COMMENTARY ON THE ANTI-MONEY LAUNDERING ACT 2010
Law, Practice, and Procedure
COMMENTARY ON THE ANTI-MONEY LAUNDERING ACT 2010
Law, Practice, and Procedure
The Research Society of International Law (RSIL) is a private sector research and policy institution based in Pakistan. Founded in 1993, by Mr. Ahmer Bilal Soon, RSIL’s mission is to conduct research on the intersection between international law and the Pakistani legal context. Today, it is the largest legal think-tank in Pakistan with a highly qualified research staff, possessing a broad spectrum of specializations in both international and domestic law. RSIL engages in academic research, policy analysis, and capacity building in order to inform the discourse on issues of national and international importance from a legal perspective and to bring out a positive effect in the domestic legal space.

Our organizational philosophy is based on the view that greater awareness of international law improves the development of a State's domestic and foreign policies and helps Pakistan remain compliant with its international commitments, solidifying its reputation as a responsible member of the international community. As RSIL is a nonpartisan, apolitical institution, our mandate is restricted to providing legal analysis on the challenges facing Pakistan without engaging in partisanship or expressing any political biases.
The Research Society of International Law (RSIL) is pleased to present its latest work, an in-depth commentary on Pakistan’s Anti-Money Laundering Act 2010 (AMLA). As Pakistan’s premier international law think tank, RSIL has been at the forefront of legal research and policy analysis since its inception in 1993.

RSIL has been involved in legal research, capacity building and policy analysis in counter-terrorism since 2001, when international frameworks relating to counter-terrorism, terrorism financing and money laundering and international cooperation were overhauled in the aftermath of the September 11 attacks. When Pakistan was ‘grey-listed’ by the Financial Action Task Force (FATF) in 2018 owing to structural deficiencies in its AML/CFT regime, RSIL deployed its best assets to conducting in-depth research in this area. Over the past five years, RSIL has developed dozens of knowledge products on AML/CFT, including research reports, policy briefs, guides, handbooks and training modules for a broad range of stakeholders, including criminal justice actors, regulators and reporting entities. We have also conducted approximately 40 trainings, consultations, working group sessions, seminars and conferences for hundreds of stakeholders and policymakers across the country with the aim of building capacity and generating policy dialogue in this important area.

Our latest work is a testament to our commitment to addressing the complex challenges facing Pakistan’s legal landscape in the domain of anti-money laundering. This commentary on AMLA is the first of its kind in Pakistan, offering a comprehensive analysis of the Act, its key objectives, contemporary practice, and practical implications. It delves into the intricacies of the Act, providing a detailed examination of offences and penalties, investigation procedures, attachment and management of properties, judicial provisions, institutional frameworks and oversight mechanisms, and obligations of reporting entities.

The commentary also provides a historical overview of Pakistan’s AML regime, tracing its evolution from piecemeal legislative responses to the current comprehensive legal framework which was revised under the FATF Action Plan for Pakistan between 2018–2022.

The commentary is designed to be a valuable resource for a wide range of stakeholders. It will assist judges, prosecutors, investigators, and defense counsel in domestic money laundering cases, while also providing policymakers, parliamentarians, and legislative drafters with a comparative analysis of key jurisdictions and international best practices. This analysis can inform further reform to AMLA in the future.

The development of this commentary was a significant undertaking, involving more than a year of dedicated work by our research team. We are grateful to the practitioners and external consultants whose insights and efforts were instrumental in enhancing the accuracy, usability, and utility of this commentary.

We would also like to express our gratitude to the American Bar Association–Rule of Law Initiative (ABA-ROLI) for their support to this endeavor. Their guidance and support to RSIL over the years has been instrumental in building specialist technical capacity in AML/CFT within RSIL, greatly benefiting the national interest.

In conclusion, as law enforcement agencies, reporting entities, and regulatory bodies begin to exercise their powers and fulfill their obligations under the revised AMLA 2010, Pakistan’s legal system is poised to encounter a surge of money laundering cases. I am confident that this commentary will serve as a crucial guide in navigating this evolving landscape.

Jamal Aziz
Executive Director
Research Society of International Law
July 2023
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# Chapter 1

Introduction to Pakistan’s AML Regime

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Evolution of Anti-Money Laundering (AML) Laws in the Pakistan

Pakistan became cognizant of the criminal issue of money laundering (ML) in the late 1990s, prompted by a rise in drug trafficking and other predicate crimes. In the early stages of its fight against ML, Pakistan’s AML strategy was haphazard, with regulatory bodies passing rules and regulations to protect the financial system and banking channels from ML-related concerns. However, these were not backed by cohesive legislative reforms that aimed to criminalize ML as an offence until much later.

It was not until 2007 that Pakistan formalized a dedicated law to tackle ML. The Anti-Money Laundering Ordinance (AMLO) in 2007 was promulgated to criminalise and target ML in Pakistan separately from other predicate offences. For the first time, AML Rules 2008 were issued under AML Ordinance, 2007. This law eventually laid the groundwork for a more detailed Anti-Money Laundering Act, 2010, (AMLA), targeting ML across various sectors of the economy and providing the basis for its criminalisation as a standalone offence. The AMLA is further bolstered by the First Schedule of predicate offences that outline the nature of criminal activity underlaying ML for the offence to stand.

By virtue of the Constitution (Amendment) Order (2007), the President amended the Constitution and Article 270AAA was introduced. This amendment validated all Ordinances including the AMLO issued under the Proclamation of Emergency in 2007. It also provided that such Ordinances shall continue in force until altered, repealed or amended by the competent authority. The insertion of Article 270AAA in Constitution was challenged in the Supreme Court of Pakistan. The Supreme Court nullified Article 270AAA in 2009 and advised the Federal Government to take steps to place the said Ordinances before the Parliament or the respective Provincial Assemblies in accordance with the law.

Subsequently, some shortcomings in the AMLO 2007 were pointed out in Pakistan’s MER 2009 conducted by the Asia–Pacific Group (APG). Accordingly, a new AMLO, issued in 2009, was deemed to have taken effect from 7 September 2007, and was set to expire on 26 March 2021. Therefore, Anti-Money Laundering Act (AMLA) was promulgated in 2010 as permanent legislation to pre-empt the AMLO’s expiration. The AMLA has been amended multiple times since 2010, with key amendments being passed especially in 2015 and in 2020 to further enhance its scope of application and ensure its alignment with international standards.

In line with its strong and high-level political commitment, Pakistan continued to strengthen its AML regime through the implementation of the Financial Action Task Force’s (FATF) international standards in the 21st century. Notwithstanding the challenges imposed by the Covid–19 pandemic, Pakistan continued its focus on the FATF Action Plan by improving deficiencies pointed out in the Mutual Evaluation Report (MER) conducted in 2019 as well as taking steps to ensure that Pakistan’s AML/CFT systems strategically align themselves to global standards by optimising its framework during the crucial post-MER observation period.

Piecemeal Legislative Response to Money Laundering: Pre–2007

In the absence of an AML regime, money laundering was largely viewed from the angle of corruption and fiscal misuse of public funds. The ambit of investigating and prosecuting ML-related offences, as well as international cooperation frameworks fell squarely within the NAB Ordinance framework.
**National Accountability (NAB) Ordinance 1999**

The NAB Ordinance established the National Accountability Bureau to eradicate corruption and corrupt practices in various organisations and hold all those accused of such practices accountable. Some pertinent provisions of this Ordinance are:

- **Section 9** of the NAB Ordinance provides that corruption and corrupt practices committed by holders of a public office, or any other person are cognisable under the Ordinance.
- **Sections 10 and 11** lay down provisions for the imposition of fines and the power to freeze property.
- **Section 16** pertains to the trial of offences, giving the Accountability Court exclusive jurisdiction to try these offences.
- **Section 20** pertains to reporting of suspicious financial transactions, whereby banks and financial institutions must take notice of unusual or large transactions which have no apparent economic or lawful purpose, to then be referred to the NAB Chairman. Failure to do so is punishable with imprisonment extending to 5 years or with fine or both.
- Under **Section 21**, the NAB Chairman or an officer authorized by the Federal Government may request a foreign State to obtain evidence for an ongoing investigation; freeze assets; confiscate articles; transfer such evidence, articles or assets to Pakistan; and transfer the person in custody to Pakistan.
- **Section 27** states that the NAB Chairman or any person authorised by him can seek full and complete assistance from any department, organisation or office.
- **Section 37** states that the President of Pakistan, in consultation with the Chief Justice of Pakistan, is competent to make any order for the purpose of removing any difficulties in respect of the Ordinance.

**Regulators in Action: 2002 – 2007**

In May 2000, Pakistan officially joined the Asia Pacific Group on Money Laundering, which required it to subscribe to a basic set of standards to counter ML and protect its financial system from ML risks. To curb ML risks, the State Bank of Pakistan (SBP) issued ‘Prudential Regulations M1 to M5’ to safeguard banks and financial institutions from the threat of ML in 2003. These Regulations laid out a minimum standard of due diligence for customers during the registration of their bank accounts. The Securities and Exchange Commission of Pakistan (SECP), the regulator of the corporate sector and capital market, also issued various AML measures to all non-bank financial institutions in 2002 to combat ML practices and threats in the corporate sector.

However, banking and company regulations could only target and mitigate a limited number of risks. The application of these regulations also remained a concern. The SBP’s Prudential Regulations were updated in 2016 – after a gap of nearly 14 years – during which the threat of ML/TF and associated risks to the banking sector in Pakistan had grown significantly. Formalised regulations to exclusively combat ML/TF in a dedicated manner were not passed until 2018 and were then updated in 2020 following Pakistan’s third grey-listing by the FATF. The poor understanding of risks, and subsequent failure to evolve its AML/CFT regime in time, resulted in considerable disrepute for Pakistani banks, particularly following a USD 225 million fine on Habib Bank Limited (HBL) for secondary liabilities in failure to curb ML/TF. Following this, Pakistan introduced an effective and sustainable four-tier regulatory framework through amendments to the AMLA.

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Anti-Money Laundering Ordinance, 2007

The first specific law to tackle ML was the Anti-Money Laundering Ordinance (AMLO), 2007. The AMLO was meant to immediately criminalise ML while the Parliament deliberated upon the details of a permanent AML law. Yet, despite its time-bound nature, the AMLO had significant flaws. Firstly, the scope of the AMLO was limited to account transactions while STRs were restricted to only bank accounts. Secondly, the offence of ML was made non-cognizable, and a small number of predicate offences were included in the schedule of the AMLO.

The AMLO provided for the prevention of ML and forfeiture of property derived from, or involved in, ML and for matters connected therewith or incidental. Some important provisions of the AMLO are as follows:

- Section 3 defined ML while Section 4 laid out its punishment.
- Section 5 established the National Executive Committee (NEC) to combat money laundering and discusses its composition;
- Section 6 sets up a Financial Monitoring Unit (FMU) as an independent decision-making authority on day-to-day matters coming within its areas of responsibility. The procedure and manner of furnishing information by the financial institutions is discussed in the subsequent section.
- As per Section 8, the investigating officer may, based on the report in his or her possession received from the concerned investigating agency, by order in writing, with prior permission of the Court, provisionally attach property, which he or she reasonably believes to be proceeds of crime or involved in money laundering for a period not exceeding ninety days from the date of the order.
- Section 9 highlights the manner of investigation in ML offences.
- Section 13 gives an investigating officer the power to survey based on material in his or her possession, if he or she has reasons to believe that an offence of ML has been committed in any place.
- Section 14 elaborates on search and seizure, while Section 15 lays down provisions for the search of persons, and Section 16 deals with the power to arrest. The subsequent sections pertain to the manner of trial and address jurisdictional questions.
- Sections 26 and 27 highlight the mutual legal assistance mechanism that may be opted to enforce the provisions of the Ordinance.

Pakistan’s First Grey-Listing (2008 to 2010)

Pakistan’s first MER was carried out by the APG in 2004-05 in limited areas. In 2008, strategic deficiencies were pointed out in the AML/CFT framework, and Pakistan was urged to continue its efforts to improve AML laws in line with international standards. When the AMLO expired in November 2009, the FATF expressed its concerns and re-affirmed its February 2008 plenary statement.

Once this Ordinance lapsed in 2008, Pakistan was placed on the FATF’s grey list for the first time, because with the AMLO’s lapse, Pakistan had no AML legislation and only a few piecemeal regulations in force by its regulators. Pakistan was successfully able to exit this grey list with the passage of a detailed Anti-Money Laundering Act, 2010 which again criminalised ML and laid the framework for its investigation and prosecution in criminal courts. For such purposes, Pakistan had to amend/introduce 14 laws in line with the FATF and international standards.
Passage of the Anti-Money Laundering Act, 2010

The AMLO was replaced by the Anti-Money Laundering Act 2010 (‘AMLA’) and various changes were incorporated in it, including a thorough definition of money laundering. The AMLA included measures to be taken for deterrence, such as forfeiture of property and assets obtained from proceeds of crime. Section 4 of the AMLA provides punishment for money laundering offenses as a rigorous imprisonment from one to ten years. Moreover, section 21(a) of the AMLA states that each crime punished under it shall be non-cognisable. In a cognizable offense, the police or the designated officer of the investigating agency has the authority to arrest the accused without having obtained a warrant or permission of the court. Cognizable offenses are serious and heinous in nature and have a minimum punishment of three years. On the other hand, non-cognizable offenses are not serious and heinous in nature compared to cognizable offenses and have a maximum punishment of up to less than three years.³

Despite this, the AMLA was lacking in certain aspects. It failed to identify terrorist financing and the application of stringent sanction in the identified cases. Moreover, the punishment specified in the Act was deemed insufficient to create effective deterrence. Lastly, the failure to categorise ML as a cognizable offence was also deemed as a significant deficiency.

Pakistan’s Second Grey-Listing (2012–2015)

In February 2012, Pakistan was once again placed on the FATF grey list. The FATF noted that Pakistan needs to enact legislation to ensure that it meets the FATF standards regarding TF offenses and the ability to identify, freeze, and confiscate terrorist assets. One of the reasons for such placement was the weaknesses in the investigation of ML offenses and the non-existence of an independent FMU.

Pakistan undertook certain key amendments of the AMLA in 2015, which was coupled with on-ground action against terrorist outfits such as s Jamaat–ud–Dawa, Falah–e–Insaniyat Foundation and Lashkar–e–Tayyba (LeT). In addition to the FATF’s Action Plan, Pakistan also achieved its own National Action Plan (NAP) against key terror outfits, a significant part of which included the dismantling of finance networks behind proscribed groups. The amendments to the AMLA in 2015 included the formation of the National Executive Committee (NEC) and the General Committee, and basic STR analysis and dissemination for the FMU. It also enhanced investigative powers of investigation officers and strengthened freeze and confiscation powers. This progress was sufficient in facilitating Pakistan’s exit from the grey list in 2015.

Pakistan’s Third Grey-Listing (2018–2022)

In 2018, the FATF placed Pakistan on the grey list again, citing ‘structural deficiencies’ that resulted in the failure to effectively target ML/TF.⁴ Following this, Pakistani authorities resorted to multifocal action to improve its performance, undertaking comprehensive legal and administrative reforms to improve compliance. This time, there was a strong political commitment to implement the FATF Action Plan, with time-bound actions to address strategic weaknesses. As a result, Pakistan made significant progress in its two Action Plans and was largely compliant on both the 27-Point TF Action Plan (2018) and the 7-Point ML Action Plan (2021) in 2022.

³ This was amended later in 2020 under the AMLA (Second Amendment) Act, 2020 – whereby under section 21 of the AMLA now, money laundering constitutes a cognizable offense.
A Mutual Evaluation Report (MER) highlighted the nature of these deficiencies resulting in Pakistan’s grey listing, including:

- Lack of necessary legal frameworks to target TF/ML;
- Lack of coordination amongst governmental actors and law enforcement agencies;
- No coherent risk-based assessment tools;
- No laws/regulations for certain high-risk sectors such as Designated Non-Financial Businesses and Persons (DNFBPs); and
- Lack of mechanisms to promote international cooperation.

The FATF instructed Pakistan to abide by its 27-point Action Plan to improve its AML/CFT frameworks to align with international standards. Since 2018, Pakistani authorities have undertaken extensive legislative and administrative reforms to improve upon the deficiencies identified in the MER. In 2020, this effort culminated in the passage and amendments of around 15 laws, including comprehensive amendments to the AMLA 2010 and the Anti-Terrorism Act, 1997 (ATA), both constituting the foundation of Pakistan’s AML/CFT frameworks. Additionally, over 30 rules/regulations were passed by authorities to further augment and enhance the implementation of the amended legislation.

The FATF designed a framework for countries to determine the effectiveness of law enforcement agencies’ (LEAs) ML investigations. This was addressed by Pakistan with the commitment of the key LEA stakeholders and the adoption of the ‘Follow the Money’ policy to understand the connectivity between related financial transactions, or the money chain. Accordingly, Pakistan notified its ‘Follow the Money’ policy on 19 May 2001 under the ‘National Policy Statement on “Follow the Money”’ as a governmental approach to tracing financial transactions in ML investigations.

**Addition of the 7-Point Money Laundering Action Plan**

In June 2021, the FATF found Pakistan compliant on 26 out of 27 Action Plan points from the original TF Action Plan of 2018. The FATF acknowledged Pakistan’s substantial progress in developing CFT capacity. The last outstanding point pertained to demonstrating that effective, proportionate, and dissuasive sanctions were imposed for TF convictions, and that Pakistan’s targeted financial sanctions regime was being used effectively to targeted terrorist assets. Experts suggested that demonstrating effectiveness and convictions requires time, as every case must follow due process at trial (a right protected under Article 10A of the Constitution of Pakistan).5

Despite only one outstanding point, the FATF handed Pakistan an additional 7-Point Action Plan that was focused on ML concerns. According to the FATF, based on the findings of the concurrent dual Mutual Evaluation process underway, Pakistan needed to address concerns regarding regulation of designated non-financial businesses and professions (DNFBPs), focusing on international cooperation and continued effectiveness (by way of increased ML convictions). These formed the core of the 7-Point Action Plan, which the Government of Pakistan announced it would achieve within 12 months. This ML-centric Action Plan was completed well before time and was highly appreciated by FATF in its multiple plenary statements.

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5 Article 10A: “For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.” Constitution of the Islamic Republic of Pakistan https://na.gov.pk/uploads/documents/1333523681_951.pdf
ML-Based FATF Action Plan (2021)

(1) Enhancing international cooperation by amending the Mutual Legal Assistance law;
(2) Demonstrating that assistance is being sought from foreign countries in implementing UNSCR 1373 designations;
(3) Demonstrating that supervisors are conducting both on-site and off-site supervision commensurate with specific risks associated with DNFBPs, including applying appropriate sanctions where necessary;
(4) Demonstrating that proportionate and dissuasive sanctions are applied consistently to all legal persons and legal arrangements for non-compliance with beneficial ownership requirements;
(5) Demonstrating an increase in ML investigations and prosecutions and that proceeds of crime continue to be restrained and confiscated in line with Pakistan’s risk profile, including working with foreign counterparts to trace, freeze, and confiscate assets; and
(6) Demonstrating that DNFBPs are being monitored for compliance with proliferation financing requirements;
(7) Demonstrate that sanctions are being imposed for non-compliance.

FATF’s Dual Evaluation of Pakistan

After 2018, Pakistan underwent two parallel evaluations: a regular evaluation as per the Fourth Round analysing Technical Compliance and Effective Compliance, and an evaluation of its progress on the 27-Point and later 7-Point Action Plans. Pakistan regularly submitted progress reports to the FATF, highlighting all on-going developments, with the FATF publishing Follow-Up Reports (FURs) to the MER conducted in 2019, updating and re-rating Pakistan’s performance on the 40 Technical Compliance indicators.

Together, these two evaluations allowed for a detailed assessment of Pakistan’s AML/CFT frameworks in terms of the laws, rules, regulations and mechanisms available to counter ML/TF risks and their efficacy in producing convictions. The Action Plans were designed to specifically counter Pakistan-specific risks, allowing for appropriate legal, regulatory, and administrative action to be undertaken to mitigate ML/TF risks. The successful completion of the two Action Plans and achieving compliance with the FATF’s technical recommendations indicate that Pakistan undertook comprehensive reforms to successfully conform its AML/CFT frameworks with international standards.

In 2022, the APG released the 4th Technical Compliance Report (referred to as the Follow-Up Report or FUR), assessing progress against Technical Compliance indicators. It reviewed the country’s overall performance up until February 2022 and commended Pakistan’s effective AML/CFT framework, particularly highlighting progress with regards to the regulation of DNFBPs as well as improved mutual legal assistance (MLA) and international cooperation frameworks. The APG expressed its satisfaction over Pakistan’s performance. Pakistan’s Mutual Evaluation Report (MER) was carried out in 2019 which was subsequently adopted by APG in August 2019. At the time of adoption of MER, Pakistan was compliant and largely compliant in 10 recommendations out of 40 Recommendations. After several Follow-up Reports, Pakistan was deemed Compliant and Largely Compliant in 38 out of 40 FATF Recommendations, becoming one of only twelve countries to achieve such a feat. To achieve this, Pakistan had to enact, enhance, and amend over 15 laws and introduce numerous subordinate rules, regulations and standard operating procedures (SOPs) across various sectors. All this was made
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possible by combined strategy and efforts of the legislature, ministries, regulators, the private sector and LEAs.

Pakistan’s Exit from the FATF Grey-List (2022)

In June 2022, the FATF Plenary deliberated upon Pakistan’s progress in achieving deliverables under the 27-Point Action Plan (2018) and a consequent 7-Point Action Plan (2021). The Plenary found Pakistan largely compliant with all 34 items of the two Action Plan points and stated that the country was now eligible for on-site inspection. Consequently, an on-site visit was arranged and concluded by September 2022, adhering to the due process that all grey-listed countries follow before being allowed to formally exit the grey-list in the upcoming plenary. This is in tandem with progress under the dual mutual evaluation as well. Owing to this considerable progress, the FATF formally removed Pakistan from the FATF grey list in October 2022. Despite the fact that Pakistan was given two stringent Actions Plans, Pakistan demonstrated its political commitment by way of effective inter-agency coordination amongst LEAs and MLA.

Key Amendments to the AMLA Act (2020)

AMLA (Amendment) Act, 2020

In September 2019, the Anti-Money Laundering (Amendment) Bill 2019 was laid in the National Assembly. The purpose of the amendment was to strengthen the current AML regime in the country with more stringent provisions.

The bill was passed the following year as the Anti-Money Laundering (Amendment) Act, 2020. According to Section 4, violators of the law would now be subject to greater financial penalties i.e., fines would be increased from 1 million rupees to 5 million rupees, and sentences would be increased from two years to ten years imprisonment. Section 8(1) of the amended AMLA also equips the investigating officer with the authority to hold a person in remand for up to 180 days, up from 90 days previously.

This amendment contributed to FATF Recommendation 3 (Money Laundering Offence) by making the ML offence sanctions more stringent, and FATF Recommendation 31 (Powers of Law Enforcement and Investigative Authorities) by enhancing investigating officers’ remand authority.

AMLA (Second Amendment) Act, 2020

The FATF Action Plans required Pakistan to specifically strengthen its AML regime by ensuring effective domestic cooperation between the FMU and LEAs in investigations of ML/TF, as well as demonstrating effectiveness of sanctions, including remedial actions to curb the same.

The AMLA (Second Amendment) Act 2020 addressed these concerns. In terms of legal clarity, multiple definitions have been amended and enhanced in Section 2. Furthermore, the legislation appoints the National Accountability Bureau (NAB) as an ‘investigating or prosecuting agency’ under Section 2(xvii), in investigating ML cases, along with CTDs, FIA and other agencies investigating all other ML cases. Furthermore, the functions and powers of AML/CFT regulatory authorities have been clearly defined with powers to issue licenses, regulatory powers and other ancillary functions to comply with provisions of the AMLA. Penalties have been made more stringent, with fines increasing from 5 million

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rupees to 25 million rupees for ML, and the fine for legal persons rising to 100 million under section 4. Section 5 establishes the National Executive Committee to enhance collaboration between different LEAs and regulatory authorities. Section 6 further introduces an AML/CFT regulatory authority, and mandates international cooperation by regulators for broader oversight.

Under section 7, customer due diligence (CDD) was mandated, including relying on third parties to ensure CDD. Section 7C specifies requirement to hold records obtained via CDD for up to five years, while section 7F mandates the integration of risk-based assessments within organisations. Section 7G requires carrying out professional training and compliance programs, and section 7I imposes sanctions for reporting bodies which do not conform to the new sections. Importantly, offences under section 21 of AMLA would now be considered cognisable offences as opposed to non-cognisable in line with the FATF recommendations. Section 25 promotes coordination by ensuring cooperation between federal officers and provincial officers. Finally, the AMLA’s schedules were amended, and new schedules were inserted which listed the Members of National Executive Committee, the General Committee and the regulators for AML/CFT regulatory authorities for the purposes of the Bill. Despite receiving a majority of votes in the National Assembly, this Bill was rejected by the Senate in late August 2020, but later passed in a joint session in September 2020.

This law contributed to the following FATF Recommendations:

- Recommendation 2 (National Cooperation and Coordination);
- Recommendation 3 (Money Laundering Offence);
- Recommendation 10 (Customer Due Diligence);
- Recommendation 20 (Reporting of Suspicious Transactions);
- Recommendation 26 (Regulation and Supervision of Financial Institutions);
- Recommendation 27 (Powers of Supervision);
- Recommendation 30 (Responsibilities of Law Enforcement and Investigative Authorities); and
- Recommendation 31 (Powers of Law Enforcement and Investigative Authorities).

This wide-ranging law broadly enhances regulatory oversight, ensuring CDD, verification of customer identity, reporting of STRs as well as widening of the scope of powers afforded to LEAs and other authorities in investigating suspicious activities. Section 21, citing offences as cognisable, is also an important development in aligning existing AML frameworks with international standards.

Apart from these amendments in the AML framework, Pakistan also introduced the following essential Rules & Regulations under AML Act–2010 (as amended):

- Appointment of Administrators Rules, 2021;
- Appointment of Prosecutors Rules, 2021;
- Anti-Money Laundering (Referral) Rules, 2021;
- Anti-Money Laundering (Forfeited Properties Management) Rules, 2021;
- Counter-Measures for High Risk Jurisdictions Rules, 2020;
- AML/CFT Sanctions Rules, 2020;
- SBP /SECP/PPOD/CDNS AML/CFT Regulations, 2020;
- FBR AML and CFT Regulations for DNFBPs, 2020; and
- Red Flag Indicators for Accountants, Jewellers, Realtors, Lawyers, NPOs and Proliferation of Finances

In December 2020, an AML Desk at the national level was also established in the FIA. Its purpose was to jumpstart ML investigations, and streamline the flow of information among all the relevant agencies and the National Database on ML. The AML Desk played an active role in interagency cooperation as well as the smooth flow of information from one agency to another.
Chapter 2
Key Elements of AML Law

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Overview

AML Legislation around the world broadly tackles the crime of money-laundering. With the rapidly evolving frameworks to counter transnational crime, a cohesive set of international rules and standards has developed which encapsulate the essence of key international conventions. Beyond tackling the prospect of money laundering, AML frameworks now include countering terrorism financing, enacting preventive measures, empowering a whole host of governmental agencies (including regulators, supervisors, LEAs, and the judicial system) as well as ensuring effective coordination to mitigate new and emerging risks around ML/TF. These elements form a starting point for State authorities as they evaluate the measures that should be incorporated into domestic law in order to prevent, detect, and effectively sanction money laundering, the financing of terrorism and the proceeds of crime.

In this chapter, we will focus on key defining themes within AML frameworks, based on international standards and recommendations as well as rooted in key international conventions. This chapter will begin with a basic definitional section that defines the key themes of AML frameworks. Following this is a brief lay-out of the international legal framework, which will posit key United Nations Conventions and Security Council Resolutions. Finally, the chapter concludes with examples from key jurisdictions across the identified themes to highlight how countries have factually applied such provisions in their legislative systems.
Defining Key Themes of AML Frameworks

I. **Criminalization of ML:** AML Laws must ensure that crimes contributing to money laundering are all accounted for within the schedule of offences. The aim behind this is to ensure that countries are focusing on the widest range of predicate offences and are applying the crime of money laundering to all such offences. Furthermore, authorities must have powers to freeze and confiscate all property or proceeds of crime. The aim is to ensure that money does not remain available to offenders while ML investigations are underway. Application of definitions in the Vienna Convention⁸ and the Palermo Convention⁹ within domestic contexts are absolutely critical in this regard.

II. **Coordination between Governmental Agencies:** Regulators, supervisors, law enforcement agencies (LEAs) and other competent authorities are all required to work in tandem to effectively counter ML/TF threats. It is also important to ensure that authorities are empowered to coordinate effective action on-ground. This means looking at policies within a jurisdiction that allow for the identification and assessment of risks, as well as designating relevant authorities to coordinate actions and resources in order to mitigate and counter-act against existing risks. The scope of action undertaken by authorities within this context includes coordination and cooperation between different law enforcement agencies, policy makers, supervisors/regulators and other competent authorities to ensure that risks are mitigated. Mechanisms, as such, need to exist between these institutions for smoother communication and exchange of information, as well as to implement policies to curb ML/TF.

