.
\(^{65}\) Article 10 of the Constitution
\(^ {66}\) Section 167 of Cr. PC
10. Right to be released on bail, if arrested\textsuperscript{67}.
11. Right not to be a witness against himself\textsuperscript{68}.
12. Right to get copies of the documents and statements of witnesses on which the prosecution relies\textsuperscript{69}.
13. Right to have the benefit of the presumption of innocence till guilt is proved beyond reasonable doubt.
14. Right to insist that evidence be recorded in his presence except in some special circumstances\textsuperscript{70}.
15. Right to have due notice of the charges\textsuperscript{71}.
16. Right to test the evidence by cross-examination\textsuperscript{72}.
17. Right to have an opportunity for explaining the circumstances appearing in evidence against him at the trial\textsuperscript{73}.
18. Right to have himself medically examined for evidence to disprove the commission of offence by him or for establishing commission of offence against his body by any other person\textsuperscript{74}.
19. Right to produce defence witnesses\textsuperscript{75}.
20. Right to be tried by an independent and impartial Judge\textsuperscript{76}.
21. Right to submit written arguments at conclusion of the trial in addition to oral submission\textsuperscript{77}.

\textsuperscript{67} Chapter XXXIX of Cr.PC
\textsuperscript{68} Article 20(3) of the Constitution
\textsuperscript{75} Section 548 of Cr.PC
\textsuperscript{77} Section 364 of Cr.PC
\textsuperscript{78} Section 221 of Cr.PC
\textsuperscript{79} Section 164 of Cr.PC
\textsuperscript{80} Section 342 of Cr.PC.
\textsuperscript{81} Section 509 of Cr.PC.
\textsuperscript{82} Section 340 of Cr.PC
\textsuperscript{83} Article 10A of the Constitution
\textsuperscript{84} Section 265-F of Cr.PC
22. Right to be heard about the sentence upon conviction.

23. Right to fair and speedy investigation and trial.


25. Right to restrain police from intrusion on his privacy.

26. Right to release of a convicted person on bail pending appeal.

27. Right to get copy of the judgment when sentenced to imprisonment.

### 7.2. Summary

- Ignoring the rights of the accused violates the concept of due process, and also disintegrates public faith in the justice system and rule of law.

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Section 366 of Cr.PC

Article 10A of the Constitution

Arts. 132(1), 134(1) and 136(1) of the Constitution

Article 14(1) of the Constitution

Section 496 of Cr.PC

Section 371 of Cr.PC
SECTION 08

Simulation Exercise
8.1. **Scenario Outline**

1. Tanzeem e Qital (TeQ) is a terrorist organization, responsible for carrying out several terrorist attacks in Pakistan over the past 3 years. These have included suicide bombings as well as armed attacks on mosques and government offices in Khyber Pakhtunkhwa and Punjab.

2. On 12 January 2020, the Ministry of Interior notified Tanzeem e Qital (‘TeQ’) as a proscribed organization under the Anti-Terrorism Act, 1997 (‘ATA’).

3. During investigation into a bombing in Lahore claimed by TeQ which occurred on 5th February 2022, one of the suspected bomber’s cell phone was recovered. The CDR from the suspected bomber’s cellphone shows calls being made to Asif Mushtaq. Police put Asif Mushtaq under surveillance.

4. Surveillance reveals that Asif Mushtaq, goes to ‘XYZ Bank’ at its Saddar Branch in Lahore.

5. Police contact the Bank Manager and are able to access the CCTV footage of the inside of the bank. They determine that Asif Mushtaq went to Bank Teller No. 3 to withdraw cash. Upon questioning Bank Teller No. 3 in the presence of the Bank Manager, they learn that Asif Mushtaq has come to the bank several times in the past to withdraw money. Police also obtain a copy of the CNIC of Asif Mushtaq.

6. The Manager also shares a Bank Statement of the account (Account No. 775512345) for the past 1 year with the Police and tells them the account was opened on 24 June 2020. As per the Bank Statement the account title is in the name of Ms. Rukhsana Imtiaz and monthly transfers are made to this account from the account of a charitable organization by the name of ‘Insani Khidmat Foundation’ (‘IKF’).

7. According to the Bank Statement, for at least the past one year, Rs. 60,000/- have been deposited into the account every month through a bank transfer from an account operated by IKF. For the same time period Mr. Asif Mushtaq has been withdrawing Rs. 58,000/- every month through cheques signed by Ms. Rukhsana Imtiaz.
8. The investigation reveals that IKF is a non-profit organization registered under the Trust Act, 1882 and receives donations from all over Pakistan.

In 2021, it received a total of Rs. 10,324,423/- worth of donations. On its website, IKF states that it runs a school, a clinic, and provides direct cash support to deserving widows and orphans in Punjab. As per record, in 2021 Rs. 10,324,423/- were distributed to a school, a clinic, and 10-15 widows or orphans. Rukhsana, a widow gets Rs.60,000/- per month while all other widows and orphans get only 6,000 to 8,000/- per month each.