III. **Preventive Measures:** Efforts to launder money and finance terrorism have been evolving rapidly in recent years. With ML activities now using ever more sophisticated mechanisms to conceal, layer and integrate funds, it is critical for the financial sector to apply preventive measures to identify and counter-act against potential TF/ML threats. Therefore, banks, companies, Development Financial Institutions (DFIs), and Micro Finance Banks (MFBs) amongst others, are all required to apply a wide range of measures to ensure that risk-based approaches are applied cohesively, internal controls are in place and due diligence requirements and records are met. AML Laws must create provisions for a range of activities that determine preventive measures – such as mandating record-keeping, conducting customer due diligence (including provisions for enhanced or simplified measures commensurate with the identified risks), ensuring mechanisms of money transfers and other channels have built-in controls when dealing with high risk jurisdictions, and effective mechanisms to report suspicious transactions to competent authorities in a prompt manner.

IV. **Regulation of DNFBPs:** Apart from the broader banking and insurance sectors, DNFBPs (Designated Non-Financial Businesses and Professions) are also an important area to consider. DNFBPs include lawyers, accountants, real-estate agents, dealers in precious metals/stones and trust and company service providers. Traditionally, such individuals are often seen as the gate-keepers of AML regimes, as those with proceeds of crime often seek technical advice on how to park, integrate or otherwise conceal illicit funds. Real estate agents and dealers in precious metals/stones are also high-risk sectors for ML/TF activity. Regulating these professions and integrating a culture of adopting risk-based approaches within this area is crucial.

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V. MLA & International Cooperation: The transnational nature of ML/TF offences requires countries to have mechanisms of approaching authorities abroad to exchange information and evidence as required. Multiple international conventions and legal instruments contain provisions recommending international cooperation between countries to tackle ML/TF. Within this ambit, mutual legal assistance (MLA) refers to the concept of countries mutually agreeing to gather and exchange information in an effort to enforce public or criminal laws. As well, countries signatory to key UN Conventions are recommended to set up avenues of international cooperation to tackle transnational crime. AML Laws in any jurisdiction must allow for the effective coordination and avenues for information sharing with other countries, supplemented with dedicated legislation and/or rules/regulations on MLA as well.

VI. Powers of LEAs - Attachment, Search, Seizure and Confiscation: Law enforcement and investigative authorities require a range of investigative powers to be made available to them effectively collect evidence required for ML/TF cases, such as conducting parallel investigations, identifying and seizing property and proceeds of crime, and liaising with other authorities or governments to initiate investigations. Special investigation techniques, such as going undercover and controlled delivery, need to be made available as well. With all competent authorities armed with the appropriate powers and responsibilities, it is expected that ML/TF risks can be effectively mitigated. Particularly, it will allow a range of evidence to be collected in ML/TF cases, resulting in successful investigations and prosecutions of ML/TF offenders.

VII. Powers of Supervisors and Regulators - Sanctions: Competent authorities or financial supervisors should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a financial institution. Supervisors should have adequate powers to supervise or monitor, and ensure compliance by, financial institutions with requirements to combat money laundering and terrorist financing, including the authority to conduct inspections. Importantly, all authorities are required to have mechanisms to levy sanctions, including financial penalties, for non-compliance with AML/CFT rules. Where required, supervisors and regulators should be able to wield a range of disciplinary and financial sanctions in cases of non-compliance, commensurate with the degree of non-compliance. These sanctions should include a range of effective, proportionate and dissuasive measures, whether criminal, civil or administrative, available to deal with natural or legal persons that fail to comply with AML/CFT requirements. Sanctions should be applicable not only to financial institutions and DNFBPs, but also to their directors and senior management.

VIII. Targeting Beneficial Ownership: Offences by Legal Persons: This requires countries to implement transparency mechanisms so that it is clear who retains effective control over a company and other legal arrangements. The issue of ultimate beneficial owners or controllers has become increasingly important internationally: it plays a central role in transparency, the integrity of the financial sector, and law enforcement efforts. Beneficial owners (BO) are natural persons who own or control a legal entity or arrangement, such as a company, a trust, a foundation, etc. Sometimes, money launderers use complex forms of layering, including BO arrangements, in attempts to conceal illicit activities or funds. Anonymity in such arrangements can enable many illegal activities to take place hidden from law enforcement authorities, such as tax evasion, corruption, money laundering, and financing of terrorism. It is thus important to know the BOs of legal entities and arrangements to prevent misuse.

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Relevant International Legal Framework

**International Conventions**

The current international AML/CFT framework is a product of treaty law, namely, instruments that are binding under international law signed by two or more states. Treaties signify that the parties intend to create rights and obligations that are enforceable under international law upon each other, and endeavour to enact legislation in their domestic jurisdictions to honour their treaty obligations.

**The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)**

Through the Drug Control Program, the UN, initiated an international agreement to combat drug trafficking and money laundering. Although the Convention does not explicitly discuss the term ‘money laundering’, it defines the concept and calls upon countries to criminalise the activity. However, the Convention does not address preventive aspects of money laundering, and the only predicate offences for money laundering under the Convention are crimes that are related to drug trafficking. This Convention, nevertheless, serves as a precursor for several of the FATF Recommendations on preventing, detecting, and prosecuting money laundering, especially as it relates to drug trafficking.


The UNTOC contains a wide range of provisions designed to combat international organised crime. The UNTOC obliges each ratifying country to:

- Criminalise money laundering and include at least all serious crimes (not just drug trafficking) as predicate offences to money laundering;
- Establish regulatory and supervisory regimes to deter and detect all forms of money laundering;
- Cooperate and exchange information, both domestically and internationally, and consider the establishment of a financial intelligence unit; and
- Consider the implementation of feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across its borders.

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

The ICSFT was adopted by the United Nations General Assembly (UNGA) on 9th December 1999 and entered into force on 10th April 2002. There are currently 188 States Parties to the ICSFT, who undertake to criminalise terrorism, terrorist entities, and terrorist acts in their respective domestic jurisdiction.\(^\text{11}\)

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

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

**Key United Nations Security Council Resolutions**

Building on the ICSFT, Security Council Resolution 1373 (2001), calls on States to prevent and suppress the financing of terrorism, *inter alia*, by criminalising the collection and provision of funds for terrorist purposes, and urges them to set up an effective mechanism to freeze funds and other financial assets of persons involved in, or associated with terrorism. It is pertinent to reiterate that even raising small funds significantly increases a terrorist organisation’s capacity to conduct terrorist activities. In Resolution 2178 (2014), the Security Council urged Member States to disrupt terrorist-financing activities linked to foreign terrorist fighters (FTFs) and to criminalise the financing of FTF travel.

**UNSC Resolution 1267**

UNSC Resolution 1267 was adopted unanimously on the 15th of October 1999. After Resolutions 1189 (1998), 1193 (1998) and 1214 (1998) on the situation in Afghanistan, the Security Council required Member States to freeze the assets of the Taliban. It was followed by Resolution 1333, which dealt specifically with the freezing of assets belonging to Osama bin Laden and Al-Qaeda. Subsequent Resolutions 1363, 1390, 1452, 1455 established monitoring arrangements; merged lists of assets to be frozen, and took other measures to improve implementation and monitoring of the sanctions regime. This regime has since then been reaffirmed and modified by several other UN Security Council Resolutions. Since the US invasion of Afghanistan in 2001, the sanctions have been applied to individuals and organisations in all parts of the world.

Resolution 1267 also established a sanctions committee, known as the ‘Al-Qaeda and Taliban Sanctions Committee’ or the ‘1267 Committee’, to fully implement the provisions of Resolution 1267 and document individuals and entities whose assets are to be frozen in light of terrorist financing threats. It is further assisted by a Monitoring Team, consisting of eight members who have expertise in countering terrorist financing and arms embargoes, to further improve implementation of sanctions mechanisms as required.

The 1267 Sanctions Committee also identifies, designates and compiles the Al-Qaeda Sanctions List (previously known as “Consolidated List”) of people and entities that have been associated with Al-Qaeda or the Taliban, and evaluates laws that ought to be passed by each Member State in order to implement the sanctions. The Committee receives reports from each State as to their progress and is able to vary the conditions imposed on any individual as it sees fit.

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12 [Main webpage of The Security Council Committee established pursuant to resolution 1267 (1999)](https://www.un.org/securitycouncil/sanctions/1267). UN. 

13 UN Security Council Committee pursuant to UNSCR 1267, 1989, 2253 – Overview, United Nations

14 Ibid.
Initially, the 1267 Sanctions Committee focused on both Al-Qaeda and the Taliban. However, in 2011, pursuant to Resolution 1988 (2011), a separate sanctions regime and Sanctions Committee was formed to oversee sanctions for the Taliban. Resolution 1989 subsequently formalised the reduction of the scope of the 1267 Sanctions Committee to focus on Al-Qaeda and all associated individuals and entities, and to consolidate all information in the renamed ‘Al-Qaeda Sanctions List.’

**UNSC Resolution 1373**

On 11th September 2001, the Security Council unanimously adopted Resolution 1373 which comprehensively outlines strategies to combat international terrorism. Under this Resolution, the Security Council also established the United Nations Security Council Counter-Terrorism Committee, which aims to “prevent terrorist acts both within [State] borders and across regions.” The Counter-Terrorism Committee also monitor the Resolution’s implementation and called upon all Member States to report on remedial actions they had taken in light of the Resolution, no later than 90 days.

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

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

The Security Council further directs States to use effective methods to trace the exchange of information amongst terrorists and increase the monitoring of suspicious transactions, including the use of forged documents used to facilitate the raising and transferring of funds for terrorist acts. States are also mandated to ensure that before granting refugee status to asylum seekers, they undertake appropriate measures to verify their identity to rule out their affiliation with any terrorist organisation.

**UNSC Resolution 2462**

UNSC Resolution 2462 urges States to implement FATF Recommendations, including adopting standards to assess terrorism-financing risks that they face. The Resolution also requires that countries ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts, or in supporting terrorist acts, is brought to justice.

The Resolution further notes that terrorist groups raise funding through a variety of means, such as:

- legitimate commercial enterprises;

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15 Ibid.
16 Ibid.
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• exploitation of natural resources;
• non-profit organisations, donations;
• crowd-funding, and
• proceeds of criminal activities.

The Resolution also acknowledges innovations in financial technologies, particularly in new and nascent industries that present avenues for significant economic growth. Given that such industries present possible openings for terrorism funding, States must be vigilant and proactive in regulating such ventures.

Centrality of the Financial Action Task Force

The FATF is an inter-governmental body established in 1989 that sets standards and promotes the effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other threats to the integrity of the international financial system. FATF’s 40 Technical Recommendations constitute the core international standards on AML/CFT and are to be implemented by all jurisdictions of the world.\(^{19}\)

Meeting the FATF standards invariably requires legislative action, and it is of the utmost importance that variations between a State’s national statutes, regulations, and court decisions, be harmonised in line with FATF Recommendations. Any State laws that are inconsistent or in direct conflict with international standards may have the effect of neutralising aspects of the AML/CFT regime. Therefore, one must examine a State’s legal framework in its entirety to ensure the minimisation of conflicts, and to suggest additional legal or legislative actions where such conflicts exist.\(^{20}\)

The FATF recognises that each State has a unique legal character, and so the solutions must not necessarily be uniform, but instead be adopted according to the individual legal systems of the State. Accordingly, FATF’s international standards are established as principles, so that each State may adopt laws consistent with its own legal norms, cultural characteristics, and economic circumstances.

\(^{19}\) Financial Action Task Force (FATF) – About. https://www.fatf-gafi.org/about/

\(^{20}\) Ibid.
Consolidation of the International Legal Framework

As has been expounded upon above, the international framework consists of treaties, FATF Recommendations, and UNSC Resolutions. These obligations correlate with one another to create a holistic international AML/CFT framework. The following matrix has been devised to illustrate the same:

<table>
<thead>
<tr>
<th>Scope of the Obligation</th>
<th>International Conventions</th>
<th>UNSCRs</th>
<th>FATF Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminalisation of financing of terrorism and money laundering</td>
<td>ICSFT, UNTOC, UNCAC, UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</td>
<td>1373, 2462</td>
<td>No. 3, No. 5</td>
</tr>
<tr>
<td>Freezing and Confiscating assets</td>
<td>ICSFT, UNTOC, UNCAC, UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</td>
<td>1267, 1373, 2462</td>
<td>No. 4, No. 6, No. 7, No. 38</td>
</tr>
<tr>
<td>Measures of International Cooperation</td>
<td>ICSFT, UNTOC, UNCAC, UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</td>
<td>1267, 1373, 2462</td>
<td>No. 37, No. 38, No. 39, No. 40</td>
</tr>
<tr>
<td>Operational and Law Enforcement Obligations to investigate and prosecute</td>
<td>ICSFT, UNTOC, UNCAC, UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</td>
<td>1373, 2462</td>
<td>No. 30, No. 31</td>
</tr>
</tbody>
</table>
Legislative Frameworks of Key Foreign Jurisdictions

Australia

Australia is a common law jurisdiction that has been a member state of the FATF since 1990. It has a score of 3.65 on the Basel AML Index, which indicates a strong, robust, and resilient AML framework. As per the FATF’s last assessment in 2018, it rated Australia as compliant with 12 Recommendations, largely compliant with another 12 Recommendations, but remains partially compliant with 10 Recommendations and non-compliant with 10.

To ensure a consolidated effort to combat ML/TF risks, it has employed a robust AML/CFT system at the national level through legislation and the establishment of institutions. The primary legislation governing Australia’s AML/CFT regime is the Anti-Money Laundering and Counter-Terrorism Financing Act, 2006, while the primary institution responsible for Australia’s AML/CFT efforts is the Australian Transaction Reports and Analysis Centre (AUSTRAC).

The AML/CFT Act aims to detect proceeds of crime and curb ML/TF by imposing several obligations on the financial sector, gambling sector, remittance services, bullion dealers, and other reporting entities offering designated services provided by the Act. The Act works in tandem with Part 10.2 of the Criminal Code Act, 1995, which penalises two categories of money laundering offences: those related to the proceeds of crime and those related to instruments of crime. Criminal liability also rests upon a finding of either knowledge, recklessness, or negligence in the intent to utilise the proceeds of crime in illegal acts.

The Act defines certain organisations as reporting entities. These entities are required to submit reports to the AUSTRAC about suspicious matters; to develop and comply with an anti-money laundering and counter-terrorism financing program; and to comply with several record-keeping requirements. In addition, the Act contains the following offenses to prosecute money laundering:

- Movement of physical currency in and out of Australia;
- Providing false information, using false documents, or using a false customer name; and
- Conducting transactions to avoid reporting requirements.

Apart from this, reporting entities must perform customer due diligence (CDD) to verify the identity of customers. This process involves obtaining and verifying customer identification documents, conducting risk assessments to determine the level of due diligence required, and ongoing monitoring of customer transactions to detect suspicious activities.

Reporting entities are also required to establish and maintain an AML/CTF program tailored to their specific risks and circumstances. The program outlines policies, procedures, and controls designed to

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21 Defined in Division 400.1 (1) as any money or other property that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).
22 Defined in Division 400.1 (1) as money or other property is an instrument of crime if it is used in the commission of, or used to facilitate the commission of, an offence against a law of the Commonwealth, a State, a Territory or a foreign country that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).
23 Ibid.
24 Ibid. Section 80.
25 Ibid. Section 107.
26 Ibid. Sections 53 and 55.
27 Ibid. Sections 136 to 141.
28 Ibid. Sections 142 and 143.
identify, mitigate, and manage the risks of money laundering and terrorism financing. It includes measures such as customer due diligence, record-keeping, employee training, and ongoing monitoring and reporting of suspicious transactions.

As Australia’s designated financial intelligence unit (FIU), AUSTRAC is also responsible for international cooperation in AML/CFT investigations. AUSTRAC forms part of the Egmont Group, which is an international network of FIUs for greater information sharing and international cooperation in financial intelligence and criminal investigations. AUSTRAC has entered into several memoranda of understanding (MoUs) with FIUs in other countries to enhance and facilitate the exchange of financial and criminal intelligence, conduct and support joint investigations, and to promote general information sharing. It also provides capacity-building, training and technical assistance to other countries to strengthen their AML/CFT frameworks.

**The United Kingdom**

Like Australia, the United Kingdom is also a common law jurisdiction that has been a member of the FATF since 1990. It has a score of 3.63 on the Basel AML Index, indicating a strong and robust AML framework. It is oft regarded as a state with one of the strongest AML/CFT frameworks encompassing a complex web of legislation, rules, regulations, and procedures across various institutions, and has been particularly praised by the FATF for its progress in this domain.

The legislative framework outlined in the Proceeds of Crimes Act, 2002 (POCA) primarily focuses on the recovery of criminal assets to prevent criminals from using their assets, recover criminal proceeds, and deter crime. The POCA is substantiated by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2019, which amended the 2017 version of the Regulations. The main institution in the AML/CFT framework is the National Crime Agency which houses the country’s Financial Intelligence Unit. Regular reviews of progress are conducted by the HM Treasury.

Part 7 of the POCA specifically deals with money laundering and provides for various offenses. The part also mandates businesses and financial institutions in the regulated sector to alert the UK Financial Intelligence Unit under the National Crime Agency (NCA) in case of any suspicions regarding criminal property or money laundering. Persons that are not covered under the regulated sector are also mandated to report any suspicious activity they witness through their trade or profession.

POCA largely focuses on methods of asset recovery. Criminal confiscation is the most frequently employed measure but requires a conviction to occur. The court makes a confiscation order after determining whether the defendant has benefited from either his general criminal conduct or lifestyle, or from his particular criminal conduct, and the recoverable amount of such benefit. The confiscation order requires the defendant to pay a specific amount out of his or her available resources, rather than confiscating property.

Alternatively, the Act provides for the recovery of criminal proceeds without a conviction, namely through civil recovery, cash seizure, and taxation powers. For instance, defendants avoid conviction by feeling abroad making conviction impossible. In such cases, the Director of Public Prosecutions, the Director of the Serious Fraud Office, and the Director of the National Crime Agency (NCA) may make an application before the High Court for a property freezing order in order to prevent a person from dealing with property obtained through unlawful conduct. Sections 295 and 298 of the POCA provide for the seizure and forfeiture of assets that are suspected to be the proceeds of crime. Section 295 allows for the seizure of cash, while Section 298 allows for the forfeiture of other assets, such as property, vehicles, and other valuable items. These provisions enable law enforcement agencies to take action against assets that are linked to criminal activity, even if no criminal conviction has been obtained.
The Regulations provide procedural obligations to conform to the provisions of the POCA, including reporting requirements for suspicious activity. Relevant persons and entities must provide suspicious activity reports (SARs) to the National Crime Agency. Similarly, they must report certain types of transactions, particularly those involving cash transactions of £10,000 or more, and electronic fund transfers of £1000 or more. Furthermore, they must conduct CDD to verify the identities of customers and to conduct thorough risk assessments.

Additionally, entities subject to AML/CFT regulations are required to have procedures in place to identify and apply enhanced due diligence measures to politically exposed persons (PEPs), who are individuals holding prominent public positions, as well as those having close associations with such individuals. Certain entities, such as trusts, must also hold beneficial ownership registers, to enhance transparency and identify the ultimate beneficial owners of business arrangements on whose behalf transactions may be carried out.

The POCA of the United Kingdom establishes the National Crime Agency (NCA) as the primary AML/CFT regulatory authority and outlines its powers and responsibilities. NCA is established under Section 1 of the Act which establishes the NCA as the agency responsible for coordinating law enforcement efforts to prevent and combat serious and organized crime, including money laundering and terrorist financing. NCA has wide-ranging powers to investigate and enforce anti-money laundering regulations, including the power to seize assets, freeze accounts, and prosecute offenders.

Part 11 of the POCA reflects the willingness of the UK to engage in national and international cooperation. Section 443 enables the enforcement of orders made by courts under the Act in different parts of the United Kingdom. Section 444 allows for making provisions to prohibit dealing with property or realizing property that is subject to an external request or order. Section 445 facilitates external investigations by permitting the issuance of foreign warrants.

Interestingly, a recent amendment to the POCA inserted section 445A which required a Statutory Review to assess the effectiveness of the arrangements in place, called Exchange of Notes (EoN), between the governments of UK and other territories during an 18 months period from 1 July 2017 to December 2018. These bilateral arrangements focused on information sharing of beneficial ownership relating to the person(s) who owns or controls a legal entity such as a company. The EoN enabled the UK government to request from a participating territory the beneficial ownership information for corporate or legal entities incorporated in their territory, and vice versa. Such information is instrumental in supporting law enforcement agencies in curbing financial crimes, such as by identifying circumstances where criminal proceeds have been obscured using complex corporate structures.

**India**

India is a common law jurisdiction that became a member of the FATF in 2010. It is yet to be assessed by the FATF in the fourth round of mutual evaluations and has not been assessed by the Basel AML Index. Nevertheless, India has made significant developments in its domestic AML/CFT framework.

The primary Indian legislation that criminalises money laundering is the Prevention of Money Laundering Act, 2002 (PMLA). This is substantiated by various rules and regulations for reporting entities, regulators, and investigating agencies. The main institution that governs the AML/CFT regime in India is the Financial Intelligence Unit–India (FIU–IND).

The PMLA defines money laundering as the process of converting illicitly obtained proceeds of crime into legitimate assets. It also covers various predicate offenses, including terrorism financing, drug trafficking, corruption, fraud, and organised crime, allowing investigations of these crimes as part of the AML/CFT framework.
As in other jurisdictions, the Indian legislation requires certain organisations and entities to report transactions that may involve the proceeds of crime. Several reporting entities, such as banks, financial institutions, and designated non-financial businesses and professions (DNFBPs), are obligated to report suspicious transactions and activities to the Financial Intelligence Unit–India (FIU–IND). They are required to file suspicious transaction reports (STRs) and cash transaction reports (CTRs) for specified transactions that meet the reporting thresholds.

Reporting entities are required to implement robust preventive measures that allows such entities to guard against ML/TF threats. These include know your customer (KYC) and customer due diligence (CDD) procedures. KYC procedures allow banks, financial institutions and DNFBPs to verify the identity of their customers, assess their risk profiles, and monitor their transactions. Furthermore, enhanced due diligence measures are applied to high-risk customers, such as politically exposed persons (PEPs) and high-value transactions. Additionally, reporting entities are required to maintain records of transactions, customer identification data, and related documents for a specified period.

The primary institutional arrangement in India’s AML/CFT regime is the Financial Intelligence Unit–India (FIU–IND), which is the central national agency responsible for receiving, analysing, and disseminating financial intelligence related to money laundering and terrorism financing. It serves as the central repository of STRs and CTRs and collaborates with domestic and international agencies for financial intelligence and investigations into financial crimes.

In support of the FIU–IND, the Enforcement Directorate (ED) is the primary investigating agency for money laundering offenses in India. It conducts investigations, initiates prosecutions, and confiscates proceeds of crime under the PMLA. Along with the FIU–IND, the ED also works with other law enforcement agencies to conduct investigations into financial crimes.

Along with the FIU–IND and ED, sector-specific regulators, such as the Reserve Bank of India (RBI) for banks and the Securities and Exchange Board of India (SEBI) for securities markets, play a crucial role in enforcing AML/CFT regulations within their respective sectors. They issue guidelines and regulations, conduct inspections, and take enforcement actions against non-compliant entities. Furthermore, Joint Coordination Committees (JCCs) are established at the central and state levels to facilitate coordination and cooperation among various law enforcement agencies, regulators, and intelligence agencies. JCCs promote information sharing and coordination in combating money laundering and terrorism financing.

The United States

The United States is a common law jurisdiction that has been a member of the FATF since 1990. It has a score of 4.32 on the Basel AML Index, which indicates a good AML framework; however, it is not as robust as Australia’s or the UK's. The FATF conducted its assessment on the US’s AML/CFT regime in 2016, with the US reporting back in 2020. It was rated as compliant on 9 of the 40 Recommendations and largely compliant on 22 of them. It remains partially compliant on 5 of the 40 Recommendations and not compliant on 4 of them.

There are two main legislative acts in the US AML/CFT framework: the Bank Secrecy Act, 1970 (BSA) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, 2001 (USA PATRIOT Act). The main institution that is part of the AML/CFT framework is the Financial Crimes Enforcement Network (FinCEN) that reports to the US Department of the Treasury.

The BSA focuses on improving transparency and accountability across the financial sector. requires financial institutions, including banks, credit unions, and money service businesses, to establish
Commentary on the Anti-Money Laundering Act 2010

Comprehensive AML programs, conduct customer due diligence (CDD), monitor transactions, and report suspicious activities to the appropriate authorities. Reporting entities must ensure suspicious activity reporting (SAR) to the FinCEN if they detect transactions or patterns of activity indicating money laundering, terrorist financing or other illegal financial behaviour. In conjunction with the BSA, the Foreign Account Tax Compliance Act (FATCA) requires foreign financial institutions to report information on US account holders in foreign jurisdictions to the Internal Revenue Service (IRS) in order to combat tax evasion and monitor cross-border financial transactions.

The USA PATRIOT Act expanded the AML/CFT framework by enhancing customer identification requirements, facilitating information sharing between financial institutions and law enforcement agencies, and strengthening international cooperation in combating money laundering and terrorist financing. The PATRIOT Act introduced a customer identification programme (CIP) requiring financial institutions to identify customers opening new accounts, maintain their information records and check customer names against government watchlists. The Act also increased cooperation and information sharing between financial institutions and law enforcement agencies. Like the BSA, the PATRIOT Act also grants authorities the power to impose special due diligence requirements on US financial institutions maintaining accounts for foreign financial institutions. The PATRIOT Act enhances penalties for money laundering and terrorist financing offenses, providing law enforcement agencies with stronger investigation powers to prosecute individuals and organisations.

The FinCEN is the primary institution in the US AML/CFT framework. It serves as the financial intelligence unit (FIU) for the US, which receives and analyses suspicious activity reports (SARs) and currency transaction reports (CTRs). It also serves as a regulatory authority, issuing regulations, rules and guidance to various institutions and entities to ensure compliance with AML/CFT obligations. This includes the conduct of CDD and CIP requirements. It collaborates and coordinates with other related institutions, such as the Office of the Comptroller of the Currency (OCC) and the Federal Reserve to supervise and examine financial institutions for compliance with AML/CFT regulations. The FinCEN also runs the FinCEN Exchange programme, which serves to promote public–private partnerships and information sharing between law enforcement agencies and financial institutions.

In terms of international cooperation, the FinCEN is a part of the Egmont Group of Financial Intelligence Units, which facilitates the secure and timely exchange of financial intelligence among member states. It also enters into bilateral agreements with other countries for the reciprocal sharing of information under mutual legal assistance on suspicious transactions, beneficial ownership, and other relevant data on transnational financial crimes.
Chapter 3
Offences and Penalties

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Overview

The third chapter of this commentary focuses on the core principles of the Anti-Money Laundering Act, 2010: the definition of offences and attached penalties. Our exploration is centered on Sections 3, 4, 21, and 37 which outline the offence of money laundering, the legal nuances of cognizability and non-bailability, and the extent of liabilities imposed on legal persons.

Section 3 lays the foundation of the Anti-Money Laundering Act, 2010 by clearly defining the offence of money laundering. It lists a range of activities, from acquiring to transferring property, that can constitute money laundering, provided there is knowledge or reasonable belief that the property in question is proceeds of crime. It extends the scope of culpability beyond direct offenders to those who attempt to conceal or disguise such properties, and those involved in planning, facilitating, or counseling the commission of these activities. Notably, the Act allows for the establishment of a money laundering offence without the need for a prior conviction of the accused for the predicate offence. This stipulation expands the Act’s reach and effectiveness in tackling money laundering.

Section 4 of the Anti-Money Laundering Act (AMLA) outlines the punitive measures imposed for the offence of money laundering under Section 3. It serves as a critical component of the legislation, ensuring that individuals involved in such illicit activities face dissuasive punishments.

Section 21 further enhances the Act’s significance by classifying money laundering offences as cognizable and non-bailable, overriding the Code of Criminal Procedure, 1898 (Act V of 1898). This provision highlights the gravity of money laundering offences and mandates stringent conditions for bail, especially for offences punishable for more than three years. It also elaborates on the process of cognizance for various offences under the Act and designates the roles of the investigating officer, Federal Government, and the Financial Monitoring Unit (FMU) in this context.

In Section 37, the Act extends its scope to include legal persons. This provision stipulates that when a legal entity commits an offence under the Act, all associated individuals who were in a position of authority at the time of the offence are considered guilty and liable for punishment. However, this liability does not extend to individuals who can demonstrate that the contravention occurred without their knowledge or despite their due diligence to prevent it. The section also covers circumstances where a contravention by a legal person is found to have occurred with the consent, connivance or knowledge of officer of the legal entity. In such cases, these individuals are also held accountable and liable to be proceeded against and punished.

Together, Sections 3, 4, 21, and 37 constitute the essence of the Anti-Money Laundering Act 2010. They lay out a comprehensive framework of offences and penalties that form the basis of this Act. This chapter aims to provide insight into the practical implications of these sections and evaluates its effectiveness in deterring money laundering and ensuring its alignment with international standards.
Relevant Definitions

**Abetting:** Abet has been defined as to encourage, incite, or set another on to commit a crime. The word *abet* is usually used in the context of aiding the commission of a crime, facilitating its commission or to promote its accomplishment.

Thus, in the context of the offence of money laundering, abetting may mean to encourage or aid the commission of the crime.

**Acquire:** In common parlance, acquired means to take or obtain. Black’s Law Dictionary defines the word *acquire* as, “to gain by any means, usually by one’s own exertions, to get as one’s own; to obtain by search, endeavor, practice our purchase; to receive or gain in whatever manner; come to have.” In the American case of Clarno v. Gamble–Robinson Co, acquire was defined as to become the owner of property, to make property one’s own etc. In Crutchfield v. Johnson & Latimer, as well it was defined as “to gain ownership of.”

Ownership in the context of acquiring must be discussed as well. Salmond states that ownership “denotes the relation between a person and any right that is vested in him.” However, Black’s Law Dictionary defines the word own as having a good title to, or to hold as property.

Thus, to acquire in the context of the offence of money laundering may mean to gain ownership of, or a property right in subject matter which is the proceed of crime.

**AML/CFT Regulatory Authority:** “AML/CFT Regulatory Authority” means the regulator or SRB as defined under section 6A of the AMLA 2010. The AML/CFT regulatory authority, as defined in the AMLA 2010, comprises the designated regulators and supervisory and regulatory bodies listed in Schedule IV. This authority is responsible for enforcing and implementing the powers and functions outlined in the Act and its prescribed regulations. Specifically, the AML/CFT regulatory authority is responsible for licensing or registering reporting entities, imposing conditions on their activities to prevent money laundering, predicate offenses, and financing of terrorism, issuing regulations and guidelines related to specific sections of the Act, providing feedback and monitoring compliance with the Act’s requirements, conducting inspections, compelling the production of relevant information, imposing sanctions and penalties on violators, maintaining statistical records, and exercising other powers granted by applicable laws.

**Associating with:** The word “associate” has been defined as acting in a union for a particular purpose. In common parlance as well, the word associate may mean to come together as partners or to combine or join efforts.

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29 “Abetting” is referred to in Section 3 of the AMLA 2010.
30 “Acquire” is referred to in Section 3 of the AMLA 2010.
32 Clarno v. Gamble–Robinson Co 251 N.W. 268 (Minn. 1933)
33 Crutchfield v. Johnson & Latimer 8 So. 2d 412 (Ala. 1942)
34 Jurisprudence 9th Edition
35 “AML/CFT Regulatory Authority” is referred to in Section 21 of the AMLA 2010.
36 Section 6A of the AMLA 2010: The AML/CFT regulatory authority, as defined in the AMLA 2010, comprises the designated regulators and supervisory and regulatory bodies listed in Schedule IV. This authority is responsible for enforcing and implementing the powers and functions outlined in the Act and its prescribed regulations. Specifically, the AML/CFT regulatory authority is responsible for licensing or registering reporting entities, imposing conditions on their activities to prevent money laundering, predicate offenses, and financing of terrorism, issuing regulations and guidelines related to specific sections of the Act, providing feedback and monitoring compliance with the Act’s requirements, conducting inspections, compelling the production of relevant information, imposing sanctions and penalties on violators, maintaining statistical records, and exercising other powers granted by applicable laws.
37 “Associating with” is referred to in Section 3 of the AMLA 2010.
Thus, the phrase “associating with” in the context of the offence of money laundering may mean acting as partner in commission of prohibited acts.

**Attempting to commit:** A attempt has been defined as making an effort or endeavouring to accomplish a crime, amounting to more than mere preparation or planning for it, which if not prevented would have resulted in the actual commission of the crime. It has also been defined as an intent combined with an act falling short of the thing intended.

Thus, in the context of the offence of money laundering, the phrase “attempting to commit” may mean intending to commit but failing to complete one’s actions.

**Cognizable:** The term “cognizable” refers to cases or matters that fall within the jurisdiction of a particular court. It suggests that a court has the authority to hear and decide upon such cases. In this context, it is often used to distinguish between “cognizable” and “non-cognizable” offenses, where the latter refers to offenses that can be investigated and tried by an investigating officer without requiring prior approval of a magistrate.

**Complaint:** A complaint is typically filed with the relevant court or legal authority and is served upon the defendant to provide them with notice of the legal action being taken against them. It serves as the formal initiation of the legal process and sets the stage for subsequent proceedings, such as the defendant’s response (often referred to as an “answer”) and subsequent stages of the litigation, including discovery, motions, and trial.

**Concealing:** Conceal has been defined as, “to hide, withhold from the knowledge of others, to withdraw from observation; to withhold from utterance or declaration; to cover or keep from sight.” In common parlance as well, the word conceal is interpreted to mean hide.

Thus, the word concealing, in the context of the offence of money laundering may mean, to hide or cover.

**Conspiring to commit:** Conspiracy has been defined as joint efforts to conduct an unlawful or criminal act or carrying out an act which is innocent in itself but becomes criminal due to the concerted action of more than one person.

Thus, in the context of the offence of money laundering, conspiracy to commit may mean to make a joint effort, or plan.

**Convert:** Conversion has been defined as, “the exchange of property from real to personal and from personal to real.” In the context of the law, Black’s Law Dictionary defines it as an “unauthorized assumption and exercise of the right of ownership of goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner’s rights.”
Personal property is that which is movable and includes chattels, whereas real property has been defined as relating to land, as distinguished from personal property. It includes land, tenements, and hereditaments.

Thus, convert, in the context of the offence of money laundering may mean alteration of property from one form to another. It may include conversion from real to personal, or personal to other forms of personal property such as chosen in action.

Counseling: While counsel means a pleader, or someone who assists their client with advice, it has been defined by Black's Law Dictionary as giving advice with regards to a proposed line of conduct.

Thus, counselling, in the context of the offence of money laundering may mean to give advice in the commission of the offence.

Disposition: Disposition has been defined as a deed of alienation by which a right to property is conveyed. It has also been defined as parting with or giving up property. In the Law of Property Act 1925 operational in the UK, the word disposition has been used as meaning transfer.

Thus, the word “disposition” in the context of the offence of money laundering may be the transfer the proceeds of crime.

Disguising: The word disguise has been defined as, “to change the guise or appearance of.” In common parlance, a distinction can be made between disguise and conceal. While conceal means to hide in common parlance, disguise means changing the appearance of something or change the way in which something is portrayed.

Thus, the word disguising, in the context of the offence of money laundering may mean, to change the appearance of or to portray something to be different than what it is.

Due Notice: In legal terms, “due notice” refers to providing proper notification or information to the concerned parties in accordance with the requirements of the law or established procedures. It ensures that all relevant parties are informed or given an opportunity to be heard in a legal proceeding or decision-making process.

Facilitating: Facilitate has been defined as to make easy or free from difficulty or impediment. Furthermore, it has been defined as making free from obstruction or hinderance.

Thus, in the context of the offence of money laundering, facilitating may mean to make commission of the crime easier.

Federal Government: In the Mustafa Impex case, Justice Nisar of the Supreme Court stated that Article 90 of the Constitution clearly defines the Federal Government: ‘it consists of the Prime Minister and the Federal Ministers’. This change in definition was primarily influenced by two factors. Firstly, the 18th Constitutional amendment removed the delegation clause, which previously allowed the transfer of government functions to subordinate authorities and officers. Secondly, the 18th

46 Ibid within the definition of personality.
47 Ibid within the definition of real: common law.
48 “Counseling” is referred to in Section 3 of the AMLA 2010.
49 “Disposition” is referred to in Section 3 of the AMLA 2010.
50 “Disguising” is referred to in Section 3 of the AMLA 2010.
51 “Due Notice” is referred to in Section 21 of the AMLA 2010.
52 “Facilitating” is referred to in Section 3 of the AMLA 2010.
53 “Federal Government” is referred to in Section 21 of the AMLA 2010.
amendment modified Article 99, making it mandatory to follow rules when executing official instruments and orders by replacing the term ‘may’ with ‘shall’. Thus, making it compulsory to follow guidelines enshrined in the Rules of Business.54

**FMU (Financial Monitoring Unit):**55 “FMU” means the Financial Monitoring Unit established under section 6 of the AMLA 2010. The Financial Monitoring Unit (FMU) is established by the Federal Government and operates independently within Pakistan, headed by a Director General appointed in consultation with the State Bank of Pakistan (SBP). The FMU’s responsibilities include receiving and analyzing Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) from reporting entities, maintaining a comprehensive database of reports and related information, cooperating with international financial intelligence units, framing regulations for report receipt, and exercising necessary powers to achieve the objectives of the Anti-Money Laundering Act. Additionally, the FMU can convey matters for regulatory or administrative action, order the temporary freezing of suspicious properties, and represent Pakistan in international forums related to money laundering and financing of terrorism.

**Foreign Serious Offence:**56 This refers to a criminal offence committed in a foreign jurisdiction. It is an offence that violates the laws of the foreign state and is recognized as such by a certificate issued by or on behalf of the government of that particular foreign state. If the same offence were to occur within the jurisdiction of Pakistan, it would be classified as a predicate offense. In essence, a foreign serious offense denotes a significant criminal act committed in a foreign country, as acknowledged by an official certificate. If committed in Pakistan, it would be categorized as a predicate offense, which refers to an underlying criminal activity that generates unlawfully obtained funds subject to money laundering or related legal actions.57

**Forfeiture:**58 This refers to the legal confiscation of assets by the state. This is a form of punishment where the state takes possession of property that is involved in money laundering or has a corresponding value. This means that if a person is found guilty of money laundering, the state has the right to seize their property that is connected to the crime or has a value equivalent to the proceeds of the crime.

**Having reason to believe:**59 Reason has been defined as “a faculty of the mind by which it distinguishes truth from falsehood.” Thus, it may be defined as the ability which enables the possessor to deduce inferences from facts or from propositions.60 Belief has been defined as, “a conviction of the truth of a proposition, existing subjectively in the mind, induced by argument, persuasion or proof addressed to the judgement.” It states that knowledge is an assurance of a fact or proposition founded on perception by the senses or intuition, whereas belief is an assurance gained by evidence.

*Thus, the phrase “reason to believe” in the context of the offence of money laundering may mean having the ability to subjectively deduce or infer a proposition through evidence.*

**Holding:**61 To hold has been defined as “to possess, to be in possession of, to keep, to retain, to maintain possession or authority over.”62
In the context of the offence of money laundering as well, the word “hold” must be given its literal interpretation and may mean to possess.

Investigating Officer: This refers to a designated law enforcement officer responsible for conducting thorough investigations into suspected instances of money laundering. These officers should possess specialized knowledge and expertise in financial crimes and should be trained to analyze complex financial transactions, follow money trails, and gather evidence to build strong cases against individuals or organizations engaged in money laundering activities.

An “investigating officer” means the officer nominated or appointed under section 24 of the AMLA 2010. Subsection (1) of section 24 of AMLA, authorizes designated investigating and prosecuting agencies to nominate their investigating officers competent to conduct investigation under respective law of the agency. For example, under section 5 of FIA Act, 1974, an officer not below the rank of sub-inspector can conduct investigation meaning thereby the sub-inspector or above can conduct investigating under FIA Act, 1974. Since, FIA is designated investigating and prosecuting agency under AMLA, therefore, the officers of rank of Sub-Inspector and above can conduct money laundering investigation under AMLA.

Investigating or Prosecuting Agency: An “investigating or prosecuting agency” means the National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation - Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under AMLA.

Legal Person: A “legal person” is a term used to refer to an entity that is not a natural person (a human being) but is recognized by the law as having rights and duties. A legal person, also known as a juridical person or a body corporate, can enter into contracts, sue and be sued, own property, and commit crimes.

In the context of the AMLA 2010, “legal person” is defined as “companies, associations, foundations, partnerships, societies and any other legal person as may be defined in any other law.”

Knowing: Knowing has been defined as with knowledge, or intention. Knowingly refers to actions which are done consciously, wilfully, and intentionally.

Location: This has been defined as site or place.

Thus, the phrase “location” in the context of the offence of money laundering may mean the site or place where proceeds of crime are kept.

63 “Investigating Officer” is referred to in Section 21 of the AMLA 2010.
64 Section 24 of the AMLA 2010: Appointment of investigating officers and their powers. — (1) The investigating or prosecuting agencies may nominate such persons as they think fit to be the investigating officers under this Act from amongst their officers. (2) The Federal Government may, by special or general order, empower an officer not below BPS-18 of the Federal Government or of a Provincial Government to act as an investigating officer under this Act. (3) Where any person other than a Federal or Provincial Government Officer is appointed as an investigating officer, the Federal Government shall also determine the terms and conditions of his appointment. (4) Subject to such conditions and limitations as the Federal Government may impose, an investigating officer may exercise the powers and discharge the duties conferred or imposed on him under this Act.
65 “Investigating or Prosecuting Agency” is referred to in Section 21 of the AMLA 2010.
66 “Legal Person” is referred to in Section 37 of the AMLA 2010.
67 Section 2(xx) of the AMLA 2010
68 “Knowing” is referred to in Section 3 of the AMLA 2010.
69 “Location” is referred to in Section 3 of the AMLA 2010.
Movement: Movement in common parlance is going from one place to another.

In the context of the offence of money laundering, the word “movement” may refer to taking proceeds of crime from one place to another.

Non-bailable: The term “non-bailable” is a legal term that linguistically signifies offenses or crimes for which the accused person is not entitled to obtain bail as a matter of right. It reflects the categorization of offenses into bailable and non-bailable, with the latter indicating more serious offenses where the accused person may be detained in custody until the trial is completed.

Notwithstanding: This term is used in legislation to mean “in spite of” or “despite”. It is used to emphasize that a particular provision applies regardless of certain facts or circumstances that might otherwise affect its application.

For example, consider a piece of legislation that states, “Notwithstanding any other law, no person shall be discriminated against on the basis of race, color, or national origin.” This means that the prohibition against discrimination applies regardless of what any other law might say. Even if there are other laws that might seem to allow such discrimination, this law prohibits it. The “notwithstanding” clause ensures that this law takes precedence in the event of any conflict with other laws.

Offence of Money Laundering: The offence of money laundering is defined in Section 3 of the AMLA 2010. According to this section, a person is considered guilty of the offence of money laundering if they engage in any of the following activities:

1. Acquiring, converting, possessing, using, or transferring property, knowing or having reason to believe that such property is proceeds of crime. This means that if a person knowingly handles property that has been obtained through criminal activity, they are committing the offence of money laundering.

2. Concealing or disguising the true nature, origin, location, disposition, movement, or ownership of property, knowing or having reason to believe that such property is proceeds of crime. This refers to actions taken to hide the fact that property is derived from criminal activity.

3. Holding or possessing on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime. This means that if a person holds property for someone else, and they know or have reason to believe that this property is the result of criminal activity, they are committing the offence of money laundering.

4. Participating in, associating with, conspiring to commit, attempting to commit, aiding, abetting, facilitating, or counseling the commission of the acts specified in the above clauses. This means that if a person is involved in any way with the activities described above, they are committing the offence of money laundering.

On behalf of: In common parlance, on behalf of, refers to doing something for someone’s benefit or interest or in representation of them. Black’s Law Dictionary defines behalf as “benefit, support, advantage.”

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71 “Movement” is referred to in Section 3 of the AMLA 2010.
72 “Non-bailable” is referred to in Section 21 of the AMLA 2010.
73 “Offence of Money Laundering” is referred to in Section 3 of the AMLA 2010.
74 “On behalf of” is referred to in Section 3 of the AMLA 2010.
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Thus, in the context of the offence of money laundering the phrase “on behalf of” may mean for the benefit or advantage of another.

Origin:75 Black’s Law Dictionary does not define the word origin, however, in common parlance, it means source.

Thus, the phrase “origin” in the context of the offence of money laundering may mean the source of proceeds of crime.

Ownership:76 Ownership has been defined, “as a collection of rights to use and enjoy property, including a right to transmit it to others.” Furthermore, it has been identified to mean title, having a proprietary right in the property, or the power to exercise the entirety of the powers of use and disposal granted under the law.

In the context of the offence of money laundering, “ownership” as used in Section 3 (b) may mean hiding or disguising the right that one may have in proceeds of crime.

Participating in:77 To participate has been defined as to "have a part or share of, to partake, experience in common with others, to take part in." In common parlance as well, participating refers to taking a part in something.

Thus, in the context of the offence of money laundering, the phrase “participating in” may mean taking part in.

Possess:78 This refers to control, in the context of property, either as owner, or proprietor. Black’s Law Dictionary provides that possession is, “that condition of facts under which one can exercise his power over a corporeal thing, at his pleasure to the exclusion of all others.”79

Thus, possession, in the context of the offence of money laundering may mean, having control over subject matter, which is the proceeds of crime, to the exclusion of others.

Predicate Offence:80 A “predicate offence” refers to an underlying criminal activity from which the illicit proceeds or funds subject to money laundering are derived. It denotes the primary criminal act that generates the unlawfully obtained funds. Predicate offences encompass a wide range of illegal activities and can vary in nature. In simpler terms, a predicate offence refers to the original crime that generates the illegal funds that are later involved in money laundering.81

Proceeds of Crime:82 Proceeds of crime, often referred to as criminal proceeds, denote the financial gains or assets obtained through illegal means. These gains can arise from various unlawful activities, and the term encompasses a wide range of assets acquired through such actions. It includes both tangible and intangible resources that result from illegal conduct. In simpler terms, proceeds of crime are the financial benefits or assets obtained through illegal activities.83

75 “Origin” is referred to in Section 3 of the AMLA 2010.
76 “Ownership” is referred to in Section 3 of the AMLA 2010.
77 “Participating in” is referred to in Section 3 of the AMLA 2010.
78 “Possess” is referred to in Section 3 of the AMLA 2010.
79 Ibid
80 “Predicate Offence” is referred to in Sections 2(xxvi) and 3 of the AMLA 2010.
81 Section 2(xxvi) of the AMLA 2010: “predicate offence” means an offence specified in Schedule – I to this Act;
82 “Proceeds of Crime” is referred to in Sections 2(xxviii) and 3 of the AMLA 2010.
83 Section 2(xxviii) of the AMLA 2010: “proceeds of crime” means any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence.
**Property:** Property encompasses a wide range of assets, both tangible and intangible, that are subject to legal ownership rights. Tangible property includes physical objects like land, buildings, and personal belongings, while intangible property encompasses intellectual property, financial instruments, contractual rights, and securities. Property also includes legal documents such as deeds, titles, and other instruments that serve as evidence of ownership or interest in a specific property or asset. Furthermore, it extends to monetary instruments, including cash and equivalents, regardless of their physical location or material nature. In simpler terms, property refers to everything you own, whether it’s something you can touch like houses and cars or something intangible like ideas and patents. It also includes documents that prove ownership and money.

Thus, property, in the context of the offence of money laundering may refer to everything owned, whether it’s something that can be touched like houses and cars or something intangible like ideas and patents. It would also include documents that prove ownership and even money.

**Property involved in Money Laundering:** The term “property involved in money laundering” is a broad term that encompasses any property that is connected to the crime of money laundering. This can include:

1. **Proceeds of Crime:** This refers to any property or economic advantage derived from the commission of a criminal act. For example, if a person sells illegal drugs and uses the money earned to buy a car, that car is considered a proceed of crime.

2. **Property Derived or Obtained from Money Laundering:** This refers to any property that is obtained, directly or indirectly, as a result of money laundering. For example, if a person launderers money through a business and uses the laundered money to buy a house, that house is considered property derived from money laundering.

3. **Property Used or Intended to be Used in Commission of Money Laundering:** This refers to any property that is used, or intended to be used, to facilitate the crime of money laundering. For example, if a person uses a computer to conduct fraudulent transactions as part of a money laundering scheme, that computer is considered property used in the commission of money laundering.

4. **Property Involved in a Predicate Offence:** A predicate offence is a crime that is a component of a more serious crime. For example, if a person commits fraud (which is a predicate offence) and then launders the money gained from that fraud, any property bought with that money is considered property involved in a predicate offence.

5. **Property Involved in a Foreign Serious Offence:** This refers to property that is connected to a serious crime that has been committed in a foreign country. For example, if a person in another country launders money and then transfers that money to a bank account in Pakistan, the money in that bank account is considered property involved in a foreign serious offence.

In all these cases, it does not matter who currently holds or has held the property. If the property is connected to the crime of money laundering, it is considered “property involved in money laundering”.

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84 “Property” is referred to in Sections 3 and 4 of the AMLA 2010.
85 Section 2(xxx) of the AMLA 2010: “property” means property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets including cash and monetary instruments, wherever located.
86 “Property” is referred to in Sections 2(xxxi) and 4 of the AMLA 2010.
87 Section 2(xxxi) of the AMLA 2010: “property involved in money laundering” means, regardless of who holds or has held the property, proceeds of crime, property derived or obtained directly or indirectly from the offence of
It is important at this juncture to note that there is a clear distinction between “proceeds of crime” and “property involved in money laundering”. Proceeds of crime denotes the financial gains or assets obtained through illegal means. These gains can arise from various unlawful activities, and the term encompasses a wide range of assets acquired through such actions. It includes both tangible and intangible resources that result from illegal conduct. This is essentially the money or other assets gained from the commission of a crime. For example, if someone robs a bank and uses the money to buy a car, that car is considered the “proceeds of crime”.

On the other hand, “property involved in money laundering” is a broader concept that includes not just the proceeds of crime, but also any property derived or obtained from the offence of money laundering itself, and any property used or intended to be used in the commission of the offence of money laundering, a predicate offence, or a foreign serious offence. So, using the same example, if that car purchased with the stolen money was later used to commit another crime (like drug trafficking), it would then be considered "property involved in money laundering".

In summary, while “proceeds of crime” refers specifically to assets gained from criminal activity, “property involved in money laundering” is a wider term that encompasses any property associated with the broader process of money laundering, whether it’s the proceeds of crime, assets derived from money laundering, or assets used in the commission of such offences.

Public Prosecutor: A public prosecutor is an individual who, having practiced as an advocate in the High Court for a minimum of 7 years, possesses the necessary competence to represent the state in legal proceedings. Public prosecutors are authorized to present plead and conduct prosecutions in all courts on behalf of the state. With the consent of the Court and prior to the delivery of a judgment, a public prosecutor has the authority to withdraw from the prosecution of any individual.

Reporting Entity: Reporting entities are defined under Section 2(3xxiv) of AMLA 2010. They include “financial institutions” as defined in Section 2(xiv) and “Designated Non-Financial Businesses & Professions or DNFPBs” as defined in Section 2(xii) and any other person notified by the Federal Government in the official Gazette.

Transferring: Transfer has been defined by Black’s Law Dictionary as, “to convey, or remove from one place, person etc. to another, pass or hand over from one to another, to sell or to give.” In Pakistani law, the Transfer of Property Act 1882, defines the phrase “transfer of property” as any means or actions through which a living person conveys property in present or in the future to another person, or to himself.

Thus, the word transferring, in the context of the offence of money laundering, may mean to convey or give subject matter which is the proceed of crime to another.

True Nature: The term “true” has been defined as, “conformable to fact, correct, exact, actual, genuine, honest,” while nature in common parlance may be referred to the character or quality of something. The word encompasses various forms and nature of a substance may not necessarily be physical and can be abstract as well.

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money laundering and property used or intended to be used in commission of the offence of money laundering, a predicate offence or a foreign serious offence;

88 “Public Prosecutor” is referred to in Sections 21 and 22 of the AMLA 2010.

89 Section 22(2) of the AMLA 2010

90 “Transferring” is referred to in Section 3 of the AMLA 2010.

91 “True Nature” is referred to in Section 3 of the AMLA 2010.
Thus, the phrase “true nature” in the context of the offence of money laundering may mean the actual character of subject matter which is the proceed of crime.

Using: The word “use” has been defined by Black’s Law Dictionary as “application, to make use of, to convert to one’s service, to avail oneself of, to employ etc.” It also provides that the word use refers to benefit.

Thus, the word use, in the context of the offence of money laundering may mean, to benefit from, to convert to one’s service or to apply subject matter which is the proceeds of crime.

92 “Using” is referred to in Section 3 of the AMLA 2010.
Chapter 3: Offences and Penalties

Section 3 – Offence of Money Laundering

3. Offence of money laundering.— A person shall be guilty of offence of money laundering, if the person: —

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

Explanation—I.— The knowledge, intent or purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984).

Explanation II.— For the purposes of proving an offence under this section, the conviction of an accused for the respective predicate offence shall not be required.

Analysis of Section 3 of the AMLA 2010

Understanding the Actus Reus Requirements in Section 3 of the AMLA, 2010

Section 3(a): This subsection addresses the acquisition, conversion, possession, use, or transfer of property. The actus reus here involves the physical act of handling property that is proceeds of crime. For instance, if a person purchases a car using money obtained from drug trafficking, that person would be committing the actus reus under this subsection. The key aspect here is the active engagement with the property that is the proceeds of crime.

Section 3(b): This subsection focuses on the concealment or disguise of the true nature, origin, location, disposition, movement, or ownership of property. The actus reus here involves the act of hiding or obscuring the illicit origins or nature of the property which is proceeds of crime. This could involve actions such as creating complex layers of transactions to obscure the origin of the money or disguising the true ownership of the property through the use of shell companies or third parties. The actus reus here is not just the possession of the property, but the active effort to conceal or disguise its illicit nature or origins.

Section 3(c): This subsection pertains to holding or possessing property on behalf of another person. The actus reus here involves the act of holding or possessing property for someone else, such property which is proceeds of crime. This could involve situations where a person holds money or property for a

94 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 3.
95 This phenomenon is also referred to as ‘self-laundering’, i.e. the person who committed money laundering is the same person who committed the predicate offence.
friend or associate, where the property was obtained through criminal activities.\textsuperscript{96} The actus reus here is the act of holding or possessing the property.

**Section 3(d):** This subsection relates to participation in, association with, conspiracy to commit, attempts to commit, aiding, abetting, facilitating, or counseling the commission of the acts specified in clauses (a), (b), and (c). The actus reus in this case involves any form of involvement in the activities described in the previous subsections. This could involve actions such as providing advice on how to launder money, facilitating a transaction that involves the proceeds of crime, or conspiring with others to commit money laundering.\textsuperscript{97} The actus reus here is the act of involvement in the money laundering process, rather than the possession or handling of the property itself.

In each of these subsections, the actus reus involves some form of engagement with property that is the proceeds of crime. The specific nature of the actus reus varies depending on the subsection, but all involve some form of handling, dealing with, or involvement with the proceeds of crime.

*Understanding the Mens Rea Requirements in Section 3 of the AMLA, 2010*

**Section 3(a):** The mens rea requirement here is the knowledge or reasonable belief that the property involved is the proceeds of crime. This means the person must either know that the property is derived from a crime, or the circumstances are such that a reasonable person would suspect the property to be the proceeds of crime. This is a subjective standard, meaning it depends on what the individual person knew or believed. However, the “reasonable belief” part introduces an objective element, as it involves what a hypothetical “reasonable person” would believe under the same circumstances. This is a common standard in law and is designed to prevent people from escaping liability by claiming ignorance when the truth should have been obvious.

**Section 3(b):** The mens rea requirement in this subsection is the knowledge or reasonable belief that the property is the proceeds of crime, coupled with the intent to conceal or disguise this fact. This introduces an additional layer of intent beyond the first subsection. Not only must the person know or have reason to believe that the property is derived from crime, but they must also intend to hide this fact. This reflects the core of what money laundering is about: taking the proceeds of crime and making them appear legitimate.

**Section 3(c):** The mens rea requirement here is the knowledge or reasonable belief that the property one is holding or possessing for another person is derived from a crime. This introduces an additional layer of intent beyond the first subsection. The person can be guilty of money laundering if they know or have reason to believe that the property that they’re holding is the proceeds of crime. This covers situations where a person might try to avoid liability by claiming they were just holding the property for someone else and weren’t involved in the underlying crime.

**Section 3(d):** The mens rea requirement in this subsection is the intent to participate in or facilitate the commission of money laundering activities. This subsection covers a wide range of activities that can contribute to money laundering, from participating in it, to associating with it, to attempting to commit it, to aiding, abetting, facilitating, or counseling it. An individual’s complicity in such activities necessitates a demonstrated intent to aid in the propagation of money laundering. This reflects the law’s aim to catch not just those who directly engage in money laundering, but also those who help or encourage others to do so.

\textsuperscript{96}This phenomenon is also referred to as ‘third-party money laundering’, i.e. where people or companies operate outside of the financial sector but provide goods or services that have a significant risk of being abused for money laundering.

\textsuperscript{97}This phenomenon is also referred to as ‘stand-alone money laundering’, i.e. where there is no evidence of the true source/origin, or a specific predicate offence.
In all these subsections, the mens rea involves a level of awareness or suspicion about the criminal origin of the property and a purpose or intent related to that property. This is consistent with the general principles of criminal law, which typically require a mental element in order for a person to be held criminally liable.

**Context from the Qanun-e–Shahadat Order, 1984**

In light of the provisions of Qanun-e–Shahadat, 1984, certain articles are relevant to the offense of money laundering. Article 23 of the Qanun-e–Shahadat states that in cases where there is reasonable ground to believe that two or more persons have conspired together to commit an offense, anything said, done, or written by any of the conspirators in reference to their common intention is considered a relevant fact. This means that statements or actions made by individuals involved in the money laundering conspiracy, such as procuring funds or facilitating transactions, can be presented as evidence to prove the existence of the conspiracy and the accused’s involvement in it.

Additionally, Article 27 of the Qanun-e–Shahadat states that facts showing the existence of a person’s state of mind, such as intention or knowledge, are relevant when the existence of such a state of mind is in question. In the context of money laundering, this article becomes significant in establishing the accused’s knowledge or belief that the proceeds involved in the transaction were derived from an unlawful activity. Evidence such as previous convictions or prior involvement in similar financial transactions can be considered to demonstrate the accused’s state of mind regarding the money laundering offense.

Furthermore, Article 28 of the Qanun-e–Shahadat is relevant to cases where the intention behind an act is in question. If there is a doubt whether a money laundering transaction was accidental or intentional, evidence of similar occurrences or patterns of behavior can be presented to support the argument that the act was not accidental. For instance, if the accused has been involved in a series of transactions involving the proceeds of unlawful activities, it can be used to establish that the money laundering act was intentional rather than accidental.

Lastly, Article 122 of the Qanun-e–Shahadat deals with the burden of proving facts that are especially within the knowledge of a person. In cases of money laundering, if the accused possesses certain facts that are materially significant to the issue, such as the source of the funds or knowledge of the unlawful activity, the burden of proving those facts falls upon the accused. It is their responsibility to provide evidence or explanations to counter the prosecution’s case and raise doubts about their involvement in the money laundering offense.

To conclude, the relevant articles of the Qanun-e–Shahadat, 1984, provide a framework for presenting and evaluating evidence in cases related to the offense of money laundering. These articles allow for the consideration of statements, actions, state of mind, patterns of behavior, and burden of proof to establish the existence of a money laundering conspiracy, the accused’s knowledge or belief, and the intentional nature of the money laundering acts.

**Linguistic Breakdown of the Sub-Sections and Explanations**

Based on a linguistic breakdown of Section 3, it can be stated that an offence of money laundering is committed under the Anti-Money Laundering Act, 2010, if an individual:

**Section 3(a):**

- **Gains or obtains property** which is the result or product of the commission of a predicate offence with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.
- **Alters property** which is the result or product of the commission by *changing its form or in some other manner*, with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

- **Has control over property** which is the result or product of the commission of a predicate offence with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

- **Benefits from the application or use of property** which is the result or product of the commission of a predicate offence with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

- **Gives or removes property** which is the result or product of the commission of a crime with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

**Section 3(b):**

- Hides or changes the appearance of *the actual character of property* which is derived in any form from an offence with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

- Hides or changes the appearance of *the source of property* which is the result or product of the commission of a crime with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

- Hides or changes the appearance of *the site or place in which property is kept* which is the result or product of the commission of a crime with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

- Hides or changes the appearance of *the transfer of property* which is the result or product of the commission of a crime with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

- Hides or changes the appearance of *proprietary rights that may exist in property* which is the result or product of the commission of a crime with the intention to gain such property or to make it appear to be legitimate, or when they had the ability to subjectively establish that such property was the result of the commission of a crime.

**Section 3(c):**

- **Holding or being in control of property on behalf of another** which is the result or product of the commission of a crime with the intention to gain such property, or when they had the ability to subjectively establish that such property was the result of the commission of a crime. This would also cover the circumstance where a person unknowingly holds or controls property which is the result or product of the commission of a crime, such as when one inherits property.
Section 3(d):

- **Taking part** in the commission of any of the above.
- **Acting as a partner** in the commission of any of the above.
- **Making a joint effort or a plan** in the form of a conspiracy in the commission of any of the above.
- **Attempting** the commission of any of the above.
- **Encouraging or aiding** the commission of any of the above.
- **Assisting in the form of removing hinderances** in the commission of any of the above.
- **Giving advice in relation to** commission of any of the above.

**Predicate Offences and Foreign Serious Offences**

Section 3 of the AMLA is fundamentally connected to what the Act terms as “predicate offences” and “foreign serious offences”. This connection is established through the notion of “proceeds of crime”, which encompasses any assets or property that are gained, either directly or indirectly, from criminal conduct. The crimes that generate these proceeds, known as predicate offences, can include a variety of serious illegal activities such as drug trafficking, fraud, and kidnapping. Similarly, foreign serious offences are crimes committed outside the jurisdiction that would also be considered illegal within it. The proceeds from these predicate or foreign serious offences can then become the target of money laundering activities, which is the primary concern of Section 3 of the AMLA.

Section 3 of the AMLA outlines the offence of money laundering, which is essentially the process of making dirty money, i.e., proceeds of crime, appear clean or legitimate. This is often achieved through a three-step process: placement (introducing the illicit money into the financial system), layering (concealing the origins of the money through complex transactions), and integration (mixing the now-difficult-to-trace illicit money with legitimate money).

The Act makes it clear that any person who knowingly engages in any of these activities with the proceeds of crime is committing the offence of money laundering. This includes:

1. **Acquisition**: If a person obtains the proceeds of crime, they are participating in money laundering. This could be through buying assets with illicit money or receiving money as a result of a crime.

2. **Conversion**: Changing the form of the proceeds of crime, such as exchanging cash for assets or vice versa, is a form of money laundering. This is often done to make the money harder to trace.

3. **Possession or Use**: Simply holding onto the proceeds of crime, or using them in any way, constitutes money laundering. This includes spending the money or investing it.

4. **Transfer**: Moving the proceeds of crime from one place to another, or from one person to another, is another form of money laundering. This could be done physically or electronically, and often involves moving money across borders to evade detection.

5. **Concealment or Disguise**: Any actions taken to hide the true nature, origin, location, disposition, movement, or ownership of the proceeds of crime are considered money laundering. This could involve creating false documents, using shell companies, or other methods of deception.

6. **Conspiring**: The Act also covers those who assist in these activities, whether by participating in, associating with, conspiring to commit, attempting to commit, aiding, abetting, facilitating, or counseling the commission of these acts.
In essence, the proceeds of crime are at the heart of the offence of money laundering as defined by Section 3 of the AMLA. The Act seeks to prevent and punish the manipulation and misuse of the proceeds of crime, thereby disrupting the financial support for criminal activities and contributing to the fight against serious crime.

**Key Cases**

**Maryam Nawaz Sharif vs. NAB PLD 2020 Lahore 205**

In the case of Maryam Nawaz Sharif vs. NAB, the defendant was accused of assisting and facilitating co-defendants in contravention of Section 3 of the AMLA 2010. This was in addition to her alleged involvement in corrupt activities as outlined in Section 9(a) of the NAO 1999. The prosecution argued that Sharif had facilitated the co-defendants by engaging in a process of layering, which involved the fraudulent transfer of 11 million shares of Chaudhry Sugar Mills Ltd. to a foreign individual. This was purportedly done to launder a foreign remittance of US $4.8 million, which was falsely represented as payment for ordinary shares transferred to the foreign individual’s name.

The prosecution further alleged that the foreign individual was merely a fictitious shareholder and that the US $4.8 million funds actually belonged to the defendants. These funds were reportedly placed in Dubai without a clear explanation of their source.

While the outcome of the case is not discussed here, it’s important to highlight that Section 3 of the AMLA 2010 is applicable in situations where an individual aids or abets the transfer of property, knowing or having reason to believe that such property is the proceeds of crime. Furthermore, the acquisition of such property also falls within the scope of Section 3.

**Mahendar Kumar vs. State 2002 YLR 846 Karachi High Court Sindh**

The case of Mahendar Kumar vs. the State, decided by the Karachi High Court, provides an application of Section 3 of the Anti-Money Laundering Act (AMLA) 2010.

In this case, the defendants were accused of engaging in activities that fall within the scope of Section 3 of the AMLA 2010. They were alleged to have collaborated with international partners via online platforms to manage and operate accounts and ledgers with the intention of defrauding the public. Furthermore, they were accused of opening multiple ‘benami’ or pseudonymous accounts to mask the illicit nature of the funds under the cover of fictitious businesses.

Section 3 of the AMLA 2010 criminalizes the acquisition, conversion, possession, use, or transfer of property, knowing or having reason to believe that such property is the proceeds of crime. It also criminalizes acts of aiding, abetting, facilitating, or counseling any of the aforementioned acts.

In the context of this case, the activities of the defendants—managing and operating accounts with the intent to defraud and using pseudonymous accounts to disguise the illicit nature of funds—can be seen as attempts to convert and possess proceeds of crime. Moreover, the act of camouflaging the illicit funds under the guise of fictitious businesses could be viewed as an attempt to conceal or disguise the true nature, origin, location, disposition, movement, or ownership of the proceeds of crime, which also falls under the purview of Section 3 of the AMLA 2010.
This case serves as a practical example of how Section 3 of the AMLA 2010 can be applied to hold individuals accountable for money laundering activities. It underscores the importance of this section in combating money laundering and the need for concrete evidence to establish that the property in question is indeed the proceeds of crime.

**Rafi Ullah vs. State 2019 PCrlJ 1608 Lahore High Court**

The case of Rafi Ullah vs. the State, decided by the Lahore High Court, provides valuable insight into the interpretation and application of Section 3 of the Anti-Money Laundering Act (AMLA) 2010.

In this case, the judge clarified that merely possessing money is not illegal unless it can be proven that the money has been derived from a crime. This interpretation is directly linked to the provisions of Section 3 of the AMLA 2010, which criminalizes the acquisition, conversion, possession, use, or transfer of property, knowing or having reason to believe that such property is the proceeds of crime.

The judge further explained that the phrase "proceeds of crime" in Section 3 of the AMLA 2010 refers to money or property derived or obtained directly or indirectly as a result of criminal activity. Therefore, for an offence under Section 3 to be established, it must be shown that the money or property in question originates from the commission of a crime. If this cannot be proven, Section 3 does not apply.

This interpretation underscores the importance of establishing the link between the money or property and a criminal activity for the offence of money laundering to be established under Section 3 of the AMLA 2010. It also highlights the burden of proof on the prosecution to provide evidence showing that the money or property is indeed the proceeds of crime.

**Anwar Khan vs. State 2018 YLR 172 Peshawar High Court**

In this case, the court reiterated that simply possessing currency is not illegal unless it can be demonstrated that the money was obtained from illegal activities. This interpretation aligns with the provisions of Section 3 of the AMLA 2010, which defines money laundering as the acquisition, conversion, possession, use, or transfer of property, knowing or having reason to believe that such property is the proceeds of crime.

The court emphasized that for an offence under Section 3 of the AMLA 2010 to be established, the prosecution must prove that the money in the possession of the accused is derived from the commission of a crime. If this cannot be proven, then an offence under Section 3 cannot be made out.

This judgement, like the one in Rafi Ullah vs. the State, underscores the importance of establishing a clear link between the money or property in question and a criminal activity for the offence of money laundering to be established under Section 3 of the AMLA 2010. It further highlights the burden of proof on the prosecution to provide evidence showing that the money or property is indeed the proceeds of crime.
The Court laid down the following principles that should be considered when interpreting the AMLA, 2010:

1. AMLA, 2010 is a special law that addresses the prevention of money laundering, combating the financing of terrorism, and the forfeiture of property derived from or involved in money laundering.

2. All offenses defined in AMLA, 2010, including predicate offenses listed in Schedule-I, must be tried under this law.

3. Any asset, property, or proceeds of crime obtained directly or indirectly from money laundering, or used or intended to be used in money laundering, fall under the scope of AMLA, 2010. Previous offenses committed by the accused person are not relevant unless included in the 1st Schedule of AMLA, 2010.

4. If an accused person commits an offense under the Pakistan Penal Code or any other law that qualifies as a predicate offense during subsequent investigations after discovering incriminating material, a second FIR should be registered.

5. A specialized investigating agency, as defined in Section 2(xviii) of AMLA, 2010, must conduct a separate investigation.

6. The law establishes the Anti Money Laundering/Counter Financing of Terrorism Regulatory Authority to deal with Suspicious Transaction Reports (STRs), Report on Currency Transactions, and customer due diligence (CDD) procedures.

7. A specialized investigating officer is appointed to handle property suspected to be involved in money laundering. The officer attaches the property, notifies the accused person, and investigates the source of income or assets. After considering the accused person’s reply, the officer can apply to the court for confirmation of the attachment.

8. The court, under AMLA, 2010, can proceed with attachment, retention, seizure, and forfeiture of property, including in cases of predicate offenses and money laundering, after the conclusion of the trial, following proper hearing rights for the accused.

9. Specific procedures for seizure and search are provided separately.

10. The offenses under AMLA, 2010 are non-bailable and cognizable.

11. The Criminal Procedure Code, 1898 applies to the extent that it is not inconsistent with AMLA, 2010. The Federal Government can enter into agreements with other countries for cooperation in investigating and prosecuting individuals, exchanging information, identifying and tracing persons and properties, and other matters related to attachment, seizure, and extradition.

12. If a person is accused of an offense under AMLA, 2010, even if their subsequent act is part of the first FIR or case, they should be proceeded against separately.

13. Offenses under ordinary law and AMLA, 2010 should be tried separately, with no impact on each other’s findings.
14. Acquittal in the first FIR does not automatically benefit the accused in subsequent FIRs or trials under AMLA.

15. The burden of proof regarding proceeds of crime involved in money laundering lies with the accused, while the burden of proof for scheduled offenses rests with the prosecution.


17. The arrest of the accused is not necessary unless the situation requires it, and it may lead to the disposal, destruction, or elimination of property under AMLA, 2010.

18. Taking action under AMLA, 2010 does not affect the registration of other cases under the Pakistan Penal Code or any other special law.

19. AMLA, 2010 overrides any inconsistent provisions of other laws. It is in addition to, not derogation of, laws such as the Anti-Narcotics Force Act, 1997, Control of Narcotic Substances Act, 1997, Anti-Terrorism Act, 1997, NAO, 1999, and other laws related to predicate offenses. The Court of Session established under the Criminal Procedure Code, 1898 has jurisdiction to try and adjudicate offenses punishable under AMLA, 2010. If the predicate offense is triable by a court other than the Court of Sessions, the court trying the predicate offense will also handle the offense of money laundering, unless it is not inferior to the Court of Session.

The judgments of Rafi Ullah vs. the State and Anwar Khan vs. the State both emphasize that the burden of proof lies with the prosecution to demonstrate that the money or property in question is derived from criminal activity. This is in line with the general principle of criminal law that the burden of proof is on the prosecution. However, the principles laid down in Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another suggest that the burden of proof regarding proceeds of crime involved in money laundering lies with the accused. This appears to be a departure from the traditional principle and could potentially create a conflict in the interpretation and application of Section 3 of the AMLA 2010.

In any case, this apparent conflict highlights the complexity of the law and the need for careful interpretation and application. It also underscores the importance of further clarification from higher courts or legislative amendments to ensure consistency in the application of the law.

**International Best Practices**

**FATF Recommendations**

The FATF Recommendations, in Recommendation 1\(^98\), state that countries should criminalize money laundering based on the Vienna Convention,\(^99\) and the Palermo Convention\(^100\). It further states that countries should apply the crime of money laundering to all serious offences, with a view to include the widest range of predicate offences.

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\(^{98}\) International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendations

\(^{99}\) United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

\(^{100}\) United Nations Convention Against Transnational Organized Crime, 2000
Model Provisions

The ‘Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime’ (henceforth Model Provisions), provide us with a template of the minimum requirements for the formulation of anti-money laundering laws. The Model Provisions note that there are generally four kinds of conduct that should be criminalized:

1. **Conversion or transfer of proceeds of crime**

   Any person who converts or transfers property

   [Option 1] knowing [or believing\(^{102}\)] that it is the proceeds of crime
   [Option 2] knowing [, believing] or suspecting\(^{103}\) that it is the proceeds of crime

   for the purpose of concealing or disguising the illicit origin of such property, or of assisting any person who is involved in the commission of an offence to evade the legal consequences of his action, commits an offence.

   This would include instances in which financial assets are converted from one type to another, as an example, by the usage of illicitly generated cash to purchase real estate, or the sale of illicitly acquired real estate in exchange for cash, as well as instances where the same asset is moved from one jurisdiction to another, or from one bank account to another.\(^{104}\)

   The conversion or transfer conducted must be intentional, with the accused having knowledge at the time of conversion/transfer that the assets are criminal proceeds, and that that the act must be done for following purposes: concealment or disguise of criminal origin or helping any person to evade criminal liability for the crime that generated the proceeds.\(^{105}\)

2. **Concealment or disguise of proceeds of crime**

   Any person who conceals or disguises the true nature, source, location, disposition, movement, or ownership of or rights with respect to property

   [Option 1] knowing that such property is the proceeds of crime
   [Option 2] knowing or suspecting that such property is the proceeds of crime

   commits an offence.

   This provision deals with the intentional deception of others, including intentional deception of law enforcement authorities. Almost any aspect of, or information about, the property may fall within the ambit of concealment or disguise, and so this section must be necessarily broad.\(^{106}\)

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\(^{102}\) “Believing” provides for criminal liability where persons may believe that they have transferred/converted proceeds, even when such may not have occurred, e.g., in the case of controlled deliveries.

\(^{103}\) This represents a further lowering of the mental requirement threshold to mere suspicion that the property might be proceeds of crime. This grants flexibility by allowing for States to perhaps have diminishing levels of criminal penalty for lowering standards. This approach has been applied extensively in Australia.


The concealment or disguise must be intentional, and the accused must have knowledge that the property concerned constitutes proceeds of crime at the time the act.\footnote{Paragraph 237, Legislative Guide for the Implementation of the United Nations Convention Against Corruption}

The requirement of concealment of the true nature of the property may be resolved simply by virtue of its criminal origin, i.e., the concealment or disguising of the property.

3. Acquisition, possession, or use of proceeds

Any person who acquires, uses, or possesses property

\begin{itemize}
\item [Option 1] knowing at the time of receipt that such property is the proceeds of crime
\item [Option 2] knowing or suspecting at the time of receipt that such property is the proceeds of crime
\end{itemize}

commits an offence.

This section imposes liability on persons who acquire, possess, or use property, as opposed to the previous two provisions which deal with liability for those who provide illicit proceeds. There must be intent to acquire, possess or use, and the accused must have knowledge at the time of acquisition or receipt that the property was proceeds of crime.\footnote{Paragraph 109, Legislative Guide for the Implementation of the United Nations Convention Against Corruption}

4. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating, and counselling

Participation in, association with or conspiracy to commit, an attempt to commit, and aiding, abetting, facilitating, and counselling the commission of any of the offences set forth [in the previous sections] is also an offence.

There are varying degrees of participation other than simply the physical commission of the offence, such as provision of assistance (aiding/abetting/facilitation) and encouragement (counselling). In addition, even attempts are to be criminalized. This section also includes the concept of conspiracy, which refers to an association of persons working together to commit an offence.\footnote{Paragraph 242, Legislative Guide for the Implementation of the United Nations Convention Against Corruption}
**United States – Money Laundering Control Act of 1986**

The following is a reproduction of the operative sections of the US money laundering law, the Money Laundering Control Act of 1986:110

(1) *Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—*

(A) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) *Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States—*

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

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110 Title 18, Part 1, Chapter 95, § 1956. Laundering of monetary instruments
111 “financial transaction” means a transaction which in any way or degree affects interstate or foreign commerce, involving the movement of funds by wire or other means, or, involving one or more monetary instruments, or, involving the transfer of title to any real property, vehicle, vessel, or aircraft, or, a transaction involving the use of a financial institution which is engaged in, or the activities which affect, interstate or foreign commerce in any way or degree.
112 The term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented the proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law.
113 “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction.
114 “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.
115 “specified unlawful activity” is a broad term, and would include all offences listed in section 1961(1) of Title 18, except for those acts that are indictable under subchapter II of Chapter 53 of Title 31. It would also include, with respect to a financial transaction occurring in whole or in part in the United States, an offence against a foreign national involving activities listed in Subsection c (7)(B), Section 1956 of Title 18.
116 “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, and money orders, or, (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that the title to it passes upon delivery.
(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law;

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant’s knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant’s subsequent statements or actions indicated that the defendant believed such representations to be true.

(3) Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term “represented” means any representation made by a law enforcement officer or by any other person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

Australia – Criminal Code Act 1995, Chapter 10, Part 10.2, Division 400

Australian law concerning money laundering is embedded into the Criminal Code, and is split based on the value of money/property being dealt with, and then further subdivided into tiers based on differing levels of intent.

For illustrative purposes, the contents of Section 400.2B are reproduced below, with annotations as needed for clarification about the differences between tiers of offences for this section, although such differences hold largely true throughout other sections as well, as seen in the table below.

400.2B Proceeds of crime etc. — money or property worth $10,000,000 or more

Tier 1 offences

(1) A person commits an offence if:\n
(a) the person deals with money or other property; and

(b) either:

(i) the money or property is, and the person believes it to be\textsuperscript{119}, proceeds of indictable crime; or

\textsuperscript{117} Section(s) 400.2B, 400.3, 400.4, 400.5, 400.6, 400.7, 400.8

\textsuperscript{118} For purposes of clarity in the forthcoming table of offences, this offence (in 400.2B, and in later sections: 400.3, 400.4, 400.5, 400.6, 400.7, and 400.8) will be referred to as Offence A. Although the specific mental requirements and penalties vary from section to section, and tier to tier, we hope that this will allow us to address the other sections without needlessly reproducing each individual section.

\textsuperscript{119} The Tier 2 offence of Section 400.2B removes this mental element requirement from the text, requiring instead only that the money or property be proceeds of indictable crime. The Tier 3 offence of Section 400.2B removes
Commentary on the Anti-Money Laundering Act 2010

(ii) the person intends that the money or property will become an instrument of crime\(^\text{120}\), and
(c) at the time of the dealing, the value of the money and other property is $10,000,000 or more.\(^\text{121}\)

Penalty: Imprisonment for life.\(^\text{122}\)

(2) A person commits an offence if:\(^\text{123}\)

(a) the person engages in conduct in relation to money or other property; and
(b) the money or property is, and the person believes it to be\(^\text{124}\), proceeds of general crime; and
(c) the conduct concealed or disguised any or all of the following:
   (i) the nature of the money or property;
   (ii) the value of the money or property;
   (iii) the source of the money or property;
   (iv) the location of the money or property;
   (v) any disposition of the money or property;
   (vi) any movement of the money or property;
   (vii) any rights in respect of the money or property;
   (viii) the identity of any person who has rights in respect of the money or property;
   (ix) the identity of any person who has effective control of the money or property; and
(d) when the conduct occurs, the value of the money and other property is $10,000,000 or more.

Penalty: Imprisonment for life.\(^\text{125}\)

(3) A person commits an offence if:\(^\text{126}\)

(a) on 2 or more occasions, the person engages in conduct in relation to money or other property; and

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this mental element requirement from the text, requiring instead only that the money or property be proceeds of indictable crime.

\(^{120}\) The Tier 2 offence of Section 400.2B removes this mental element requirement from the text, requiring instead that there be a “risk that the money or property will become an instrument of crime”. The Tier 3 offence of Section 400.2B removes this mental element requirement from the text, requiring only that the person be “negligent as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime”.

\(^{121}\) The Tier 2 offence of Section 400.2B adds a requirement for the person to have been reckless as to the fact that the money or property is proceeds of indictable crime or the fact that there is a risk that it will become an instrument of crime.

\(^{122}\) The Tier 2 offence of Section 400.2B reduces the penalty to 15 years imprisonment, or 900 penalty units, or both. The Tier 3 offence of Section 400.2B reduces the penalty to 6 years imprisonment, or 360 penalty units, or both.

\(^{123}\) For purposes of clarity in the forthcoming table of offences, this offence (in 400.2B, and in later sections: 400.3, 400.4, 400.5, 400.6, 400.7, and 400.8) will be referred to as Offence B. Although the specific mental requirements and penalties vary from section to section, and tier to tier, we hope that this will allow us to address the other sections without needlessly reproducing each individual section.

\(^{124}\) The Tier 2 offence of Section 400.2B once again removes the mental element requirement from the text, requiring only that the money or property be proceeds of general crime, and adds the requirement that the person needs to be reckless as to the fact that the money or property is proceeds of general crime. The Tier 3 offence of Section 400.2B once again removes the mental element requirement from the text, requiring instead that the money or property be proceeds of general crime, and adds the requirement that the person needs to be negligent as to the fact that the money or property is proceeds of general crime.

\(^{125}\) The Tier 2 offence of Section 400.2B reduces the penalty to 15 years imprisonment, or 900 penalty units, or both. The Tier 3 offence of Section 400.2B reduces the penalty to 6 years imprisonment, or 360 penalty units, or both.

\(^{126}\) For purposes of clarity in the forthcoming table of offences, this offence (in 400.2B, and in later sections: 400.3, 400.4, 400.5, 400.6, 400.7, and 400.8) will be referred to as Offence C. Although the specific mental requirements and penalties vary from section to section, and tier to tier, we hope that this will allow us to address the other sections without needlessly reproducing each individual section.
(b) for each occasion, the money or property is, and the person believes it to be\(^\text{127}\), proceeds of general crime; and

(c) for each occasion, the conduct concealed or disguised any or all of the following:

(i) the nature of the money or property;
(ii) the value of the money or property;
(iii) the source of the money or property;
(iv) the location of the money or property;
(v) any disposition of the money or property;
(vi) any movement of the money or property;
(vii) any rights in respect of the money or property;
(viii) the identity of any person who has rights in respect of the money or property;
(ix) the identity of any person who has effective control of the money or property; and

(d) the sum of the values of the money and other property (where each value is worked out as at the time when the relevant conduct occurred) is $10,000,000 or more.

Penalty: Imprisonment for life.\(^\text{128}\)

This pattern of reduced punishments with increasingly less stringent evidentiary requirements for offences, be that in the form of removal of proof of intent requirements, or the addition of factors such as recklessness and negligence, provide for a sliding scale of money laundering offences as has been outlined in the table below:

<table>
<thead>
<tr>
<th>Section of Law</th>
<th>Tier of Offence</th>
<th>Differentiation</th>
</tr>
</thead>
</table>
| \(\text{400.2B: Proceeds of crime etc. — money or property worth}\) $10,000,000 or more | Tier 1 | • Requires belief and intent as mental component.  
• Imprisonment for life. |
| | Tier 2 | • Removes belief and intent requirement.  
• Requires recklessness in relation to fact that the money or property is proceeds of crime.  
• Imprisonment for 15 years, or 900 penalty units\(^\text{129}\), or both. |
| | Tier 3 | • Removes belief and intent requirement.  
• Requires negligence in relation to fact that the money or property is proceeds of crime. |

\(^{127}\) The Tier 2 offence of Section 400.2B once again removes the mental element requirement from the text, requiring only that the money or property be proceeds of general crime, and adds the requirement that the person needs to be reckless as to the fact that the money or property is proceeds of general crime. The Tier 3 offence of Section 400.2B once again removes the mental element requirement from the text, requiring only that the money or property be proceeds of general crime, and adds the requirement that the person needs to be negligent as to the fact that the money or property is proceeds of general crime.

\(^{128}\) The Tier 2 offence of Section 400.2B reduces the penalty to 15 years imprisonment, or 900 penalty units, or both. The Tier 3 offence of Section 400.2B reduces the penalty to 6 years imprisonment, or 360 penalty units, or both.

\(^{129}\) A penalty unit is a standard amount of money used to compute penalties for many breaches of law in Australia at both the federal, state, and territory level. Fines are calculated by multiplying the value of a penalty unit by the number of units prescribed for the offence.
## Comment on the Anti-Money Laundering Act 2010

### 400.3: Proceeds of crime etc.—money or property worth $1,000,000 or more

| Tier 1 | Requires belief and intent as mental component.  
| Requires imprisonment for 25 years, or 1500 penalty units, or both. |
| Tier 2 | Removes belief and intent requirement.  
| Requires recklessness in relation to fact that the money or property is proceeds of crime.  
| Requires imprisonment for 12 years, or 720 penalty units, or both. |
| Tier 3 | Removes belief and intent requirement.  
| Requires negligence in relation to fact that the money or property is proceeds of crime.  
| Requires imprisonment for 5 years, or 300 penalty units, or both. |

### 400.4: Proceeds of crime etc.—money or property worth $100,000 or more

| Tier 1 | Requires belief and intent as mental component.  
| Requires imprisonment for 20 years, or 1200 penalty units, or both. |
| Tier 2 | Removes belief and intent requirement.  
| Requires recklessness in relation to fact that the money or property is proceeds of crime.  
| Requires imprisonment for 10 years, or 600 penalty units, or both. |
| Tier 3 | Removes belief and intent requirement.  
| Requires negligence in relation to fact that the money or property is proceeds of crime.  
| Requires imprisonment for 4 years, or 240 penalty units, or both. |

### 400.5: Proceeds of crime etc.—money or property worth $50,000 or more

| Offence A | Requires belief and intent as mental component.  
| Requires imprisonment for 15 years, or 900 penalty units, or both. |
| Offence B | Removes belief and intent requirement.  
| Removes concealment/disguise requirement.  
<p>| Requires only that the person dealt with money/property, not engaging in conduct in relation to. |</p>
<table>
<thead>
<tr>
<th><strong>Chapter 3: Offences and penalties</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>400.6: Proceeds of crime etc.— money or property worth $10,000 or more</strong></td>
</tr>
</tbody>
</table>
| **Offence A** | Requires belief and intent as mental component.  
Imprisonment for 10 years, or 600 penalty units, or both. |
| **Offence B** | Requires belief and intent as mental component.  
Imprisonment for 5 years, or 300 penalty units, or both. |
| **Offence C** | Requires belief and intent as mental component.  
Imprisonment for 2 years, or 120 penalty units, or both. |
| **400.7: Proceeds of crime etc.— money or property worth $1,000 or more** |
| **Offence A** | Requires belief and intent as mental component.  
Imprisonment for 5 years, or 300 penalty units, or both. |
### Offence B
- Removes belief and intent requirement.
- Removes concealment/disguise requirement.
- Requires only that the person dealt with money/property, not engaging in conduct in relation to.
- Requires recklessness in relation to fact that the money or property is proceeds of crime.
- Imprisonment for 2 years, or 120 penalty units, or both.

### Offence C
- Removes belief and intent requirement.
- Removes concealment/disguise requirement.
- Requires only that the person dealt with money/property, not engaging in conduct in relation to.
- Requires negligence in relation to fact that the money or property is proceeds of crime.
- Imprisonment for 12 months, or 60 penalty units, or both.

### Offence A
- Requires belief and intent as mental component.
- Imprisonment for 12 months, or 60 penalty units, or both.

### Offence B
- Removes belief and intent requirement.
- Removes concealment/disguise requirement.
- Requires only that the person dealt with money/property, not engaging in conduct in relation to.
- Requires recklessness in relation to fact that the money or property is proceeds of crime.
- Imprisonment for 6 months, or 30 penalty units, or both.

### Offence C
- Removes belief and intent requirement.
- Removes concealment/disguise requirement.
- Requires only that the person dealt with money/property, not engaging in conduct in relation to.
- Requires negligence in relation to fact that the money or property is proceeds of crime.
- 10 penalty units.
Section 4 – Punishment for Money Laundering

4. Punishment for money laundering.—(1) Whoever commits the offence of money laundering shall be punished with rigorous imprisonment for a term which shall not be less than one year but may extend upto twenty-five million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

(2) The fine under sub-section (1) may extend upto one hundred million rupees in case of a legal person. Any director, officer or employee of such legal person who is also found guilty under this section shall also be punishable as provided under sub-section (1).

Key Cases

Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another (W.P. No. 1184/2021 & 1778/2021)

The Court laid down the following principles that should be considered when interpreting the AMLA, 2010:

- **Principle 1:** AMLA, 2010 is a special law that addresses the prevention of money laundering, combating the financing of terrorism, and the forfeiture of property derived from or involved in money laundering.

  The definition of AMLA as a special law aimed at preventing money laundering and allowing for the forfeiture of property involved in money laundering underscores the gravity of the crime. This ties directly to Section 4, which outlines the specific punishments, including rigorous imprisonment and property forfeiture, for individuals who are found guilty of money laundering.

- **Principle 2:** All offenses defined in AMLA, 2010, including predicate offenses listed in Schedule-I, must be tried under this law.

  By stating that all offenses under AMLA, 2010, including predicate offenses, must be tried under this law, it is established that any prosecution for money laundering offenses would adhere to the penalties described in Section 4 of AMLA. This principle reinforces the notion that money laundering crimes are serious and should be dealt with through the extensive penalty provisions provided in Section 4.

- **Principle 3:** Any asset, property, or proceeds of crime obtained directly or indirectly from money laundering or used or intended to be used in money laundering, fall under the scope of AMLA, 2010.

  The third principle clarifies the scope of the Act and makes explicit that property tied to money laundering, whether directly or indirectly, falls within AMLA’s jurisdiction. This principle reinforces the forfeitures listed under Section 4 of AMLA, establishing a strong legal foundation for the seizure and forfeiture of assets involved in money laundering activities.

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130 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 3.

131 Please note that the list of principles laid down by the Court are more extensive than the list provided, which has been necessarily truncated to only include those principles relevant to Section 4 of the AMLA 2010.
• **Principle 8:** The court, under AMLA, 2010, can proceed with attachment, retention, seizure, and forfeiture of property, including in cases of predicate offenses and money laundering, after the conclusion of the trial.

*This principle allows for the execution of the penalties outlined in Section 4. It gives the court the authority to seize and forfeit properties involved in money laundering after the conclusion of a trial. In this way, it directly enables the application of the penalties for money laundering as outlined in Section 4.*

• **Principle 10:** The offenses under AMLA, 2010 are non-bailable and cognizable.

*By defining offenses under AMLA as non-bailable and cognizable, it underscores the severity of these crimes and supports the stringent punishments outlined in Section 4. This principle indicates that money laundering offenses are taken seriously, which aligns with the heavy penalties established in Section 4.*


The court's judgement clarified several key aspects of the Anti-Money Laundering Act (AMLA), 2010, which help inform how Section 4 - outlining punishments for money laundering - is applied.

Firstly, the court defined "proceeds of crime" as money or property derived from criminal activities. This is fundamental to identifying money laundering offenses. This understanding directly informs the application of Section 4 as the term "proceeds of crime" is essential to establishing whether an offence of money laundering, punishable under Section 4, has taken place.

Next, the court determined that an alleged predicate offence is necessary for money laundering to occur. This is an important nuance, as it means that for a charge of money laundering (and the subsequent punishments of Section 4) to be levied, there must first be a crime from which proceeds were generated.

The judgement also reviewed the powers granted to the Investigating Officer under Sections 8 and 14, specifically to attach or seize property believed to be involved in money laundering. The implications for Section 4 here are clear - these provisions enable the forfeiture of property involved in money laundering as specified under Section 4. However, it was emphasized that such powers must be exercised in accordance with the law and due process.

In one case, the court found that accounts were unlawfully seized, contravening the law's stipulations. This signifies that any breach of the law or due process can impact the enforcement of Section 4, potentially invalidating the seizure or attachment of property and negating the application of prescribed penalties.

In conclusion, the court's interpretation and application of various provisions of AMLA form a comprehensive legal context for Section 4, ensuring that penalties for money laundering are enforced in alignment with the Act's spirit and the broader principles of legal fairness and due process.
Chapter 3: Offences and Penalties

International Best Practices

FATF Recommendations

Recommendation 3 - Money Laundering Offence: This recommendation states that countries should criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches.

This aligns with Section 4 of the AMLA, which stipulates that anyone who commits the offence of money laundering shall be punished with rigorous imprisonment and a fine. The recommendation and the Act both emphasize the importance of treating money laundering as a serious criminal offence.

Recommendation 4 - Confiscation and Provisional Measures: This recommendation states that countries should adopt measures similar to those set forth in the Vienna and Palermo Conventions, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following: (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in, money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organizations.

This is reflected in Section 4 of the AMLA, which states that individuals found guilty of money laundering are liable to forfeiture of property involved in money laundering or property of corresponding value. Both the recommendation and the Act recognize the importance of removing the financial incentives for committing money laundering by confiscating the proceeds of the crime.

Recommendation 35 - Sanctions: This recommendation states that countries should ensure that there is a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons covered by these Recommendations that fail to comply with anti-money laundering or counter-terrorist financing requirements.

This aligns with Section 4 of the AMLA, which provides for rigorous imprisonment and a fine as sanctions for committing the offence of money laundering. Both the recommendation and the Act underline the necessity of having strong sanctions in place to deter potential offenders and to penalize those who commit money laundering offences.

United States

In the United States, Section 4 of 18 U.S.C. § 1956 - Laundering of monetary instruments, which pertains to penalties for money laundering, is quite comprehensive. It stipulates that any individual who knowingly conducts or attempts to conduct a financial transaction involving the proceeds of a specified unlawful activity can be penalized. The penalties are severe, including a fine of up to $500,000 or twice the value of the property involved in the transaction, whichever is greater, and/or imprisonment for up to twenty years. The law applies to those who engage in such transactions with the intent to promote the unlawful activity, engage in tax evasion or fraud, or to conceal or disguise the nature, location, source, ownership, or control of the proceeds. It also applies to those who aim to avoid a transaction reporting requirement under state or federal law. The law considers a financial transaction to involve the proceeds of specified unlawful activity if it is part of a set of parallel or

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132 Section 4 of 18 U.S.C. § 1956 can be found at https://www.law.cornell.edu/uscode/text/18/1956
dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

Section 4 of the AMLA 2010 and Section 4 of 18 U.S.C. § 1956 both deal with the punishment for the offence of money laundering. The following list provides for where the two laws are similar and where they differ from each other:

**Similarities:**

1. **Criminalization of Money Laundering:** Both laws provide for penalties including fines and imprisonment.

2. **Penalties:** Both laws provide for severe penalties for money laundering. The AMLA provides for rigorous imprisonment for a term which may extend up to ten years and a fine which may extend up to twenty-five million rupees. The U.S. law provides for a fine of up to $500,000 or twice the value of the property involved in the transaction, whichever is greater, and/or imprisonment for up to twenty years.

3. **Confiscation of Property:** Both laws provide for the confiscation of property involved in money laundering. The AMLA provides for the forfeiture of property involved in money laundering or property of corresponding value. The U.S. law provides for the forfeiture of property involved in the transaction or property traceable to such property.

**Differences:**

1. **Scope of the Law:** The AMLA applies to all persons, including individuals, companies, and other legal entities, within the territory of Pakistan. The U.S. law applies to U.S. citizens and entities, as well as foreign individuals and entities that conduct a financial transaction in the U.S. or use a financial institution with a U.S. presence.

2. **Penalty Amounts:** The penalty amounts are different in the two laws. The AMLA provides for a fine which may extend up to twenty-five million rupees, while the U.S. law provides for a fine of up to $500,000 or twice the value of the property involved in the transaction, whichever is greater.

3. **Imprisonment Terms:** The terms of imprisonment are also different. The AMLA provides for rigorous imprisonment for a term which may extend up to ten years, while the U.S. law provides for imprisonment for up to twenty years.

These similarities and differences reflect the different legal, economic, and social contexts in which these laws operate. Despite these differences, both laws share the common goal of combating money laundering and its associated harms.
Section 21 – Offences to be Cognizable and Non-bailable.

21. Offences to be cognizable and non-bailable. — 133 (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) and subject to sub-sections (2) and (3), —

(a) every offence punishable under this Act shall be cognizable and non-bailable;
(b) no person accused of an offence punishable under this Act for a term of imprisonment of more than three years shall be released on bail or on his own bond unless —

(i) the Public Prosecutor has been given due notice; and
(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by,—

(a) the investigating officer; or
(b) any officer of the Federal Government or a Provincial Government authorized in writing in this behalf by the Federal Government by a general or special order made in this behalf by that Government:

Provided that where the person accused is a reporting entity, the investigating officer or any other authorized officer, as the case may be, shall, before filing such complaint, seek the approval of the concerned AML / CFT regulatory authority which shall not withhold its decision for a period exceeding sixty days.

(3) The Court shall not take cognizance of any offence punishable under sub-section (1) of section 33 except upon a complaint in writing made by the FMU or investigating or prosecuting agency.

(4) The power and discretion on granting of bail specified in clause (b) of sub-section (1) are in addition to the power and discretion under the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force on granting of bail.

Analysis of Section 21 of the AMLA 2010

1. Cognizability and Non-Bailability:

Offenses under the AMLA are considered cognizable, which means that law enforcement authorities have the power to arrest individuals without a warrant if they have reasonable grounds to believe that an offense has been committed under the Act. These offenses are also non-bailable, which means that individuals accused of such offenses cannot be released on bail as a matter of right. They may be detained in custody during the course of the investigation and trial.

2. Bail Conditions:

Subsection (1)(b) of Section 21 states that an accused person charged with an offense punishable under the AMLA for a term of imprisonment exceeding three years shall not be released on bail unless specific

133 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 3.
conditions are met. These conditions include giving due notice to the Public Prosecutor and satisfying the Court that there are reasonable grounds to believe that the accused is not guilty of the offense and is unlikely to commit any offense while on bail.

3. Cognizance of Offenses:

The Court can only take cognizance (initiate legal proceedings) of offenses punishable under Section 4 and subsection (1) of Section 33 upon a written complaint. For offenses under Section 4, the complaint must be made by the investigating officer or an authorized officer of the Federal Government or Provincial Government. Furthermore, if the accused person is a reporting entity, the investigating officer or authorized officer must seek the approval of the concerned AML/CFT regulatory authority before filing the complaint. The regulatory authority's decision cannot be withheld for more than sixty days.

Finally, for offenses under subsection (1) of Section 33, the complaint must be made by the Financial Monitoring Unit (FMU) or the investigating or prosecuting agency.

4. Relationship with Code of Criminal Procedure (CrPC):

Subsection (4) of Section 21 clarifies that the power and discretion to grant bail, as specified in clause (b) of subsection (1), are in addition to the power and discretion provided under the Code of Criminal Procedure, 1898, or any other relevant law concerning bail. This means that the specific provisions related to bail in the Code of Criminal Procedure, or any other applicable law will also be considered when determining whether an accused person can be released on bail.

Interpretation of Section 32 alongside Section 21

Section 32 of the Anti-Money Laundering Act (AMLA) addresses the punishment for vexatious survey and search conducted by an investigating officer without prior permission from the Court. It appears that there is a potential contradiction between Section 32 and Section 21 in terms of cognizability.

Contradiction

Given the potential contradiction between Section 21 and Section 32 of the AMLA, and the favoring of Section 21 which establishes the cognizability of offenses, it is reasonable to argue for the omission or amendment of Section 32. By removing Section 32, the inherent cognizability of offenses under the AMLA would be reinforced, aligning with the legislative intent expressed in Section 21. This amendment would provide clarity and consistency in the law, ensuring that investigating officers have the necessary powers to take immediate action for AMLA offenses without prior permission from the Court, while still respecting the principles of justice and fairness.

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324 Section 32 of the AMLA 2010: Punishment for vexatious survey and search.— Any investigating officer exercising powers under this Act or any rules made hereunder, who, without prior permission from the Court,— (a) surveys or searches, or causes to be surveyed or searched, any building or place; or (b) detains or searches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.
Substantive Issues

1. Cognizability and Non-Bailability:

One substantive issue revolves around the provision that designates offenses under the AMLA as cognizable and non-bailable. Balancing the need to combat money laundering with protecting individual rights can be a point of contention.

2. Approval from Regulatory Authorities:

The requirement for seeking approval from AML/CFT regulatory authorities before filing a complaint in cases involving reporting entities raises issues related to administrative burden, potential delays in the legal process, and the potential for undue influence or arbitrary decisions by regulatory bodies. Striking the right balance between effective regulation and efficient legal proceedings is a key substantive consideration.

3. Interaction with the Code of Criminal Procedure:

The interaction between Section 21 of the AMLA and the existing Code of Criminal Procedure or other relevant laws governing bail can present substantive issues. Ensuring consistency, clarity, and avoiding conflicts or confusion between these legal frameworks becomes essential.

Procedural Issues

1. Compliance with Procedural Requirements:

Ensuring that the procedural requirements outlined in Section 21 are followed correctly can be a significant issue. This includes complying with the requirement for a written complaint made by the investigating officer, authorized government officer, or the Financial Monitoring Unit (FMU) or investigating/prosecuting agency, as specified in the relevant subsections.

2. Timelines for Seeking Approvals:

If the accused is a reporting entity and approval from the AML/CFT regulatory authority is required before filing a complaint, there may be concerns about the timelines for seeking and obtaining such approvals. Delays in obtaining regulatory approvals can affect the progress of investigations and potentially infringe upon the rights of the accused.

3. Judicial Review and Oversight:

Procedural issues may arise regarding the process of judicial review and oversight of actions taken under Section 21. This includes scrutinizing the actions of investigating officers, evaluating the sufficiency of evidence provided in complaints, and ensuring that due process rights are upheld during the legal proceedings.

4. Integration with Existing Procedural Frameworks:

Harmonizing the procedural requirements of Section 21 with the existing procedural frameworks, such as the Code of Criminal Procedure or other relevant laws, can be a procedural challenge. Ensuring that the provisions of Section 21 align with established legal procedures and do not create conflicts or inconsistencies is essential.
5. Training and Awareness:

Adequate training and awareness programs for law enforcement officials, investigating officers, prosecutors, and judicial officers are important procedural considerations. Ensuring that these stakeholders are familiar with the procedural requirements and have a clear understanding of their roles and responsibilities can help avoid procedural errors or delays.

Key Cases

Abdul Ghaffar vs. The State & Habib ur Rehman Sub–Inspector (2021)

In the case of Abdul Ghaffar vs. The State & Habib ur Rehman Sub–Inspector, the applicant was accused of providing undue favor to a company in exchange for illegal remuneration during his role as in-charge of the Cyber Crime Reporting Centre in Karachi. He was initially granted bail before arrest but was subsequently arrested and his remand confirmed by a Judicial Magistrate. The applicant argued that only a Sessions Court or an authorized officer could register an FIR and make an arrest under the Anti–Money Laundering Act (AMLA) and that search and seizure actions required prior approval from the Sessions Court. However, the court held that the magistrate’s order was lawful and that the investigating authority had the power to search and seize evidence, with approval from the Sessions Court or an authorized officer. It emphasized the importance of allowing investigating authorities to gather evidence on cognizable offenses to avoid hampering the investigation process\textsuperscript{35}.

International Best Practices

FATF Recommendations

Recommendation 3: This recommendation states that countries should criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches.

Recommendation 4: Confiscation and Provisional Measures: This recommendation focuses on ensuring that countries have legal frameworks and procedures in place for the confiscation of assets related to money laundering and terrorist financing, as well as the provision for provisional measures to prevent the dissipation of such assets.

Recommendation 29: Financial Intelligence Units (FIUs): This recommendation focuses on the establishment of effective and autonomous FIUs as the central agencies responsible for receiving, analyzing, and disseminating suspicious transaction reports (STRs) and other financial intelligence.

Recommendation 35: Sanctions and Other Measures for Compliance: This recommendation highlights the importance of implementing effective, proportionate, and dissuasive sanctions and other measures for non–compliance with AML/CFT obligations.

The United Kingdom

Money laundering offenses in the UK are generally considered serious crimes and are cognizable and non–bailable. Bail decisions are made based on factors such as the seriousness of the offense, the risk

\textsuperscript{35} Abdul Ghaffar v The State & Habib ur Rehman Sub–Inspector (Cr. Misc. Appn. No. 263 of 2021) [2021]
of flight, interference with witnesses, and potential reoffending. Furthermore, there is no specific requirement for seeking approval from regulatory authorities before initiating legal proceedings for money laundering offenses in the UK. However, regulatory authorities play a crucial role in overseeing compliance with AML regulations and may collaborate with law enforcement agencies during investigations. Finally, bail decisions in the UK are subject to judicial discretion, with courts considering factors such as the likelihood of the defendant appearing in court, the risk of reoffending, the risk of interference with witnesses, and public safety concerns.136

**The United States**

Money laundering offenses in the US are typically treated as serious crimes and are often cognizable and non-bailable. Bail determinations are made based on factors such as the nature and severity of the offense, the defendant’s criminal history, flight risk, and the potential danger posed to the community. In the US, there is no specific requirement for seeking approval from regulatory authorities before filing a complaint or initiating legal proceedings for money laundering offenses. However, authorities may collaborate with regulatory agencies during the investigative process and share information as necessary. Bail decisions in the US are typically subject to judicial discretion, with courts considering factors such as the defendant’s risk of flight, danger to the community, and the strength of the evidence against them. Furthermore, courts may also impose conditions on bail, such as surrendering travel documents or electronic monitoring.137

**Canada**

In Canada, money laundering offenses are considered serious crimes and are cognizable and non-bailable. Bail decisions are made based on factors such as the likelihood of the defendant appearing in court, the risk of reoffending, and the protection of the public. Regulatory authorities, such as the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), are responsible for overseeing compliance with anti-money laundering (AML) regulations and may collaborate with law enforcement agencies during investigations.138 However, regulatory approval is not required before initiating legal proceedings for money laundering offenses in Canada.

**Singapore**

Money laundering offenses in Singapore are treated as serious crimes and are cognizable and non-bailable. Bail decisions are made based on factors such as the flight risk of the defendant, the seriousness of the offense, and the likelihood of interference with witnesses or evidence. The Monetary Authority of Singapore (MAS) is the regulatory authority responsible for overseeing AML compliance. While regulatory approval is not required to initiate legal proceedings, authorities may collaborate with the MAS during investigations and share information as necessary.139

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Section 37 – Offences by Legal Persons

37. Offences by legal persons. —

(1) Where a legal person commits an offence under this Act, every person who at the time when the offence was committed, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any natural person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything in sub-section (1) where an offence under this Act is committed by a legal person and it is proved that the contravention has taken place with the consent, connivance or knowledge of any director, manager, secretary or other officer of any legal person, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation — For the purposes of this section, “director” in relation to a firm, means a partner in the firm.

Analysis of Section 37 of the AMLA, 2010

In prior evaluations, Pakistan was noted as lacking transparency requirements concerning beneficial ownership (BO) and control of legal persons. The provisions of the Companies Act 2017 and the Limited Liability Partnership Act 2017 lay down frameworks governing ownership, however there is a lack of clarity and various lacunae concerning these frameworks. The FATF in its evaluations noted that the information required to be included in trust agreements on trustees, settlors and beneficiaries did not cover the concept of beneficial ownership. It was also noted that registration of trust information is decentralized and remains in manual records making it very difficult for law enforcement agencies to access in practice.

Within this context, Pakistan has recently made substantive progress in laying down the legal and administrative framework to promote the documenting of beneficial owners and/or legal arrangements. Key amendments to the Companies Act 2017 and the Limited Liabilities Act 2017 have been enacted to promote adherence to these recommendations. The SECP has also passed multiple SROs to give effect to changes in the law, and created rules and annexures detailing the types of information required in order to detail all beneficial ownership arrangements with transparency. Though these particular provisions remain outside the scope of the AMLA Legislative Review, Section 37 is critical to explore in terms of applicability of AMLA provisions and by extension, relevant penalties in cases of commission of the ML offence.

Substantive Issues

The criminal liability of that of an abettor is implied in this section. In abetment, the person who had mens rea, but was not involved in actus reus is punishable. An abettor is defined in the Pakistan Penal Code (PPC) as: “A person abets an offence, who abets either the commission of an offence, or the

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Words within this provision that are **bolded** are defined in the “Relevant Definitions” section of Chapter 3.
commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same Intention or knowledge as that of the abettor.”

In order to charge any person under abetment, it is not necessary that the act has to be committed. Even if the act is incomplete or interrupted, the offence of abetment is said to be committed. Mere assistance to the offender without the knowledge of facilitation of committing crime is not abetment. Moreover, an abettor can escape from liability if he proves that there was an express withdrawal or revocation of the task given by him.

The legal person who connived, whether actively participated or abetted or consensually stayed as a silent participant during the commission of the offence, shall be prosecuted under the ambit of this section. A legal person refers to a human or non-human entity that can sue and be sued, own property, and enter into contracts. Furthermore, the section entails that an innocent person who had no agenda of causing the offence shall not be prosecuted or punished. This section upholds the rule of law and the maxim ‘every person must be presumed innocent until proven guilty’ shall be applied here.

Read together with section 4(2) of the AMLA Act places the fine limit at 100 million rupees in case a legal person is found involved to have committed money laundering under section 4(1), with liability falling on employees, directors or officers of the legal person as required.

**Interaction with other relevant legislation**

Provisions and recent amendments in the Companies (Amendment) Act, 2020 the Limited Liability Partnership (Amendment) Act, 2020 all allow for a more enhanced application of Section 37 of the AMLA. These two amendments were concurrently introduced to ensure transparency in terms of ascertaining ownership and aid the AML framework in the country by providing effective methods to trace the money trail to the rightful owners, further curbing down benamidaars and money launderers. The rules amended therein all ensure that transparency is maintained with regards to the identity of the UBO.

In 2020, the Companies Act was amended to ensure companies policies are in alignment with FATF standards. A new section (60A) was introduced, which delegalized practices involving bearer shares, prohibited the allotment, issuing, selling, transferring or assigning of any bearer shares, bearer share warrants or any other equity or debt security of a bearer nature. Furthermore, subsections of 60A were introduced which require the registration or cancellation of such shares, along with a penalty of up to one million rupees for a person, or ten million rupees for a company upon failure to comply. Section 123A has also been introduced, which makes it compulsory for companies to retain information and records of their ultimate beneficial owners, and to maintain a register of their particulars and any changes therein. Failure to comply with this can result in a penalty of up to one million rupees for a person, or ten million rupees for a company. Finally, amendments have been made to section 431 pertaining to the disposal of books and papers of a company. Hereby, it is stated that no responsibility will fall on the company or the liquidators or anyone managing the books once five years have lapsed from the dissolution of the company (increased from three years).

In line with the Companies (Amendment) Act, 2020, the Limited Liability Partnership (Amendment) Act, 2020 was also amended. Amendments to section 8 make it necessary for partnerships to “obtain, maintain and timely update particulars of ultimate beneficial owner, including any change therein, of any person who is a partner in limited liability partnership in such form, manner and submit such declaration to the registrar as may be specified.” Furthermore, penalties of up to one million rupees for

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541 legal person | Wex | US Law | LII / Legal Information Institute (cornell.edu)
542 AMLA Section 4(2): The fine under sub-section (1) may extend up to one hundred million rupees in case of a legal person. Any director, officer or employee of such legal person who is also found guilty under this section shall also be punishable as provided under sub-section (1).
a person, or ten million rupees for a limited liability partnership are introduced upon failure to comply with the requirements of this section. These provisions were further operationalized via amendments to existing rules through SROs. Amendments were made to Limited Liability Regulations, 2018 (SRO 925), the Foreign Companies Regulations, 2018 (SRO 926), the Companies (Incorporation) Regulations, 2017 (SRO 927) and Companies Regulations 2018 (SRO 928). Similar in nature, these amendments were based on strengthening transparency by registering the Ultimate Beneficial Owner (UBO) with details such as name, father’s name, CNIC, nationality etc. all to be formally made part of the record.

**Due Diligence**

This involves risk and compliance checks, conducting an investigation, review, or verification of facts and information about a particular subject. Lack of customer due diligence is identified as one of the main causes of AML breaches. The complications in performing due diligence such as its subjective nature and the lack of adequate technology could pose significant trouble for the person involved.

**International Best Practices**

**FATF Recommendation**

Recommendation 24 governs transparency of beneficial ownership of legal persons. Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing.

The proviso 7 (d) in the interpretive note to Recommendation 3 by the FATF says: “There should be appropriate ancillary offences to the offence of money laundering, including participation in, association with or conspiracy to commit, attempt, aiding and abetting, facilitating, and counselling the commission, unless this is not permitted by fundamental principles of domestic law.”

**Model Provisions**

Section 36 of the Common Law Legal Systems Model Legislative Provisions on Money Laundering includes a drafting note on “Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling.” According to the note, in addition to the actual performance of the crime, there are many levels of involvement or participation, including encouragement and help (aiding, abetting or counselling). It should be illegal to attempt. Conspiracy, a term from common law, is included in this section. It can also refer to a group of people coming together to conduct an offence.
United Kingdom

Regulation 33(1)\(^{\text{144}}\) of The Money Laundering, Terrorist Financing and Transfer of Funds Regulations (MLR) 2017 sets out a list of circumstances in which enhanced due diligence (EDD) measures must be applied.

It includes any transaction or business relationship involving:

- a) a person established in a high-risk third country.
- b) a politically exposed person (PEP) or a family member or known associate of a PEP.
- c) any other situation that presents a higher risk of money laundering or terrorist financing.

Regulation 33(6) of the MLR 2017 also sets out a list of factors that must be considered when assessing whether there’s a higher risk of money laundering present.

Regulation 37 of the MLR 2017 allows to carry out simplified due diligence (SDD) where you’re satisfied that the business relationship or transaction presents a low risk of money laundering or terrorist financing.

\(^{144}\) The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (legislation.gov.uk)
Chapter 4
Investigation Procedures and Authorities

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Section 24 – Appointment of Investigating Officers and their Powers 112
Overview

Chapter 4 of our commentary contains a comprehensive analysis of the legal mechanisms and procedures involved in investigating money laundering offenses in Pakistan. It highlights the importance of special investigation techniques, such as undercover operations, intercepting communications, accessing computer systems, and controlled delivery. These techniques, as outlined in the Act, emphasize the need for adaptability and flexibility in investigative methods. This adaptability is particularly crucial given the intricate nature of money laundering and financing of terrorism cases, which often involve complex networks and sophisticated methods of concealing illicit activities.

The commentary further explores the roles and responsibilities of investigating officers. They are empowered to conduct surveys, carry out search and seizure operations, and retain any seized property or records for a period if required for the investigation. These powers are crucial in gathering evidence, preventing the disposal or transfer of assets involved in money laundering, and ensuring that crucial evidence remains accessible throughout the investigation.

The commentary also addresses the legal provisions that facilitate the process of evidence gathering and validation. The Act permits the court or the investigating or prosecuting agency to make certain presumptions, which can streamline the process of admitting documents into evidence. This is particularly applicable when a document of public record is discovered in someone’s possession or control during a survey or a search.

The commentary concludes with a discussion on the appointment and powers of investigating officers. The Act allows both government agencies and the Federal Government to nominate officers, ensuring competent individuals are chosen. It also provides guidelines for non-governmental officers appointments and outlines their powers, ensuring a well-regulated investigation process to prevent misuse or abuse.

In conclusion, Chapter 4 of our commentary explains the legal procedures for investigating money laundering in Pakistan. It underscores the need for flexible investigative methods, the critical role of investigating officers, and the legal provisions aiding evidence gathering. The chapter also highlights the appointment and powers of investigating officers, ensuring a well-regulated process to prevent misuse or abuse, effectively addressing the complexity of money laundering cases.
Relevant Definitions

**Accessing Computer Systems:** This involves the authorized and controlled infiltration of computer networks or electronic systems suspected to be involved in facilitating or concealing illicit financial activities. This approach allows law enforcement agencies to gather critical evidence, identify key players, and dismantle money laundering operations operating in the digital realm. For instance, if a criminal organization is suspected of using encrypted communication channels and online platforms to launder money, law enforcement may employ authorized hacking techniques to gain access, monitor communication, trace financial transactions, and gather evidence to prosecute the individuals involved in the money laundering scheme.

**Attest:** According to Black’s Law Dictionary, the term "attested" refers to the act of witnessing or affirming the authenticity of a document or instrument by signing it as a witness. This process involves acknowledging the execution of the document and affirming that the signatures appearing on it are genuine. The act of attesting serves as evidence of the document’s authenticity and the fact that it was executed in the presence of witnesses. By affixing their signatures, the witnesses certify that they were present during the execution and can testify to its validity.

**Controlled Delivery:** This refers to a law enforcement technique where suspected illicit funds or assets are intercepted and seized, but instead of immediate arrest, they are covertly allowed to continue to their intended destination under close surveillance. This approach enables authorities to trace the money, gather evidence against higher-level criminals, and dismantle the entire money laundering operation. For example, if a drug trafficking organization is suspected of laundering money, law enforcement may intercept a cash shipment destined for a key suspect, monitor its movement, identify other involved parties, and ultimately arrest everyone involved to prosecute the money laundering network.

**Derogation:** This term refers to the partial repeal or abolition of a law, or the relaxation of its strictness. When a law is in derogation of another, it means that the law has been modified or limited in some way by the later law.

However, in the AMLA 2010, the phrase "not in derogation of" is used. This means that the AMLA does not limit or modify the laws mentioned, but rather, it operates in addition to them. The AMLA does not replace these laws but adds to the legal framework that they establish.

**Execute:** According to Black’s Law Dictionary, the term "execute" refers to the completion or carrying out of an action, contract, or legal instrument. This involves the act of signing, delivering, and fulfilling all the necessary formalities to ensure its validity and legal effectiveness. Whether it pertains to performing an agreed-upon action, implementing a contractual obligation, or executing a legal document, such as a will or deed, the term "execute" encompasses the entire process required for its proper execution.

**Financing of Terrorism:** In the context of Pakistan, since there is no specific set definition of “financing of terrorism,” we can derive a working definition based on the understanding of what constitutes a terrorist as outlined in the excerpt from the FATF Recommendations, and from the terrorism financing provisions of the Anti-Terrorism Act, 1997. Financing of terrorism in Pakistan can be understood as the provision of financial support, either directly or indirectly, to individuals or groups involved in committing, attempting to commit, facilitating, organizing, or directing terrorist activities.
acts as described in the definition of a terrorist. This includes contributing to the commission of terrorist acts by a group of individuals acting with a common purpose, where the contribution is made intentionally and with the aim of furthering the terrorist act or with knowledge of the group's intention to carry out a terrorist act.

The Anti-Terrorism Act, 1997 incorporates a set of unique offences relating to terrorism financing, that although do not define the term outright, do provide us with the contours of what it can encapsulate:

- **Section 11H(1):** Relates to the act of inviting another to provide money or other property for the purposes of terrorism;
- **Section 11H(2):** Criminalizes the offence of receiving money or other property for the purposes of terrorism;
- **Section 11H(3):** Criminalizes the offence of providing money or other property for the purposes of terrorism;
- **Section 11I:** Criminalizes the use of money or property for the purposes of terrorism;
- **Section 11J(1):** Criminalizes entering or becoming concerned in an arrangements as a result of which money/property is made available for the purposes of terrorism;
- **Section 11J(2):** Criminalizes the provision/availability of money for the benefit of a proscribed organization or person;
- **Section 11K:** Criminalizes entering or being concerned in an arrangement facilitating retention or control of terrorist property by concealment, removal from jurisdiction, transfer to nominees, or in any other way;
- **Section 11-F(5):** Criminalizing soliciting, collecting or raising money or other property for a proscribed organization.

**Investigating Officer:** This refers to a designated law enforcement officer responsible for conducting thorough investigations into suspected instances of money laundering. These officers should possess specialized knowledge and expertise in financial crimes and should be trained to analyze complex financial transactions, follow money trails, and gather evidence to build strong cases against individuals or organizations engaged in money laundering activities.

An “investigating officer” means the officer nominated or appointed under section 24 of the AMLA 2010. Subsection (1) of section 24 of AMLA, authorizes designated investigating and prosecuting agencies to nominate their investigating officers competent to conduct investigation under respective law of the agency. For example, under section 5 of FIA Act, 1974, an officer not below the rank of sub-inspector can conduct investigation meaning thereby the sub–inspector or above can conduct investigating under FIA Act, 1974. Since, FIA is designated investigating and prosecuting agency under AMLA, therefore, the officers of rank of Sub–Inspector and above can conduct money laundering investigation under AMLA.

**Investigating or Prosecuting Agency:** An “investigating or prosecuting agency” means the National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation – Customs) Federal Board of Revenue,
Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under AMLA.

**Intercepting Communications:**
This refers to the authorized monitoring and surveillance of electronic communications such as phone calls, emails, or text messages, with the purpose of gathering evidence and identifying individuals involved in illicit financial activities. By intercepting and analyzing these communications, law enforcement agencies can uncover hidden financial transactions, track money flows, and establish links between different actors within a money laundering network. For instance, if there is suspicion of a criminal organization using encrypted messaging apps to coordinate money laundering activities, law enforcement may obtain legal authorization to intercept and monitor these communications, allowing them to gather crucial evidence.

**Notwithstanding:**
This term is used in legislation to mean “in spite of” or “despite”. It is used to emphasize that a particular provision applies regardless of certain facts or circumstances that might otherwise affect its application.

For example, consider a piece of legislation that states, “Notwithstanding any other law, no person shall be discriminated against on the basis of race, color, or national origin.” This means that the prohibition against discrimination applies regardless of what any other law might say. Even if there are other laws that might seem to allow such discrimination, this law prohibits it. The “notwithstanding” clause ensures that this law takes precedence in the event of any conflict with other laws.

**Offence of Money Laundering:**
The offence of money laundering is defined in Section 3 of the AMLA 2010. According to this section, a person is considered guilty of the offence of money laundering if they engage in any of the following activities:

1. Acquiring, converting, possessing, using, or transferring property, knowing or having reason to believe that such property is proceeds of crime. This means that if a person knowingly handles property that has been obtained through criminal activity, they are committing the offence of money laundering.

2. Concealing or disguising the true nature, origin, location, disposition, movement, or ownership of property, knowing or having reason to believe that such property is proceeds of crime. This refers to actions taken to hide the fact that property is derived from criminal activity.

3. Holding or possessing on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime. This means that if a person holds property for someone else, and they know or have reason to believe that this property is the result of criminal activity, they are committing the offence of money laundering.

4. Participating in, associating with, conspiring to commit, attempting to commit, aiding, abetting, facilitating, or counseling the commission of the acts specified in the above clauses. This means that if a person is involved in any way with the activities described above, they are committing the offence of money laundering.

**Permission of the Court:**
This refers to the legal authorization sought by law enforcement agencies to conduct specific investigative actions related to suspected money laundering activities. This process
involves presenting evidence and arguments to a judge, demonstrating the necessity and proportionality of the requested action in the investigation. The court’s permission may be sought for the use of 'investigation techniques' including undercover operations, interception of communications, accessing of computer systems, and controlled deliveries. By obtaining permission from the court, law enforcement agencies can ensure that their actions are within the boundaries of the law, protect individuals’ rights, and gather admissible evidence to ensure successful prosecutions of money laundering cases.

**Predicate Offence:** A “predicate offence” refers to an underlying criminal activity from which the illicit proceeds or funds subject to money laundering are derived. It denotes the primary criminal act that generates the unlawfully obtained funds. Predicate offences encompass a wide range of illegal activities and can vary in nature. In simpler terms, a predicate offence refers to the original crime that generates the illegal funds that are later involved in money laundering.

**Proceeds of crime:** Proceeds of crime, often referred to as criminal proceeds, denote the financial gains or assets obtained through illegal means. These gains can arise from various unlawful activities, and the term encompasses a wide range of assets acquired through such actions. It includes both tangible and intangible resources that result from illegal conduct. In simpler terms, proceeds of crime are the financial benefits or assets obtained through illegal activities.

**Property:** Property encompasses a wide range of assets, both tangible and intangible, that are subject to legal ownership rights. Tangible property includes physical objects like land, buildings, and personal belongings, while intangible property encompasses intellectual property, financial instruments, contractual rights, and securities. Property also includes legal documents such as deeds, titles, and other instruments that serve as evidence of ownership or interest in a specific property or asset. Furthermore, it extends to monetary instruments, including cash and equivalents, regardless of their physical location or material nature. In simpler terms, property refers to everything you own, whether it’s something you can touch like houses and cars or something intangible like ideas and patents. It also includes documents that prove ownership and even money.

**Property involved in money laundering:** The term “property involved in money laundering” is a broad term that encompasses any property that is connected to the crime of money laundering. This can include:

1. Proceeds of Crime: This refers to any property or economic advantage derived from the commission of a criminal act. For example, if a person sells illegal drugs and uses the money earned to buy a car, that car is considered a proceed of crime.

2. Property Derived or Obtained from Money Laundering: This refers to any property that is obtained, directly or indirectly, as a result of money laundering. For example, if a person launders money through a business and uses the laundered money to buy a house, that house is considered property derived from money laundering.

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156 “Predicate Offence” is referred to in Section 9A of the AMLA 2010.

157 Section 2(xxvi) of the AMLA 2010: “predicate offence” means an offence specified in Schedule I to this Act;

158 “Proceeds of Crime” is referred to in Section 13 of the AMLA 2010.

159 Section 2(xxx) of the AMLA 2010: “property” means property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets including cash and monetary instruments, wherever located.

160 “Property involved in Money Laundering” is referred to in Sections 14, 15, and 17 of the AMLA 2010.
3. Property Used or Intended to be Used in Commission of Money Laundering: This refers to any property that is used, or intended to be used, to facilitate the crime of money laundering. For example, if a person uses a computer to conduct fraudulent transactions as part of a money laundering scheme, that computer is considered property used in the commission of money laundering.

4. Property Involved in a Predicate Offence: A predicate offence is a crime that is a component of a more serious crime. For example, if a person commits fraud (which is a predicate offence) and then launders the money gained from that fraud, any property bought with that money is considered property involved in a predicate offence.

5. Property Involved in a Foreign Serious Offence: This refers to property that is connected to a serious crime that has been committed in a foreign country. For example, if a person in another country launders money and then transfers that money to a bank account in Pakistan, the money in that bank account is considered property involved in a foreign serious offence.

In all these cases, it does not matter who currently holds or has held the property. If the property is connected to the crime of money laundering, it is considered “property involved in money laundering”.

It is important at this juncture to note that there is a clear distinction between “proceeds of crime” and “property involved in money laundering”. Proceeds of crime denotes the financial gains or assets obtained through illegal means. These gains can arise from various unlawful activities, and the term encompasses a wide range of assets acquired through such actions. It includes both tangible and intangible resources that result from illegal conduct. This is essentially the money or other assets gained from the commission of a crime. For example, if someone robs a bank and uses the money to buy a car, that car is considered the “proceeds of crime”.

On the other hand, “property involved in money laundering” is a broader concept that includes not just the proceeds of crime, but also any property derived or obtained from the offence of money laundering itself, and any property used or intended to be used in the commission of the offence of money laundering, a predicate offence, or a foreign serious offence. So, using the same example, if that car purchased with the stolen money was later used to commit another crime (like drug trafficking), it would then be considered "property involved in money laundering".

In summary, while “proceeds of crime” refers specifically to assets gained from criminal activity, “property involved in money laundering” is a wider term that encompasses any property associated with the broader process of money laundering, whether it’s the proceeds of crime, assets derived from money laundering, or assets used in the commission of such offences.

**Reason to believe:** Reason has been defined as “a faculty of the mind by which it distinguishes truth from falsehood.” Thus, it may be defined as the ability which enables the possessor to deduce inferences from facts or from propositions. Belief has been defined as, “a conviction of the truth of a proposition, existing subjectively in the mind, induced by argument, persuasion or proof addressed to the judgement.” It states that knowledge is an assurance of a fact or proposition founded on perception by the senses or intuition, whereas belief is an assurance gained by evidence. Thus, the phrase “reason to believe” in the context of the offence of money laundering may mean having the ability to subjectively deduce or infer a proposition through evidence.

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163 Section 2(xxxi) of the AMLA 2010: “property involved in money laundering” means, regardless of who holds or has held the property, proceeds of crime, property derived or obtained directly or indirectly from the offence of money laundering and property used or intended to be used in commission of the offence of money laundering, a predicate offence or a foreign serious offence;

164 “Reason to believe” is referred to in Section 14, 15, 17, and 18 of the AMLA 2010.
Explanation-1 of section 3 of AMLA states that “the knowledge, intent or purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984).”

Section 26 of Pakistan Penal Code defines reason to believe as under:

“A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.”

In accordance with FATF standard, the knowledge, intent, purpose may be inferred from “objective factual circumstances. Following are the types of objective factual circumstance:

- Willful blindness
- Deliberate avoidance of knowledge of the facts
- Purposeful indifference

In accordance with the judgement of the Supreme Court of Pakistan\(^{165}\), the term “reason to believe” can be classified at a higher pedestal than a mere suspicion and allegation but not equivalent to proven evidence. Even the strongest suspicion cannot transform in “reason to believe”.

**Record:**\(^{166}\) “record” includes the records maintained in the form of books or stored in a computer or any electronic device, or such other form as may be prescribed.

**Retain:**\(^{167}\) According to Black’s Law Dictionary, "retain" means to continue to hold, have, use, recognize, or keep something. It implies the ongoing possession or control over a particular item, right, or relationship without relinquishing it. The term conveys the idea of preserving or keeping something intact and acknowledges the continued existence or exercise of certain rights or privileges (Kimbell Trust & Savings Bank v. Hartford Accident & Indemnity Co., 333 Ill. 318, 164 N.E. 661, 662).\(^{168}\)

**Survey:**\(^{169}\) The term "survey" refers to the power granted to investigating officers to enter premises and conduct inspections or investigations related to suspected money laundering offenses. It allows the officer, with the permission of the court, to visit a place where activities associated with the commission of the offense are being carried out. During a survey, the officer may inspect records, verify transactions, check proceeds of crimes, gather relevant information, mark identification on records, make copies or extracts, create inventories of checked property, and record statements from individuals present at the premises.

**Seizure:**\(^{170}\) If during the search, the investigating officer discovers documents, records, or property that they reasonably believe to be connected to the money laundering offense, they are empowered to seize and secure such evidence. This step is crucial for preserving the integrity of the evidence and ensuring its availability for subsequent investigations or legal proceedings. The seizure of relevant evidence strengthens the investigative process and contributes to the prosecution of money laundering offenders.

\(^{165}\) Chaudhry Shujat Hussain v. The State - 1995 SCMR 1249
\(^{166}\) “Record” is referred to in Sections 13, 14, 15, 18, and 19 of the AMLA 2010.
\(^{167}\) “Retain” is referred to in Sections 17 and 18 of the AMLA 2010.
\(^{169}\) “Survey” is referred to in Sections 13, 14, and 19 of the AMLA 2010.
\(^{170}\) “Seizure” is referred to in Sections 14 and 15 of the AMLA 2010.
Search: According to Black’s Law Dictionary, a "search" refers to the examination of a person’s residence, buildings, property, or their person, including vehicles, aircraft, packages, luggage, or other possessions. If a police officer has a warrant of arrest, and has reasonable grounds to believe that a suspicious individual is in a specific place, then the police officer has a legal right to enter that place and search for him.

Undercover Operations: This involve law enforcement officers assuming false identities or infiltrating criminal organizations with the aim of gathering intelligence, gathering evidence, and dismantling money laundering networks. By blending in with these criminal networks, undercover agents can gain valuable insights into the inner workings of money laundering operations, identify key individuals involved, and obtain evidence for prosecution. For example, an undercover officer may pose as a corrupt financial professional offering money laundering services to criminal organizations. Through this undercover role, they can gain the trust of money launderers, uncover their methods, and gather evidence of illegal financial transactions. The evidence collected by means of undercover operations shall be admissible in the court of law.

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171 "Search" is referred to in Sections 14, 15, and 19 of the AMLA 2010.
172 "Undercover Operations" is referred to in Section 9A of the AMLA 2010.
Section 9A – Application of Investigation Techniques

9A. Application of Investigation Techniques.—173

1) The investigating officer may with the permission of the court, within sixty days of such permission, use techniques including undercover operations, intercepting communications, assessing computer systems and controlled delivery for investigation of offences of money laundering, associated predicate offences and financing of terrorism. The aforementioned period of sixty days may be extended up to further period of sixty days by the court on a request made to it in writing. The court may grant extension, if it is satisfied on the basis of situation or reasons given in the written request. The provisions of this subsection shall be in addition to and not in derogation of any other law for the time being in force.

2) The Federal Government may make rules to regulate the procedure and for execution of order for the purposes of this section.

Analysis of Section 9A of the AMLA, 2010

Section 9A of the AMLA, 2010, introduces the concept of special investigation techniques. These techniques include undercover operations, intercepting communications, accessing computer systems, and controlled delivery. The inclusion of these techniques in the Act signifies a recognition of the complex and often covert nature of money laundering and financing of terrorism offenses. It emphasizes the need for investigative methods that can adapt to these complexities and effectively uncover illicit activities.

The techniques outlined in Section 9A are not just additional tools for investigators; they represent a shift towards more proactive and sophisticated approaches to tackling money laundering. Undercover operations, for instance, allow investigators to infiltrate criminal networks, while intercepting communications and accessing computer systems can reveal hidden transactions and connections. Controlled delivery, on the other hand, can help track the movement of illicit funds. These techniques, therefore, significantly enhance the capacity of investigators to tackle money laundering and financing of terrorism.

Section 9A of AMLA allows an investigating officer, with the approval of the court, to use techniques such as undercover operations, intercepting communications, accessing computer systems, and controlled delivery when investigating money laundering offenses and financing of terrorism. However, despite providing for the usage of SITs, Section 9A does not have clear procedural guidelines or mechanisms to regulate the execution of orders issued under it.

In the absence of formulation of any rules for Section 9A, there does not currently exist any mechanism that regulates the procedure and execution of orders issued under these laws.

Specifically, these questions become relevant:

- How does one apply for a warrant under Sections 9A?
- What sort of objective(subjective) criteria will a judge use in the issuance of such warrants?

173 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 4.
Are human rights concerns, specifically in relation to privacy, considered when issuing a warrant?

What is the documentation requirement for an extension?

What penalties exist for law enforcement agencies misusing the powers under these sections?

All of these unresolved questions mean that it is unlikely that Section 9A of the AMLA will become operational without first formulating rules governing its usage, and so any questions about evidentiary standards in relation to, as an example, secret recordings by an undercover officer, would be secondary concerns.

There is also the issue of deciding whether or not these laws apply in a vacuum, or whether they are hindered (or helped) by existing legislation. The following excerpt: “The provisions of this subsection shall be in addition to and not in derogation of existing laws”, which has been inserted into Section 9A, would lead us to believe that this is not the case. The laws would sit alongside existing legislation, and therefore an investigating officer would have to comply with other general legislation, such as the Qanun-e-Shahadat Order, 1984, the Code of Criminal Procedure, etc., in addition to Section 9A.

In the case of the QSO, this is not too problematic, as evidence obtained through modern means could be deemed admissible through Article 164 of the QSO, which states that, “In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence which may have become available because of modern devices and techniques”. This would eliminate concerns of admissibility relating to accessing of computer systems and interception of communications and may even be an avenue through which certain evidence obtained through undercover operations and controlled deliveries would be deemed as becoming available because of modern devices and techniques. For all other forms of evidence, such as document recovery, etc., the ordinary rules of evidence would apply.

Another concern would be the existence of an already established enactment in the field of SITs, namely, the Investigation for Fair Trial Act, 2013 (IFTA). The IFTA includes detailed procedures and safeguards for usage of SITs, in addition to criminal penalties for usage of techniques without approval of the Court. The question then becomes, does an IO open himself up to criminal liability when acting in accordance with the AMLA and not the IFTA, and what potential concerns does such a conflict have for the admissibility of any evidence obtained. Until such conflicts are resolved adequately, either through legislative amendments, rule-making, or through the development of case law, Section 9A is unlikely to be effective in its application.

**The Investigation for Fair Trial Act, 2013**

The procedure laid out in IFTA may serve as a guide for any rule-making undertaken to operationalize Section 9A, and so has been summarized below:

The Directorate General Inter-Services Intelligence, the three Services Intelligence Agencies, the Intelligence Bureau and the Police are listed as Applicants under the Act, which empowers and requires them to approach the Federal Minister for Interior for permission to make an application to the Judge for the use of SITs.

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724 Section 35 of the IFTA states that, “Any person who carries out any surveillance or interception except in accordance with the provisions of this Act shall in addition to any other punishment to which he may be liable under any other law for the time being in force be punished with imprisonment for up to three years and shall also be liable to fine.”

725 Section 3(d) of the IFTA defines ‘Court’ as the High Court.

726 Section 3 (a) of the Investigation for Fair Trial Act, 2013

727 ‘Section 3 (h) of the Investigation for Fair Trial Act, 2013: Judge’ means a Judge of the High Court
The application itself, in order to not jeopardize any ongoing investigation, will be presented to the Judge in-chambers\(^{178}\) by the authorized officer\(^{179}\), wherein the judge shall consider whether the collection of evidence through such extraordinary means is necessary, and subsequently either issue or decline such warrant. The Act requires that the Judge essentially apply a threefold test in order to determine the issuance of a warrant:

1. Would the warrant, if issued, enable the applicant to collect evidence?\(^{280}\)
2. Is there a reasonable threat that a scheduled offence will be committed?\(^{181}\)
3. Would the warrant, if issued, cause undue interference with the right to privacy of persons and property?\(^{182}\)

Once this determination has been made, the Judge will issue a warrant for a duration of sixty day, which can then be re-issued for a further sixty days by the Judge after being shown sound reasoning for such an extension by the authorized officer.\(^{183}\) If the Judge declines the issuance of a warrant, the applicant may approach the Chief Justice of the concerned High Court for constitution of a Division Bench of two judges for a hearing in-chambers to review said earlier decision.\(^{184}\)

In terms of evidence collection itself, anything collected through the operation of the warrant will not be subject to the evidentiary standards set forth in the Qanun-e-Shahadat Order 1984\(^{185}\) (QSO), nor does it require registration of an FIR prior to the beginning of the investigation\(^{186}\) as is required per Section 154 of the Code of Criminal Procedure, 1898 (Cr.P.C.) as interpreted by the Superior Courts of Pakistan.\(^{187}\) The mode of serving the warrant, if a third-party service provider is involved, is to approach said provider within seven days of issuance of warrant.\(^{188}\) The service provider will be provided immunity\(^{189}\) and indemnity\(^{190}\) for actions taken in pursuance of said warrant, and must ensure confidentiality of any evidence uncovered, as well as of the investigation generally.\(^{191}\)

**Key Cases**

*Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another (W.P. No. 1184/2021 & 1778/2021)*

The Court laid down the following principles that should be considered when interpreting the AMLA, 2010.\(^{192}\)

- **Principle 1:** AMLA, 2010 is a special law that addresses the prevention of money laundering, combating the financing of terrorism, and the forfeiture of property derived from or involved in money laundering.
The framing of AMLA as a special law combating money laundering aligns directly with Section 9A. This section equips the authorities with enhanced investigative techniques to uncover money laundering and terrorist financing activities effectively, thus serving the very purpose of the Act outlined in this principle.

- **Principle 2**: All offenses defined in AMLA, 2010, including predicate offenses listed in Schedule-I, must be tried under this law.

  By specifying that offenses under AMLA, including predicate offenses, must be tried under this law, this principle strengthens the mandate for the usage of special investigative techniques under Section 9A. These techniques are aimed at unraveling the intricate web of transactions typically involved in money laundering and predicate offenses.

- **Principle 5**: A specialized investigating agency, as defined in Section 2(xvii) of AMLA, 2010, must conduct a separate investigation.

  This principle enhances the scope of Section 9A by affirming that specialized agencies, empowered with the investigative techniques provided under Section 9A, are to handle money laundering investigations. This underscores the role of Section 9A in equipping these agencies with the means to effectively carry out their responsibilities.

- **Principle 11**: The Federal Government can enter into agreements with other countries for cooperation in investigating and prosecuting individuals, exchanging information, identifying and tracing persons and properties, and other matters related to attachment, seizure, and extradition.

  The emphasis on international cooperation in this principle is mirrored in the provisions of Section 9A. Special investigative techniques like intercepting communications and accessing computer systems can gather crucial evidence that can be shared with foreign counterparts, thus facilitating international cooperation in combating money laundering.

**International Best Practices**

**FATF Recommendations**

**FATF Recommendation 30 – Responsibilities of Law Enforcement and Investigative Authorities:**

This recommendation underscores the responsibilities of law enforcement and investigative authorities in conducting money laundering and terrorist financing investigations, in accordance with national AML/CFT policies. In the context of Section 9A of the AMLA, 2010, it mandates that the investigating officer should have the responsibility and authority to use special investigative techniques like undercover operations, intercepting communications, accessing computer systems, and controlled delivery. These techniques, which align with the proactive parallel financial investigation approach suggested by Recommendation 30, serve to enhance the effectiveness and efficiency of investigations, particularly those related to major proceeds-generating offenses. Recommendation 30 also emphasizes the need for expeditious actions to identify, trace, freeze, and seize property suspected to be proceeds of crime. This complements the investigative techniques outlined in Section 9A, enabling Pakistani authorities to promptly respond to potential money laundering activities and disrupt the financial networks of criminals and terrorists. Furthermore, the recommendation encourages international cooperative investigations, highlighting the necessity of

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cross-border collaboration in tackling money laundering, an aspect that Section 9A supports through its flexible framework for implementing investigative techniques in response to foreign requests.

**FATF Recommendation 31 – Powers of Law Enforcement and Investigative Authorities:** This recommendation encourages countries to permit their competent authorities to use a wide range of investigative techniques in the fight against money laundering, associated predicate offenses, and terrorist financing. The special investigative techniques outlined in Section 9A of the AMLA, 2010, align well with this recommendation, demonstrating Pakistan’s commitment to employ comprehensive and internationally recognized methods in its investigations.

These investigative techniques include undercover operations, intercepting communications, accessing computer systems, and controlled delivery. Moreover, Recommendation 31 emphasizes the power of competent authorities to compel the production of records, search persons and premises, take witness statements, and seize and obtain evidence, all of which support the effective execution of the special investigative techniques that an investigating officer may employ under Section 9A.

The recommendation also stresses the importance of having effective mechanisms to identify accounts and assets, which further facilitate the tracing and potential freezing or seizure of assets related to money laundering or terrorist financing. This is crucial to the successful implementation of Section 9A, enhancing Pakistan’s ability to disrupt financial networks linked to criminal activities.

Finally, Section 9A ensures the flexibility necessary for conducting comprehensive investigations by allowing for an extension of the investigation period, subject to court approval. This aligns with the adaptable approach advocated by FATF in Recommendation 31, enabling competent authorities to thoroughly investigate complex money laundering cases.

**FATF Recommendation 37 – Mutual Legal Assistance:** This recommendation emphasizes the importance of countries providing the broadest possible range of mutual legal assistance in relation to money laundering and associated offenses. When an investigation is triggered abroad but needs to be implemented in Pakistan, the mechanisms established by Section 9A come into play. The section’s stipulations provide clear legal grounds for implementing special investigative techniques such as undercover operations, intercepting communications, accessing computer systems, and controlled delivery, even when such investigations originate from foreign requests. The provisions of Section 9A enable foreign jurisdictions to rely on Pakistan’s cooperation in their investigations, fostering a collaborative approach to tackling money laundering. The judicial oversight and legislative framework also ensure that such assistance is granted in compliance with the principles of legality, proportionality, and respect for human rights.

**FATF Recommendation 40 – Other Forms of International Cooperation:** Recommendation 40 encourages the exchange of information internationally, fostering collaboration beyond just formal mutual legal assistance. For instance, when a money laundering investigation is initiated abroad and implicates individuals or entities within Pakistan, the investigating officer, with the court’s permission, can employ the special investigative techniques outlined in Section 9A to assist the foreign jurisdiction. This could involve providing information derived from intercepting communications, accessing implicated computer systems, or managing controlled deliveries, all of which can significantly contribute to the foreign investigation. Additionally, the Financial Monitoring Unit can

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95 FATF Recommendation 37, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations
96 FATF Recommendation 40, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations
play a crucial role in this process, facilitating the international exchange of financial intelligence and information in line with Recommendation 40.

In essence, FATF Recommendations 37 and 40, when viewed in the context of the legal provisions of Section 9A, underscore Pakistan’s commitment to contributing to the global fight against money laundering. The robust legal framework provided by Section 9A allows for the implementation of special investigative techniques domestically, which can significantly support international investigations, foster mutual legal assistance, and facilitate information exchange, thereby strengthening global efforts to combat money laundering.
Section 13 – Power of Survey

13. Power of Survey. —

1) Notwithstanding anything contained in any other provisions of this Act, where an investigating officer, on the basis of material in his possession, has reasons to believe that an offence of money laundering has been committed, he may, with the permission of the Court, enter any place,—

a) within the limits of the area assigned to him; or

b) in respect of which he is authorized for the purposes of this section by such other authority who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping him in, such act so as to,—

i) afford him the necessary facility to inspect such record as he may require and which may be available at such place;

ii) afford him the necessary facility to check or verify the proceeds of crimes or any transaction related to proceeds of crimes which may be found therein; and

iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation.—For the purpose of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

2) The investigating officer referred to in sub-section (1), shall, after entering any place referred to in that sub-section and within forty-eight hours immediately after completion of survey, forward a copy of the report on survey to the head of the concerned investigating or prosecuting agency in a sealed envelope.

3) The investigating officer acting under this section may,—

a) place marks of identification on the records inspected by him and make or cause to be made extracts or copies there from.

b) make an inventory of any property checked or verified by him, and

c) record the statement of any person present in the place which may be useful for or relevant to any proceeding under this Act.

Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 4.
Analysis of Section 13 of the AMLA

Section 13 of the Anti-Money Laundering Act grants investigating officers the power of survey in order to facilitate investigations into suspected money laundering offenses. A survey allows the officer, with court permission, to enter premises where activities related to the commission of the offense are taking place. The officer can inspect records, check and verify proceeds of crimes or related transactions, and obtain relevant information. The section also permits the officer to mark identification on records, make extracts or copies, create inventories of checked property, and record statements from individuals present during the survey. This power is essential in gathering evidence and obtaining necessary information for proceedings under the Act.

Section 13 of the Anti-Money Laundering Act deals with the powers of survey granted to investigating officers when there is a reasonable belief that a money laundering offense has taken place. This section can be split into the following components:

1. Court permission:

Before conducting a survey, the investigating officer must obtain permission from the Court. This ensures that there is legal oversight and that the officer has a valid reason to carry out the survey.

2. Survey locations:

The investigating officer can conduct the survey at any location where they believe the money laundering offense is being carried out, either within their assigned area or where they have been authorized by another authority. The location may also include places where records or properties related to the offense are being stored, even if no active operations are happening there.

3. Cooperation from individuals:

During the survey, the investigating officer can require cooperation from proprietors, employees, or any other persons involved in the suspected activity. This cooperation includes providing access to relevant records, allowing the officer to verify any proceeds of crimes or related transactions, and supplying useful or relevant information for the proceedings under the Act.

4. Post-survey report:

After completing the survey, the investigating officer has 48 hours to submit a sealed report to the head of the concerned investigating or prosecuting agency. This report must detail the findings of the survey and any relevant information discovered during the process.

5. Investigating officer’s authority during the survey:

The investigating officer is allowed to place identifying marks on inspected records, make copies or extracts, compile an inventory of verified properties, and record statements from individuals present at the location that may be relevant to the proceedings under the Act.

Substantive Issues

Ambiguity in Scope and Limitations: Section 13 lacks clarity regarding the scope of the power to survey. It doesn’t specify the types of premises that can be surveyed or the circumstances under which a survey can be conducted. This ambiguity could lead to the potential violation of individuals’ rights and possible abuse of power. A clearer definition in Section 13(1) would help mitigate these issues.
Furthermore, there is a lack of definitive clauses in this Act, concerning instances where an investigating officer, armed with substantial evidence, believes a money laundering offence has been committed. Under the current legislation, the provision for an investigating officer to enter any implicated place for a survey lacks clear boundaries, oversight and fails to respect the limitations and safeguards provided in this section.

**International Best Practices**

**United States**

**Legal Thresholds:** Probable cause is a legal standard requiring a reasonable belief that a crime has been committed or that evidence of the crime can be found at the specific location to be searched. This standard is applied to prevent arbitrary searches and ensure that law enforcement has an adequate basis for conducting a search.

Probable cause is the standard for obtaining a search warrant under the Fourth Amendment to the U.S. Constitution, as well as in Rule 41 of the Federal Rules of Criminal Procedure198.

**Judicial Oversight:** Judicial oversight ensures that searches are conducted only after an impartial assessment of the evidence. A neutral and detached magistrate, such as a judge or a magistrate judge, must review the evidence and determine if probable cause exists before issuing a search warrant. This ensures the protection of individual rights and prevents abuse of power.

The Fourth Amendment and Rule 41 of the Federal Rules of Criminal Procedure require law enforcement to obtain a warrant from a neutral and detached magistrate before conducting a search199.

**Scope and Time Limitations:** Rule 41 of the Federal Rules of Criminal Procedure sets forth requirements for search warrants, including limitations on the scope of the search (i.e., the specific areas and items to be searched) and the time for executing a search (i.e., the search must be conducted within a reasonable time after the warrant is issued). These limitations prevent unreasonable searches and ensure that searches are conducted efficiently and within a specified timeframe.

**Documentation and Reporting:** Proper documentation and reporting ensure transparency and accountability in law enforcement activities. Rule 41(f) requires officers to prepare a written inventory of the property seized and provide a copy to the person from whom the property was taken. This allows individuals to know the extent of the search and the items seized, and it provides a record for future legal proceedings.

**United Kingdom**

**Legal Thresholds:** “Reasonable grounds for suspicion” is a lower legal standard than probable cause, but it still requires a factual basis for suspecting that evidence of a crime can be found at the specific location to be searched. This standard maintains a balance between the investigative needs of law enforcement and the protection of individual rights.

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198 ‘Probable Cause’ (Legal Information Institute) <https://www.law.cornell.edu/wex/probable_cause> accessed 13 July 2023

199 ‘Rule 41. Search and Seizure’ (Legal Information Institute) <https://www.law.cornell.edu/rules/frcrmp/rule_41> accessed 13 July 2023
The Police and Criminal Evidence Act 1984 (PACE) requires “reasonable grounds for suspicion” to obtain a search warrant under Section 8.

**Judicial Oversight:** The requirement to obtain a search warrant from a justice of the peace or a judge under PACE ensures that an impartial assessment of the evidence is conducted before a search is authorized. This oversight prevents abuse of power and helps protect individual rights.

PACE mandates that law enforcement obtain a search warrant from a justice of the peace or a judge in certain circumstances, as outlined in Section 8.

**Scope and Time Limitations:** Sections 15 and 16 of PACE provide limitations on the scope and time of searches, ensuring that searches are conducted efficiently and within a specified timeframe. This prevents unreasonable searches and protects the rights of individuals subjected to searches.

**Documentation and Reporting:** PACE Code B provides guidelines on the recording and reporting of search activities. These guidelines require law enforcement officers to prepare search records detailing the grounds for the search, the items sought, the items seized, and any damage caused during the search. Providing a copy of the search record to the occupier of the premises ensures transparency and accountability.

**Australia**

**Legal Thresholds:** “Reasonable grounds for suspecting” is a legal standard requiring a factual basis for suspecting that evidence relevant to an offense can be found at the specific location to be searched. These standard balances the needs of law enforcement with the protection of individual rights.

The Crimes Act 1914 requires "reasonable grounds for suspecting" the existence of evidence relevant to an offense to obtain a search warrant under Section 3E.

**Judicial Oversight:** Requiring law enforcement to obtain a search warrant from a magistrate or judge under the Crimes Act 1914 ensures an impartial assessment of the evidence before a search is authorized. This oversight helps prevent abuse of power and protect individual rights.

The Crimes Act 1914 requires law enforcement to obtain a search warrant from a magistrate or judge under Section 3E.

**Scope and Time Limitations:** Sections 3F and 3H of the Crimes Act 1914 impose limitations on the scope and time of searches, ensuring that searches are conducted efficiently and within a specified timeframe. This prevents unreasonable searches and protects the rights of individuals subjected to searches.

**Documentation and Reporting:** The Crimes Act 1914 and the Australian Federal Police guidelines require proper documentation and reporting of search activities. Law enforcement officers must prepare search records detailing the grounds for the search, the items sought, the items seized, and any damage caused during the search. Providing a copy of the search record to the occupier of the premises ensures transparency and accountability.

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Section 14 – Search and Seizure

14. Search and Seizure. —

1) Subject to sub-section (2), where the investigating officer, on the basis of information in his possession, has reason to believe that any person—

a) has committed any act which constitutes money-laundering;

b) is in possession of any property involved in money laundering; or

c) is in possession of any record which may be useful for or relevant to proceedings under this Act, he may either himself, or authorize any officer subordinate to him to,—

i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such record or properties are kept;

ii) break open the lock of any door, box locker, safe, almirah or other receptacles for exercising the powers conferred by clause (i) where the keys thereof are not available;

iii) seize any such record or property found as a result of such search;

iv) place marks of identification on such record or make, or cause to be made, extracts or copies therefrom;

v) make a note of any inventory of such record or property; or

vi) examine any person, who is found to be in possession or control of any such record or property, in respect of all matters relevant for the purposes of any investigation under this Act.

2) The powers to search under sub-section (1) shall be exercisable by the investigating officer with the prior permission of the Court: Provided that where immediate action is required, the powers of search and seizure shall be exercisable with the prior permission of the senior officer of the concerned investigating or prosecuting agency not below the rank of an officer of BS–20.

3) The investigating officer shall, within forty-eight hours immediately after search and seizure, forward a copy of the report on search and seizure to the head of the concerned investigating or prosecuting agency in a sealed envelope.

4) Where the investigating officer, upon information obtained during survey under section 13, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence.

5) omitted.

202 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 4.
Analysis of Section 14 of the AMLA

By outlining a clear and thorough procedure for search and seizure during money laundering investigations, Section 14 of the AMLA 2010 ensures that law enforcement officials in Pakistan have the necessary tools to effectively investigate these offenses. The provisions of this section not only empower investigating officers but also uphold the rights of individuals involved in the investigation by providing due process protections and requiring judicial oversight. Here is a detailed breakdown of its provisions:

**Obtaining a search warrant:** One of the key elements of Section 14 is the requirement for an investigating officer to obtain a search warrant from a court before conducting a search. This judicial oversight acts as a safeguard against arbitrary or unwarranted searches, ensuring that there is a reasonable basis for suspecting a money laundering offense. The involvement of the court adds legitimacy to the search operation and protects the rights of individuals.

**Scope of the search:** Once the search warrant is obtained, the investigating officer is authorized to enter and search any premises specified in the warrant. This includes a wide range of locations such as residential, commercial, or industrial properties. By allowing the search to extend to any person present at the premises, the investigating officer can uncover any evidence that may be hidden on individuals or within their immediate surroundings. This provision enables a thorough investigation while balancing the need for privacy and respect for individual rights.

**Seizure of evidence:** If during the search, the investigating officer discovers documents, records, or property that they reasonably believe to be connected to the money laundering offense, they are empowered to seize and secure such evidence. This step is crucial for preserving the integrity of the evidence and ensuring its availability for subsequent investigations or legal proceedings. The seizure of relevant evidence strengthens the investigative process and contributes to the prosecution of money laundering offenders.

**Examination of persons present:** Section 14 grants investigating officers the authority to question any person present at the premises regarding the seized evidence. This provision enables the officer to gather additional information, clarify the nature of the evidence, and establish connections to the alleged offense. However, it is important to note that individuals retain their right to remain silent and cannot be compelled to provide self-incriminating information. This safeguard protects against potential coercion or violation of individual rights during the questioning process.

**Reporting to the court:** Following the search and seizure operation, the investigating officer is required to submit a detailed report to the court that issued the warrant. This report includes an inventory of the seized property and a comprehensive description of the search process. By reporting to the court, the investigating officer provides transparency and accountability, allowing the court to review the actions taken and make informed decisions regarding the retention or return of the seized property. This reporting requirement ensures that the search and seizure process remains within the bounds of the law and prevents any potential misuse of power.

Section 14 of the AMLA 2010 establishes a robust framework for search and seizure activities during money laundering investigations in Pakistan. The provisions within this section strike a balance between empowering investigating officers to gather evidence effectively and protecting the rights of individuals involved in the investigation. Through the requirement of obtaining a search warrant, conducting searches within the authorized scope, seizing relevant evidence, questioning individuals, and reporting to the court, this section ensures accountability, transparency, and adherence to due process throughout the search and seizure process.
**Other Relevant Laws**

Section 22 of the AMLA 2010 extends the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) to govern various aspects of proceedings under the AMLA. This includes matters such as arrest, bail, search, seizure, investigation, prosecution, and other related proceedings, as long as they are not inconsistent with the provisions of the AMLA. Hence, it is imperative to examine the relevant provisions of the CrPC 1898.

Section 98 of the CrPC 1898 enables a First Class Magistrate to issue a warrant for the search of a place suspected to be used for storing stolen property, forged documents, counterfeit currency, or materials for counterfeiting. This warrant grants a police officer above the rank of constable the authority to enter and search the premises, seize suspected property, documents, or materials, and apprehend individuals involved in the offense.

Similarly, Section 523 of the CrPC 1898 deals with the seizure of property under Section 51 or property suspected to be stolen. In such cases, a police officer must promptly report the seizure to a Magistrate, who will then decide on the appropriate course of action regarding the disposal, delivery, or custody of the seized property. If the rightful owner is known, the Magistrate may order the property to be returned to them, while if the owner is unknown, the Magistrate may detain the property and issue a proclamation to invite potential claimants to establish ownership within a specified timeframe.

In connection to these provisions, Section 14 of the AMLA 2010 comes into play. It empowers investigating officers, based on reasonable grounds, to conduct searches and seizures related to money laundering offenses. This includes the authority to enter and search premises, seize relevant records or property, mark and make copies or extracts of seized items, and examine individuals in possession or control of such items. However, prior permission from the court or a senior officer of the investigating or prosecuting agency is required for these actions.

Section 98 primarily focuses on offenses involving stolen property, forged documents, counterfeit currency, and counterfeiting materials, whereas Section 14 specifically addresses money laundering offenses and the search and seizure of property, records, and evidence related to such offenses. Additionally, Section 14 introduces the requirement for prior permission from the court or a senior officer, acknowledging the need for additional safeguards and oversight in the specialized field of money laundering investigations.

This highlights the distinct legal framework and procedures established by the AMLA 2010 to address the unique challenges posed by money laundering offenses. The AMLA provisions are designed to align with international standards and best practices in combating money laundering and terrorism financing, supplementing the general provisions of the CrPC 1898 with specialized measures tailored to the complexities of money laundering cases.

**Key Cases**

*Abdul Ghaffar vs. The State & Habib ur Rehman Sub-Inspector (Cr. Misc. Appn. No. 263 of 2021)*

FIR No. 04/2021 dated 20.03.2021, for which the accused was granted bail before arrest, was registered against the applicant under Sections 161/165/165-A/109 PPC. During investigation, it transpired that the accused, during his posting as In-charge Cyber Crime Reporting Centre (CCRC) Karachi, extended undue favor to M/s. ABTACH (PVT) Ltd., against receipt of illegal remuneration. Consequently, the offences listed in the aforementioned FIR comprised the predicate offences for a subsequent FIR No.
08/2021, registered under sections 3 & 4 of AMLA, 2010. The applicant was thus arrested and his remand was confirmed by Judicial Magistrate III, Karachi South.

The Court held that section 14 of the Act gave powers to search and seize to the investigating authority to gather evidence as required. The section further provides that such action requires approval of the Court of Sessions but the same approval may be obtained from an officer of the investigating agency not below the rank of BS-20. In the instant case, permission for arrest had been obtained by Director, FIA Sindh, Zone-I. The arrest was hence held to be legal, as per section 14(2) of the AMLA 2010.

**International Best Practices**

**FATF Recommendations**

**Recommendation 30 – Responsibilities of Law Enforcement and Investigative Authorities:** The FATF Recommendation emphasizes the need for competent authorities to have adequate powers to conduct investigations and gather evidence. In this context, authorities should have the power to search persons and premises, access all necessary documents and information, and compel the production of records.

Recommendation 30 of the FATF Recommendations aligns with Section 14 of the AMLA 2010 by emphasizing the role of designated law enforcement authorities, proactive parallel financial investigations, asset freezing and seizure, and international cooperation in combating money laundering. Section 14 provides the legal framework for search and seizure activities, enabling investigating officers to exercise their powers in line with the recommendations outlined by FATF.

**Recommendation 31 – Powers of Law Enforcement and Investigative Authorities:** Recommendation 31 of the FATF highlights the importance of empowering law enforcement and investigative authorities with the necessary tools and powers to effectively combat money laundering and terrorist financing. A key aspect of this recommendation is the establishment of mechanisms that enable these authorities to identify, trace, and seize or freeze property that is, or may become, subject to confiscation.

Section 14 of the AMLA 2010 aligns with Recommendation 31 by outlining the specific powers of search and seizure granted to investigating officers. This section empowers the officers to enter and search premises where they have reasonable grounds to believe that property involved in money laundering or relevant records are kept. They are authorized to seize any records or property discovered during the search, and also have the authority to break open locks if necessary.

The objective of Recommendation 31 and Section 14 is to equip investigators with the means to disrupt illicit financial activities by depriving criminals of the proceeds of their crimes. By identifying, tracing, and seizing assets linked to money laundering and terrorist financing, authorities can effectively dismantle criminal networks and prevent further utilization or dissipation of illicit funds.

**United States**

In the United States, the powers of search and seizure in relation to money laundering investigations align with Section 14 of the AMLA 2010. These powers are guided by constitutional safeguards and specific legal provisions. The Fourth Amendment to the U.S. Constitution is a cornerstone, providing

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\(^{203}\) FATF Recommendation 30, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations

\(^{204}\) FATF Recommendation 31, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations
COMMENTARY ON THE ANTI-MONEY LAUNDERING ACT 2010

protection against unreasonable searches and seizures. This means that law enforcement agencies must obtain a warrant, supported by probable cause, before conducting a search or seizing evidence related to money laundering. An example demonstrating the application of these principles can be found in the case of United States vs. $124,700 in U.S. currency.205

To operationalize these principles, the United States follows the Federal Rules of Criminal Procedure, particularly Rule 41. This rule outlines the procedures for obtaining a search warrant, including the necessary requirements for the warrant application, the issuance of the warrant, and the execution and return of the warrant. It ensures that searches and seizures comply with due process standards and that evidence obtained is lawfully obtained and admissible in court.

Furthermore, U.S. federal statutes, specifically 18 U.S. Code § 981 (Civil Forfeiture) and § 982 (Criminal Forfeiture), provide the legal framework for the seizure and forfeiture of property connected to money laundering offenses. These statutes align with Section 14 of the AMLA 2010 by empowering investigating officers to enter and search premises where there is reason to believe money laundering-related records or properties are kept. The statutes establish procedures for obtaining warrants and ensure due process protections throughout the forfeiture process. It is important to note that, in certain circumstances such as exigent situations or lawful arrests, law enforcement agencies may seize property upon probable cause even without a warrant, although post-seizure judicial review is typically required.

These legal provisions and constitutional safeguards in the United States strike a balance between the investigative powers needed to combat money laundering and the protection of individual rights, privacy, and due process. They provide a framework that ensures effective law enforcement while upholding the principles of fairness and proportionality.

United Kingdom

In the United Kingdom, the Proceeds of Crime Act 2002 (POCA) grants significant powers to law enforcement authorities regarding search and seizure in the context of money laundering investigations, aligning with the provisions outlined in Section 14 of the AMLA 2010. POCA empowers authorities to take proactive measures to combat money laundering, including the application for search and seizure warrants, as specified in Sections 352–353. These warrants allow law enforcement officials to enter premises, seize relevant records or property, and freeze or restrain assets involved in money laundering offenses206.

Importantly, POCA emphasizes the importance of judicial oversight and due process. It requires law enforcement authorities to seek court approval before carrying out specific actions related to search and seizure, ensuring that these powers are not abused and that individual rights are protected. The involvement of the court serves as a safeguard, ensuring that searches and seizures are conducted lawfully and based on reasonable grounds.

Furthermore, POCA provides opportunities for affected parties to challenge the seizure of their property. It recognizes the need for transparency and fairness by allowing individuals to contest the legitimacy of the seizure through the established legal process. This allows for the protection of innocent parties whose assets may have been wrongly implicated in money laundering activities.

Sections 297–298 of POCA specifically address the seizure and detention of cash related to money laundering offenses. These provisions outline the procedures and requirements for seizing and retaining cash that is suspected to be the proceeds of crime. They further emphasize the need for law

205 781 F.3d 949 (8th Cir. 2015)
206 Proceeds of Crime Act 2002 (POCA), sections 352–353
enforcement authorities to follow the prescribed legal framework and obtain appropriate court orders when exercising their powers.

By incorporating these provisions, POCA establishes a comprehensive framework for search and seizure, aligning with the principles set out in Section 14 of the AMLA 2010. It balances the need for effective investigation and asset recovery with the protection of individual rights and ensures that authorities operate within the boundaries of the law.

**Australia**

In Australia, the Proceeds of Crime Act 2002 (POCA) grants authorities the ability to restrain, manage, and dispose of property suspected to be linked to criminal proceeds. This legislation, which addresses the issue of money laundering, provides investigating officers with the power to enter and search various premises where there is a reasonable belief that records or properties related to money laundering may be found. Additionally, the Act enables the seizure of any evidence discovered during these searches that is deemed to be connected to money laundering activities. Furthermore, POCA allows for the appointment of a trustee or responsible person to oversee the management of the restrained property, ensuring its preservation and value retention during the retention period. The legislation also incorporates safeguards to protect the rights of third parties, offering them the opportunity to apply to the court for exclusion from restraining or forfeiture orders.

Comparing this with Section 14 of the AMLA 2010, similarities can be observed. Both jurisdictions acknowledge the importance of restraining and managing properties associated with money laundering. They empower investigating officers to conduct searches, seize relevant evidence, and appoint trustees or responsible individuals to manage the restrained assets. Moreover, both legal frameworks consider the rights of third parties and provide mechanisms for them to seek exclusion from restraining or forfeiture orders. However, it is essential to note that specific procedures, requirements, and safeguards may vary between the two jurisdictions. Therefore, a comprehensive analysis of the respective laws is necessary to fully understand the nuances and details of their search and seizure provisions.
Section 15 – Search of Persons

15. Search of Persons. — 207

1) If an investigating officer, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about the person or anything under his possession, ownership or control, any record or property which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act.

2) The investigating officer shall, within forty-eight hours immediately after search and seizure, forward a copy of the report on search and seizure to the head of the concerned investigating or prosecuting agency in a sealed envelope.

3) omitted.

4) omitted.

5) omitted.

6) No female shall be searched by anyone except a female.

7) The investigating officer shall record the statement of the person searched under sub-section (1) in respect of the records or property involved in money laundering and found or seized in the course of the search.

8) omitted.

Analysis of Section 15 of the AMLA

It is important to note that Section 15 of the Anti-Money Laundering Act 2010 (AMLA) grants investigating officers the authority to search individuals if there is reason to believe they possess concealed records or property relevant to money laundering proceedings. Following a search, a report must be sent to the head of the investigating or prosecuting agency within 48 hours, and statements from the searched individuals regarding any seized records or property must be recorded. Notably, female individuals can only be searched by female officers. In contrast, Section 14 deals with the search of buildings, places, vehicles, etc., where officers may suspect the presence of money laundering-related records or properties. These sections differ in terms of their scope and the entities being searched, with Section 15 focusing on individuals and Section 14 on physical locations.

Section 15 of the Anti-Money Laundering Act, which deals with the search of persons, sets forth specific provisions to ensure that searches are conducted in a lawful and respectful manner during money laundering investigations. The key aspects of this section can be elaborated as follows:

Reasonable grounds: An investigating officer must have reasonable grounds to believe that an individual possesses any documents or items related to money laundering offenses. This provision ensures that searches are not conducted arbitrarily or without proper justification.

207 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 4.
Gender considerations: To protect the dignity and privacy of the individual, the law stipulates that a female can only be searched by another female. This helps to avoid any potential misconduct or discomfort during the search process.

Reporting requirement: To maintain oversight and ensure that searches are conducted appropriately, any search performed under Section 14 must be reported to the head of the concerned investigating agency within 48 hours. This reporting mechanism acts as a check on the power of the investigating officer and helps to prevent any potential abuse of authority.

It is important to note that the investigating officers, after conducting a search and seizure under Section 14 and conducting a search of a person under Section 15 of the Anti-Money Laundering Act (AMLA), issue a show cause notice under Section 9(1) of the AMLA to the person concerned or the aggrieved persons. The purpose of this notice is to provide an opportunity for the individuals to explain the source of their income or the disposal of any other asset from which the property in question was obtained. They are also required to state why such property should not be forfeited to the federal government.

Key Cases

Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another (W.P. No. 1184/2021 & 1778/2021)

The court has established two important principles that are relevant under the concerned section. Firstly, it is mandated that a specialized investigating agency, as defined in Section 2(xviii) of the Anti-Money Laundering Act (AMLA) 2010, must conduct a separate investigation. This principle recognizes the significance of expertise and specialization in dealing with money laundering cases. By assigning these investigations to specialized agencies, the court ensures a focused and comprehensive approach to uncovering and prosecuting money laundering offenses.

Secondly, the court emphasizes the existence of specific procedures for seizure and search, which are provided separately. This principle underscores the need for clear and well-defined procedures to be followed when conducting seizure and search activities in relation to money laundering investigations. By delineating these procedures separately, the court aims to promote transparency, accountability, and adherence to the rule of law in the process of conducting seizures and searches.

International Best Practices

FATF Recommendations

Recommendation 31: Powers of law enforcement and investigative authorities: This recommendation emphasizes the importance of competent authorities having the necessary powers to search persons and seize evidence in money laundering cases. This includes the ability to search both natural and legal persons, access any relevant information, and seize documents, records, or property related to the offense.

United States

The Fourth Amendment to the United States Constitution protects individuals against unreasonable searches and seizures. This protection extends to searches of persons suspected of involvement in money laundering. Law enforcement must obtain a warrant based on probable cause before conducting
a search, except in specific situations such as consent searches, exigent circumstances, or searches incident to a lawful arrest.

One notable case related to searches in the context of money laundering investigations in the United States is United States v. Jacobsen (1984). In this case, the Supreme Court held that in situations where law enforcement conducts a search and seizure that is later determined to be lawful, evidence discovered during that search is admissible in court. The Court emphasized that the legality of a search is determined at its inception, rather than by its later fruits. This case reaffirmed the importance of the Fourth Amendment’s protections and established principles regarding the admissibility of evidence obtained through lawful searches in money laundering cases.

**United Kingdom**

The Police and Criminal Evidence Act 1984 (PACE) regulates the search of persons in the UK. PACE Code A provides guidance on the exercise of powers to search individuals, emphasizing the need for reasonable suspicion, respect for the person’s dignity, and the use of the least intrusive method of search. Officers must also have clear grounds for suspicion and must follow specific procedures when conducting a search.

- The Proceeds of Crime Act 2002 grants law enforcement the power to search persons and seize property connected to money laundering offenses.
- PACE Code A provides guidelines to ensure that searches are conducted respectfully, using the least intrusive methods, and with proper documentation.
- The search must be carried out using the least intrusive method possible, and officers must explain the legal basis and purpose of the search to the individual.
- Officers are required to document the details of the search, including the grounds for suspicion, the items seized, and any injuries or damage caused during the search.

**Canada**

The Canadian Charter of Rights and Freedoms protects individuals from unreasonable search and seizure under Section 8. Law enforcement must have reasonable grounds to believe that an offense has been committed and that the person has evidence related to the offense before conducting a search. Additionally, officers must follow specific procedures, such as obtaining a warrant or having the individual’s consent, to ensure the search is legally justified.

- Canadian law requires law enforcement officers to obtain a warrant based on reasonable grounds for a search in money laundering investigations.
- Warrantless searches are allowed under specific circumstances, such as when the person consents to the search, there is an imminent risk of evidence being destroyed, or the search is incident to a lawful arrest.

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Section 17 – Retention of Property

17. Retention of Property. — 209

1) Where any property has been seized under section 14 or section 15 and the investigating officer has, on the basis of material in his possession, reason to believe that such property is required to be retained for the purposes of investigation under section 9, such property may be retained for a period not exceeding ninety days from the time such property was seized:

Provided that the investigating officer shall duly inform the Court about any peculiar nature of the seized property and, where necessary, seek appropriate directions for its proper care during retention.

2) The investigating officer, immediately after he has passed an order for retention of property for purposes of investigation under section 9, shall forward a copy of the order to the head of the concerned investigating or prosecuting agency in a sealed envelope.

3) On the expiry of the period specified under sub-section (1), the property shall be returned to the person from whom such property was seized unless the Court permits retention of such property beyond the said period.

4) The Court, before authorizing the retention of such property beyond the period specified in sub-section (1), shall satisfy itself that the property is prima facie property involved in money laundering and the property is required for the purposes of investigation under section 9.

5) omitted.

Analysis of Section 17 of the AMLA

Retention of property, as outlined in Section 17 of the AMLA 2010, refers to the act of holding onto property that has been seized under sections 14 or 15 of the Act. It allows the investigating officer to retain the property for a maximum period of 90 days, provided there are reasonable grounds to believe that it is required for the purpose of investigating money laundering offenses under section 9. This section serves to strike a balance between the investigative needs of law enforcement agencies and the protection of individuals’ property rights. Retention of property is crucial in money laundering investigations for several reasons. Firstly, it enables the investigating authorities to preserve and secure the seized property, preventing its dissipation or disposal by potential offenders. By retaining the property, investigators can thoroughly examine and analyze it, gathering crucial evidence that could establish a link between the property and money laundering activities. This process aids in establishing a strong prima facie case against the individuals involved, helping to facilitate a fair and effective investigation.

One of the key aspects of Section 17 is the requirement for the investigating officer to promptly inform the court when property is seized under Section 14 or Section 15. This ensures transparency and provides an opportunity for judicial oversight, preventing arbitrary or unchecked retention of property. By involving the court in the process, individuals whose property has been seized are given an avenue to seek redress or challenge the seizure if they believe it was unjustified.

209 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 4.
Upon receiving the report from the investigating officer, the court evaluates the connection between the property and the alleged money laundering activities. If the court determines that there is a valid reason for retaining the property, it will issue an order allowing the property to be retained for a maximum of 90 days. This time limit is in place to prevent undue delays in the investigation process and to ensure that individuals' property is not held indefinitely without justification.

The court also has the power to extend the 90-day retention period if it finds that the investigation has not been completed and further retention is necessary. This flexibility allows the court to balance the need for a thorough investigation with the rights of property owners.

Additionally, Section 17 recognizes the possibility of perishable property or property that may rapidly deteriorate. In such cases, the court has the authority to order the sale of the property to preserve its value. The proceeds from the sale are held in place of the property and can be used as evidence or returned to the rightful owner, depending on the outcome of the investigation.

Lastly, if the property is determined to be unrelated to the money laundering activities or is no longer needed for the investigation or legal proceedings, the court can order the release of the property. This provision ensures that individuals who are not implicated in money laundering can reclaim their property.

Overall, Section 17 establishes a structured and transparent process for the retention, extension, release, or disposal of seized property during money laundering investigations. It strikes a balance between the needs of law enforcement agencies to conduct thorough investigations and the protection of individuals' property rights. By involving the court in the decision-making process, the section upholds the principles of fairness, accountability, and judicial oversight.

**Key Cases**

**Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another (W.P. No. 1184/2021 & 1778/2021)**

The Court laid down the following principles relevant under the concerned section:

- Any asset, property, or proceeds of crime obtained directly or indirectly from money laundering, or used or intended to be used in money laundering, fall under the scope of AMLA, 2010. Previous offenses committed by the accused person are not relevant unless included in the 1st Schedule of AMLA, 2010.
- A specialized investigating officer is appointed to handle property suspected to be involved in money laundering. The officer attaches the property, notifies the accused person, and investigates the source of income or assets. After considering the accused person’s reply, the officer can apply to the court for confirmation of the attachment.
- The court, under AMLA, 2010, can proceed with attachment, retention, seizure, and forfeiture of property, including in cases of predicate offenses and money laundering, after the conclusion of the trial, following proper hearing rights for the accused.

**International Best Practices**

**FATF Recommendations**

**Recommendation 4 – Confiscation and Provisional Measures:** The Recommendation states that Countries should implement measures similar to those outlined in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, with the aim of enabling competent authorities
to freeze, seize, and confiscate the following assets, while safeguarding the rights of innocent third parties: (a) laundered property, (b) proceeds derived from money laundering or predicate offenses, (c) property associated with financing terrorism, terrorist acts, or terrorist organizations, and (d) property of equivalent value. These measures should grant authorities the power to: (a) identify, trace, and assess assets subject to confiscation, (b) impose interim measures like freezing and seizing to prevent any transaction, transfer, or disposal of said assets, (c) undertake actions to prevent or invalidate actions that hinder the country’s ability to freeze, seize, or recover confiscated property, and (d) employ appropriate investigative measures.

Moreover, countries should consider implementing measures that allow for confiscation of such proceeds or assets without requiring a criminal conviction (known as non-conviction-based confiscation), or that place the burden on the offender to demonstrate the lawful origin of the assets subject to confiscation, in line with their domestic legal principles.

This recommendation aligns with Section 17 of AMLA 2010, which addresses the retention of property in the context of money laundering investigations. Section 17 ensures that property seized under the Act is retained for a specified period, subject to court approval, to facilitate investigations under Section 9. Similarly, the FATF recommendation emphasizes the need for countries to adopt measures allowing for the freezing, seizure, and confiscation of assets connected to money laundering and terrorist financing, while also safeguarding the rights of third parties. Both Section 17 and Recommendation 4 aim to provide a structured framework that balances the investigative requirements with the protection of property rights and the prevention of illicit activities.

**United States**

The Comprehensive Crime Control Act of 1984 in the United States introduced the Department of Justice Asset Forfeiture Program, which serves as a model for best practices in the management and disposition of forfeited property. This program aligns with the objectives of Section 17 of the AMLA 2010 by providing comprehensive guidelines for the retention and disposal of seized property.

In the United States, the Department of Justice Asset Forfeiture Program allows for the retention of property for investigative purposes. This means that seized assets can be held temporarily to facilitate ongoing investigations, similar to the provisions outlined in Section 17 of the AMLA 2010. The program ensures that property is managed transparently and with proper care throughout the entire process, including the retention period. This ensures that the rights of individuals whose property has been seized are safeguarded, similar to the requirement in Section 17 of the Pakistani law for the investigating officer to inform the court and seek appropriate directions for the proper care of the seized property.

The best practices highlighted by the U.S. Comprehensive Crime Control Act of 1984 and Title 18, United States Code, Section 981 include:

- A centralized asset forfeiture program that provides guidelines for the management and disposition of forfeited property.
- Transparency and proper handling of property throughout the seizure, retention, and disposal process.
- Protection of third-party rights during the asset forfeiture process.
- A system that allows for the retention of property for investigative purposes and the eventual disposal of forfeited property.

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Title 18 further supports the alignment between U.S. practices and Section 17 of the AMLA 2010 as it establishes the legal framework for the seizure and forfeiture of property involved in money laundering offenses. The provisions of this section include guidelines for obtaining seizure warrants, the management of seized property by the U.S. Marshals Service, and the eventual disposal of forfeited assets through the Asset Forfeiture Fund. These procedures demonstrate a structured and transparent approach to handling seized property, similar to the safeguards set forth in Section 17.

Comparing the American provision with Section 17, both emphasize the importance of retaining property for investigative purposes and providing guidelines for its management and disposal. Both systems aim to ensure transparency and proper handling of the seized property, taking into account the rights of individuals affected by the forfeiture process.

However, there are also some differences between the two provisions. While the American system has a centralized asset forfeiture program under the Department of Justice, Section 17 of the Pakistani law does not specifically outline a centralized program for the management of seized assets. Additionally, the American system includes the establishment of the Asset Forfeiture Fund to manage the proceeds from forfeited assets, whereas the Pakistani law does not explicitly address the handling of such funds.

Despite these differences, both the American provision and Section 17 reflect the importance of implementing a structured and transparent approach to the retention, management, and disposal of seized property in money laundering investigations. These provisions aim to balance the need for effective investigations with the protection of individuals’ rights and the integrity of the legal process.

**United Kingdom**

In the United Kingdom, the Proceeds of Crime Act 2002 (POCA) serves as a significant legislative framework for the retention, management, and disposal of property involved in money laundering and other criminal activities. This Act shares similarities with Section 17 of the AMLA 2010 in terms of establishing procedures for the handling of seized property.

Part 5 of POCA specifically focuses on civil recovery, which allows for the freezing and management of property suspected to be derived from unlawful conduct. This provision aligns with Section 17 of the AMLA 2010, which empowers investigating officers to retain property seized during money laundering investigations. Both provisions recognize the need to temporarily retain property to facilitate investigations and prevent the disposal or transfer of assets that may be connected to criminal activities.

Similarly, to Section 17, POCA provides provisions for extending the retention period if it is deemed necessary for ongoing investigations. This flexibility allows the authorities to retain the property for a longer period when required, ensuring that the investigation is not impeded and enabling the thorough examination of the seized assets.

The UK’s Asset Recovery Incentivization Scheme (ARIS) further complements POCA by establishing procedures and incentives for the recovery and sharing of assets among law enforcement agencies, prosecutors, and the courts. The best practices highlighted by POCA, and the ARIS include:

- A comprehensive legal framework that allows for the freezing, management, and disposal of property suspected to be the proceeds of crime.
- Provisions for extending the retention period when necessary for ongoing investigations.
- The authority to release or dispose of property when appropriate, ensuring proper management and disposal.
• Incentivizing the recovery and sharing of assets between law enforcement agencies, prosecutors, and the courts.
• Safeguarding the rights of third parties throughout the asset recovery process.

This scheme promotes collaboration and coordination in asset recovery efforts, enhancing the effectiveness of the overall process. While Section 17 of the AMLA 2010 does not explicitly address asset recovery incentivization, both the UK’s ARIS and Section 17 emphasize the importance of cooperation and coordination between relevant stakeholders involved in the retention, management, and disposal of seized property.

Moreover, both the UK’s POCA and Section 17 of the AMLA 2010 emphasize the significance of protecting the rights of third parties throughout the asset recovery process. These provisions aim to strike a balance between investigative requirements and the safeguarding of individuals’ rights, ensuring that innocent parties are not unduly impacted by the seizure and forfeiture of property.

In summary, the UK’s Proceeds of Crime Act 2002 and the Asset Recovery Incentivization Scheme establish a robust framework for the retention, management, and disposal of property involved in money laundering and other criminal activities. These provisions share similarities with Section 17 of the AMLA 2010, as they provide clear guidelines for the retention of seized property, extension of the retention period when necessary, and the release or disposal of property in appropriate circumstances. Additionally, all three provisions prioritize the protection of third-party rights and encourage collaboration among relevant stakeholders involved in asset recovery efforts.

Australia

In Australia, the Proceeds of Crime Act 2002 establishes provisions for the restraint, management, and disposal of property suspected to be the proceeds or instrumentalities of crime. This legislation shares similarities with Section 17 of the AMLA 2010, as both provide guidelines for the handling of seized property in the context of money laundering investigations.

One commonality between the Australian and Pakistani laws is the recognition of the need to restrain and manage property suspected of being derived from criminal activities. Both provisions aim to prevent the dissipation or disposal of assets that may be connected to unlawful conduct. This aligns with the objective of effective asset management during the course of an investigation, as outlined in Section 17 of the Pakistani law.

The Australian law also emphasizes the appointment of a trustee or responsible person to manage the restrained property during the retention period. Similarly, Section 17 of the AMLA 2010 requires the investigating officer to inform the court about any peculiar nature of the seized property and, if necessary, seek appropriate directions for its proper care during retention. Both provisions acknowledge the importance of proper management and preservation of the value of the retained property during the investigation.

Furthermore, both the Australian Proceeds of Crime Act and Section 17 of the AMLA 2010 incorporate safeguards to protect the rights of third parties. In Australia, third parties have the ability to apply to the court for the exclusion of their interest from restraining orders or forfeiture orders. This provision ensures that individuals who are not implicated in the criminal activity have the opportunity to assert their rights over the property. Section 17 of the AMLA 2010 also recognizes the rights of bona fide third

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parties, ensuring that their interests are considered in the retention, release, or disposal of the seized property.

The appointment of the Official Trustee in Bankruptcy in Australia to manage the restrained property reflects a specific mechanism for the preservation and appropriate handling of the assets. While Section 17 of the AMLA 2010 does not explicitly mention the appointment of a trustee, both provisions emphasize the need for responsible and proper care of the retained property during the investigation process.

Australia's Proceeds of Crime Act 2002 and Section 17 of the AMLA 2010 share common objectives and practices in the restraint, management, and disposal of property suspected to be involved in criminal activities. Both provisions establish a legal framework for asset management during investigations, highlight the appointment of responsible individuals or entities, safeguard the rights of third parties, and prioritize the preservation of property value. These similarities indicate a shared commitment to effective asset control and protection of individuals' rights in the context of money laundering investigations.
Section 18 – Retention of Records

18. Retention of Records. —

1) Where any record has been seized under section 14 or section 15 and the investigating officer has reason to believe that any of such records are required to be retained for an investigation under this Act, he may retain such records for a period not exceeding ninety days from the time the record was seized.

(2) The person, from whom records were seized, shall be entitled to obtain copies of records retained under sub-section (1).

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the Court permits retention of such records beyond the said period.

(4) The Court before authorizing the retention of such records beyond the period mentioned in sub-section (1) shall satisfy itself that the records were required for the purposes of investigation under section 9.

(5) omitted.

Analysis of Section 18 of the AMLA

Section 18 of the AMLA deals with the retention of records and sets forth specific provisions regarding the duration and control of such retention. The objectives and purposes of this section are primarily aimed at facilitating the investigation of crimes related to money laundering and providing necessary safeguards to protect the rights of individuals whose records have been seized.

One of the main objectives of Section 18 is to allow investigating officers to retain records that have been identified pursuant to Sections 14 and 15 of the AMLA. These sections typically deal with the identification and seizure of records that are relevant to the investigation of money laundering or other financial crimes. By enabling the retention of such records, the section aims to ensure that investigators have access to the necessary evidence and information to effectively carry out their investigations. The section specifies that the investigating officer may retain the seized record for a maximum period of ninety days. This duration begins from the date of seizure. The purpose of this time limit is to prevent indefinite retention of records and strike a balance between the investigative needs and the rights of the person from whom the records were seized.

To further safeguard the rights of individuals, Section 18 introduces controls and provisions for the person whose records have been seized. The section states that the person from whom the information or record was seized is entitled to obtain copies of it. This provision ensures that individuals have access to their own information and can exercise their rights effectively, even during the investigative process.

Additionally, the section emphasizes that after the expiration of the ninety-day period, the retained records are to be returned to the person from whom they were seized, unless the Court permits their retention beyond the specified period. This requirement serves as a safeguard against the unnecessary

212 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 4.
and prolonged retention of records and ensures that the investigating officer must demonstrate a valid reason for retaining the records beyond the prescribed time limit.

Furthermore, Section 18 mandates that the Court must determine whether the retention of records beyond the ninety-day period is necessary under Section 9 of the AMLA or not. Section 9 typically deals with matters related to the investigation, prosecution, and prevention of money laundering. By requiring the Court's evaluation, this provision ensures that the continued retention of records aligns with the legal requirements and the purposes of the AMLA.

**Substantive Issues**

The Section deals with procedural requirements which fall within the scope of the investigative process and thus must be considered and complied with when dealing with retention of certain records necessary for the investigation. The process of investigation has been explained within Section 9 of the Act and has been reviewed previously in this document and thus, does not require discussion again. However, it is necessary to mention that the process of retention has been defined within sub-section 3 of Section 9 which provides that if an investigating officer identifies that retention of property or record seized under Section 14 or 15 is necessary, then they will apply for a Court order to give effect to such retention.

Moreover, Section 9 also requires the party against whom the record has been collected to be given an opportunity to be heard to prove that the record does not reflect that they have been involved in money laundering. However, after this opportunity is provided and the court decides that the record is necessary for investigation as it may reflect some form of contribution to money laundering, then it will pass an order confirming the retention of such record which in accordance with Section 18 will be retained for an initial period of ninety days, post which any further retention must be confirmed by the Court.

One significant factor which the Court must consider when authorizing retention of records is their importance in investigating under Section 9 and thus, retention must only be allowed when a link between the record and the crime can be made out. Thus, if it is discovered that the records retained are significant and the investigation has gone beyond the ninety-day period, then the time period for which the record may be retained can be extended by the Court.

**International Best Practices**

**FATF Recommendations**

The FATF Recommendations do not provide information relating to the retention of records however, it establishes an overarching guidance on the powers of law enforcement agencies. It provides that law enforcement officers must be allowed to obtain access to all necessary documents and information which they require for an investigation to be carried out. This includes powers to use compulsory measures for the production of records held by financial institutions, DNFBPs and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence.\(^{213}\)

The Recommendations also require certain safeguards to be employed to protect information exchange which may apply to records retained for the purposes of an investigation as well. The Recommendations provide that information exchanged must only be used for the intended purpose for

which it was sought or provided. Any dissemination of this information to other authorities or third parties, or its utilization for administrative, investigative, prosecutorial, or judicial purposes beyond the initial approval, must require prior authorization from the relevant competent authority.

To maintain the integrity of the investigation or inquiry, competent authorities must maintain the appropriate confidentiality for any request for cooperation and the information exchanged. This must be consistent with both parties’ privacy and data protection obligations. Competent authorities must, at the very least, protect exchanged information in the same way they would protect similar information acquired from domestic sources. Countries must establish controls and safeguards to guarantee that exchanged information is used only as authorized.

The exchange of information must occur securely and through reliable channels or mechanisms. Requested competent authorities may decline to provide information if the requesting competent authority cannot effectively safeguard the information.

Thus, by introducing sections on search, seizure, and retention of records Pakistan’s AMLA 2010 has established powers and procedures in line with the FATF Recommendations.

**Model Provisions**

The ‘Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime’ provide guidelines on production orders and information gathering powers of law enforcement agencies. Section 77 of the Model Provisions deal with this and state:

1. “Where there are reasonable grounds to believe that a person has been, is or will be involved in the commission of a serious offence, and a police officer has reasonable grounds for suspecting that any person has possession or control of:

   (a) a document relevant to identifying, locating or quantifying property of the person, or to identifying or locating a document necessary for the transfer of property of such person; or

   (b) a document relevant to identifying, locating or quantifying tainted property in relation to the offence, or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence, the police officer may apply ex parte and in writing to a [judge in chambers] for an order against the person suspected of having possession or control of a document of the kind referred.

2. A police officer may apply ex parte and in writing to a [judge in chambers] for an order against the person suspected of having possession or control of a document relevant to identifying, locating or quantifying terrorist property or to identifying or locating a document necessary for the transfer of terrorist property, where there are reasonable grounds to believe that the person has possession or control of such a document.

3. An application under this section shall be supported by an affidavit.

4. The judge may, if he or she considers there are reasonable grounds for so doing, make an order that the person produce to a police officer, at a time and place specified in the order, any documents of the kind referred to in subsection (1) or (2), provided that an order under this subsection may not require the production of [bankers books].

5. A police officer to whom documents are produced may:

   (a) inspect the documents;
(b) make copies of the documents; or
(c) retain the documents for so long as is reasonably necessary for the purposes of this Act.

6. Where a police officer retains documents produced to him or her, he or she shall make a copy of the documents available to the person who produced them.

7. A person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that:
   
   (a) the document might tend to incriminate the person or make the person liable to a penalty; or
   
   (b) the production of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose either the existence or contents, or both, of the document.  

This covers the powers of search and seizure identified within Section 14 and 15 of the AMLA 2010 and the ability to retain a record under Section 18. The relevant part of this Section is to be found within sub-section 5 which provides that where a record is identified, the law enforcement officer has the power to inspect the documents, make copies of it and retain the documents for as long as is reasonably necessary. Sub-section 6 then states that where a record is retained, it must be made available to the persons who produced them.

These are significantly reflected under Section 18 of the AMLA 2010 as well as the Section provides for records identified to be made available to those who produced them. Moreover, Section 18 expands upon the Model Provisions to state that the record is to be retained for an initial period of ninety days and any extension to this period must be done in line with an order from the Court. This information remains missing within the Model Provisions as no procedure or controls upon the retention of records is to be found within these. Thus, the domestic anti-money laundering legislation has taken a more restrictive approach in ensuring that the exercise of powers by law enforcement agencies remains checked by due process safeguards.

**United Kingdom**

The power of retaining seized property is found under Section 41A, 120A and 190A of the Proceeds of Crime Act 2002. These Sections provide that a restraint order may include provision authorising the detention of any property to which it applies if the property is seized by an appropriate officer under a relevant seizure power or is produced to an appropriate officer in compliance with a production order under Section 345. Moreover, it provides that such a restraint order must relate to specified property, to property of a specific description or to all property to which the order applies, or to property that has already been seized or produced or to property that may be seized or produced in the future.

While the Section provides for powers to retain property, on a comparative analysis it may be stated that Section 18 of Pakistan’s AMLA 2010 establishes a better procedure for the purposes of retention of property by providing clear controls on how property may be retained and how an extension for retention of property may be applied for.

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214 Section 77, (Money-laundering, proceeds of crime and terrorist financing bill, 2003)

Australia

The Anti-Money Laundering and Counter Terrorism Financing Act 2006 deals with AML/CFT requirements in Australia and lays down obligations relating to record collection and retention. On the one hand, it requires reporting entities to collect information and ensure a record which is available to authorised officers when conducting an investigation. Secondly, under Section 171 it establishes rules for the purposes of retention of documents collected by authorised officers.

Section 171 provides,

1. “An authorised officer may take possession of a document produced under this Part and retain it for as long as is reasonably necessary.
2. The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the authorised officer to be a true copy.
3. The certified copy must be received in all courts and tribunals as evidence as if it were the original.
4. Until a certified copy is supplied, the authorised officer must provide the person otherwise entitled to possession of the document, or a person authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, the document.”

The Section establishes a wide power with regards to retention of documents and provides that an officer may possess a document and retain it as long as it is reasonably necessary. Moreover, much like Pakistani law on this matter, the law provides that a copy of the record retained by an officer must be made available to the person under whose control the document was. Additionally, it provides that the certified copy of the document must also be received by the court or tribunal and must be seen as part of the evidence much like the original document. Finally, it states that until the officer retains the original document, a copy of it must be made accessible to the person under whose control the document initially was.

In comparison, the AMLA 2010 in Pakistan has been able to establish robust controls on the retention of documents for the purposes of investigation as it establishes an initial ninety-day period for which documents may be retained.216 After this ninety-day period has been expired, it requires the investigating officer to show a court order extending the retention of the documents for them to continue possession of the documents. Additionally, other requirements relating to the person who is initially in possession of the document are similar under both laws as both emphasize on ensuring that a copy of the documents retained are made available to the individuals under whose control or possession the record initially was, and copies of the record are shared with them.

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216 Anti-money laundering and Counter-Terrorism Financing Act 2006
Section 19 – Presumption as to Records or Property in Certain Cases

19. Presumption as to records or property in certain cases. — Where any document of public record is found in the possession or control of any person in the course of a survey or a search under this Act or where any records have been received from any place outside Pakistan duly authenticated by such authority or person and in such manner as may be prescribed in the course of proceedings under this Act, the Court or the investigating or prosecuting agency as the case may be, shall—

(a) presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed, by or to be in the handwriting of, any particular person, is in that person’s handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have so executed or attested; and

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Analysis of Section 19 of the AMLA 2010

Section 19 of the AMLA establishes a presumption regarding records or property discovered during a survey or search under the Act. If a document of public record or authenticated records from outside Pakistan are found, the court or investigating/prosecuting agency must presume that the signatures and other parts of the record are genuine. They must also admit the document as evidence, even if it is not duly stamped, as long as it is otherwise admissible. This provision aims to facilitate the use of such records in proceedings under the Act, ensuring their validity and admissibility.

Section 19 of the AMLA 2010 plays a crucial role in establishing rules regarding the admissibility of records or documents discovered during surveys or received from authorities outside of Pakistan. The section addresses two main aspects: the presumption of authenticity and the admissibility of documents.

Firstly, Section 19(a) establishes a presumption of authenticity for records that are considered public documents. If such a document is found in the possession or control of an individual during a survey or search conducted under the Act, or if records are received from a foreign jurisdiction and duly authenticated, the court or the investigating/prosecuting agency is required to make certain presumptions.

The section stipulates that the court or agency shall presume that the signature and every other part of the record, which appears to be in the handwriting of a particular person or can reasonably be assumed to be signed by or in the handwriting of that person, is indeed in that person's handwriting. Furthermore, in the case of a record that is executed or attested, it shall be presumed that it was executed or attested by the person mentioned in the document.

These presumptions help streamline the legal process by relieving the court or agency from having to prove the authenticity of each signature or handwriting individually. By establishing such

[217] Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 4.
presumptions, Section 19 facilitates the investigation and prosecution of money laundering offenses by simplifying the process of establishing the authenticity of relevant records.

Secondly, Section 19(b) addresses the admissibility of the documents in question. It states that even if a document is not duly stamped, it must be admitted as evidence if it is otherwise admissible under the law. This provision emphasizes the substantive value of the document rather than focusing on technicalities such as stamping requirements. By allowing the admission of such documents, Section 19(b) ensures that the court and investigating/prosecuting agencies can consider relevant evidence for the purpose of proving money laundering activities.

The purpose of Section 19 is to provide a framework that enables the efficient and effective investigation and prosecution of money laundering cases. By establishing presumptions of authenticity and ensuring the admissibility of relevant documents, this section supports the authorities in their efforts to combat money laundering and related offenses.

**Substantive Issues**

Section 19 focuses on procedural issues and relates to the admissibility of documents when dealing with a case under this law. The Section is titled, “Presumption as to records or property in certain cases.” This is because, this section only applies to documents which are part of the public record, and which are found to be in the control of a person and identified during a survey or search or when documents have been received from outside of Pakistan.

Thus, these two categories of documents fall within the purview of this Section and will be subject to the presumption under this law. Furthermore, the Section provides that to assess whether the document is signed or duly authenticated, the following presumption will apply that the signature and every other part of the record which is in the handwriting of the person or for which the court can reasonably assume signature will be considered admissible even if it has not been duly stamped.

The inclusion of the presumption regarding the signature and handwriting of the relevant individuals helps to streamline the evidentiary process. It allows the court or agency to rely on the presumption rather than having to individually establish the authenticity of each signature or handwriting. This provision aims to expedite proceedings related to money laundering cases and ensure that relevant documents can be considered as evidence.

Furthermore, Section 19 emphasizes the importance of the substantive content of the document over technicalities such as stamping requirements. It states that if a document is duly signed or authenticated, it should be admitted as evidence, even if it lacks the required stamp, as long as it is otherwise admissible under the law. This provision ensures that the focus remains on the evidentiary value of the document, rather than being impeded by procedural formalities.

The clear language of Section 19 enables the identification of the situations to which the presumption applies, namely documents found during surveys or received from outside Pakistan. It also aligns with general principles of evidence admissibility, emphasizing the significance of authentication and the admissibility of documents that meet the criteria specified, irrespective of stamping requirements.

**Context from the Qanun-e-Shahadat Order, 1984**

Chapter V of the Qanun-e-Shahadat Order, which deals with documentary evidence, becomes relevant in understanding the context of Section 19. The Order defines public documents in Article 85 which helps identify the scope of public documents that fall within the ambit on Section 19. The section has been reproduced below:
“85. Public documents: The following documents are public documents: —

1. documents forming the acts or records of the acts:
   (i) of the sovereign authority;
   (ii) of official bodies and tribunals, and
   (iii) of public officers, legislative, Judicial and executive of any part of Pakistan or of a foreign country.
2. public records kept in Pakistan of private documents.
3. documents forming part of the records of judicial proceedings;
4. documents required to be maintained by a public servant under any law; and (5) registered documents the execution whereof is not disputed.”

The second relevant requirement to establish admissibility of documents for the purposes of Section 19 is outlined in Section 78 of the Qanun e Shahadat order. This Section states:

“78. Proof of signature and handwriting of person alleged to have signed or written document produced: If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person’s handwriting must be proved to be in his handwriting.”

This Section provides that where a person has written parts of the document and has signed it then it is necessary to show that the signature is in fact in the writing of the person who wrote the document. Thus, for the purposes of Section 19 as well it must be shown that the signature used to authenticate the document by a person in control of a public document is in fact their signature through comparison between handwriting and the signature. The comparison of handwriting and signatures becomes crucial in establishing the authenticity of the document.

The third section which is relevant for documents which are submitted by an individual or by authority outside of Pakistan is Section 84 which states:

“84. Comparison of signature, writing or seal with others admitted or proved:

(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made any signature writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3) This Article applies also, with any necessary modifications, to finger-impressions.”

This Section states that in order to determine whether a signature or seal belongs to the person who has written the document, it must be compared to their existing signature or seal. This may be even done by requiring the individual submitting the document to write something in court to determine whether the handwriting is same or not. However, this, in light of Section 19 will not apply to those documents which have been submitted by an authority outside of Pakistan. Nonetheless, for that purpose, it is possible for the authority’s seal to be identified and checked to determine authenticity.

Based on the requirements under the Qanun e Shahadat Order, it can be stated that the rules of admissibility under the Order and under Section 19 are quite similar as they require an assessment of
whether the document has been signed by the person who had it in their possession, or who wrote it. In the same manner, to determine whether an authority outside of Pakistan has authenticated a document, their seal will have to be checked and if it is determined that the correct seal has been used to authenticate the document, then it will be considered admissible.

Thus, if these requirements are fulfilled the requirement for a stamp may be done away with as the signature and seal will be enough for the presumption under Section 19 to apply to determine the validity of the document.

**Key Cases**

*Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another (W.P. No. 1184/2021 & 1778/2021)*

One crucial principle laid down by the court is that a separate investigation must be conducted by a specialized investigating agency, as defined in Section 2(xviii) of the Anti-Money Laundering Act (AMLA) 2010. This principle emphasizes the need for a dedicated and specialized approach to investigating cases related to money laundering. By assigning these investigations to specialized agencies, the court aims to ensure that the complexities and nuances of money laundering offenses are effectively addressed.

**International Best Practices**

It is important to note that Section 19’s specific admissibility presumption is unique to Pakistan and cannot be found within the FATF Recommendations, the UN Model Law, or the laws of other states. This highlights the distinct nature of this provision in Pakistani legislation, tailored to facilitate the investigation and prosecution of money laundering offenses within the country.
Section 24 – Appointment of Investigating Officers and their Powers

24. Appointment of investigating officers and their powers. —

(1) The investigating or prosecuting agencies may nominate such persons as they think fit to be the investigating officers under this Act from amongst their officers.

(2) The Federal Government may, by special or general order, empower an officer not below BPS-18 of the Federal Government or of a Provincial Government to act as an investigating officer under this Act.

(3) Where any person other than a Federal or Provincial Government Officer is appointed as an investigating officer, the Federal Government shall also determine the terms and conditions of his appointment.

(4) Subject to such conditions and limitations as the Federal Government may impose, an investigating officer may exercise the powers and discharge the duties conferred or imposed on him under this Act.

Analysis of Section 24 of the AMLA

Section 24 of the AMLA allows investigating or prosecuting agencies to appoint officers as investigating officers under the Act. The Federal Government can also empower certain officers to act as investigating officers. These officers have specific powers and responsibilities to enforce the provisions of the AMLA.

The objective and purpose of Section 24 of the Anti-Money Laundering Act (AMLA) is to establish a framework for the appointment of investigating officers and to define their powers. Section 24 provides guidelines for the appointment of investigating officers. It states that investigating or prosecuting agencies have the authority to nominate suitable individuals from among their officers to act as investigating officers under the AMLA. Additionally, the Federal Government has the power to empower officers not below the rank of BPS-18 to act as investigating officers. This ensures that qualified and competent individuals are designated to