9. Police undertake a raid of Asif Mushtaq’s house to arrest him. He is found and arrested without struggle. Upon search of the premises Rs. 260,000/- is recovered from the house. Additionally, several pamphlets are recovered which promote TeQ and request people to provide funds to it. They also find a receipt booklet which has been used to provide receipts for donations to a madrassah in Lahore. The booklet shows donations worth Rs. 158,000/- have been received from various individuals. They also discover promotional material for IKF at Asif Mushtaq’s residence seeking donations for the charity.

10. During interrogation Asif Mushtaq states that Ms. Rukhsana Imtiaz is his wife’s friend and since she is old he makes withdrawals on her behalf and gives her the money.

11. Police arrest Ms. Rukhsana Imtiaz who is an elderly woman and interrogate her. She states that Asif Mushtaq opened an account for her approximately a year and half ago and promised to get her money for monthly expenses. She states Asif made her sign all the cheques as soon as the cheque book was issued, saying it would be easier than having her sign a cheque every month. Ms. Rukhsana said Asif was very helpful and that she is dependent on the Rs. 8,000/- that he provides her every month. Police release Rukhsana because they do not feel she is involved in the scheme.

12. Police confront Asif that Rukhsana is receiving only Rs. 8,000/- whereas he withdraws 58,000/- every month. Asif initially denies this and claims he gives her the entire amount but after repeated questioning he admits that he keeps Rs. 50,000/-. Asif states that the 50,000/- from Rukhsana’s account as well as
any money he raises through donations for the Madrassah is given to Javed Khan who is a Trustee of IKF. He does not know what Javed does with the money. He was due to meet Javed the next day to give him Rs. 260,000/- that were in his possession. Police are able to match Javed Khan’s name with the Trustees named in the Trust Documents for IKF. His CNIC number is also identified.

13. Based on this information, the Police are able to arrest Javed Khan from the meeting point. They also find out from his CNIC that he lives nearby and search his home. During the search Police recover a laptop and two mobile phones.

14. Forensic analysis of one mobile phone reveals WhatsApp messages to one Rauf Malik.

15. Forensic analysis of the laptop reveals an untitled Microsoft Word document.

16. There are also 11 videos on his laptop. 3 videos show young men firing bullets and receiving weapons training. The other videos seem to be TeQ propaganda showing attacks and bombings done by TeQ in the past.

17. CDR of the Mobile Phone shows several calls to Asif Mushtaq over the past few weeks as well as calls to other numbers. The Mobile Phone also has a WhatsApp group called ‘Brothers’ wherein there are photos of the location of the 5th February Bombing in Lahore and surrounding areas dated 2nd February (before the blast took place). Asif Mushtaq is also a member of this Whatsapp Group.

18. The Police confront Javed Khan with this information. They accuse him of coordinating the 5th February bomb attack, of receiving funds for supporting TeQ’s terrorist activities, and for transferring funds for purchases and payments to terrorists. He denies these allegations. He states he is not a terrorist; he had just fallen on hard times and needed some money from IKF that is why he asked Asif Mushtaq to help him take funds from Rukhsana Imtiaz’s account. He says he has an interest in bombings and explosions that is why the videos are on his laptop. When confronted about the pictures of
the location of the bombing, he says he didn’t take the pictures himself and did not know why someone posted them in the WhatsApp group.

19. Police trace Rauf Malik’s cell phone number to Karachi. By coordinating with Sindh Police, Rauf Malik is arrested and interrogated. He states that he is a businessman and has no link to any terrorist organization. He says he is a philanthropist, and his money is used for various good causes across Pakistan including to support schools and hospitals.

20. Through his CNIC number, Police are able to track down his bank accounts in various banks. Upon examination of the Bank Statement of one account it is determined that Rauf Malik makes monthly donations to IKF in the sum of Rs. 60,000/-. He has also provided IKF larger donations of Rs. 1 million and Rs. 2.5 million in the past.

The Police submit the Challan to the Prosecutor to initiate a case in the Anti-Terrorism Court against Asif Mushtaq, Javed Khan, and Rauf Malik.

8.2. Assessment

Considering the above, please answer the following questions:

Q.1. What offences, if any, should Asif Mushtaq be charged with?
Q.2. What offences, if any, should Javed Khan be charged with?
Q.3. What offences, if any, should Rauf Malik be charged with?
Q.4. What are the key pieces of evidence in this case?
Q.5. What further evidence do you feel the Police should have collected?
   (If you were doing scrutiny of the Challan what would you recommend to the Police?)
Q.6. Would you take this case to trial?
Q.7. What would be your strategy at trial?

Bonus Question:

Q.8. Do you think investigation should be started against IKF and why?
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Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism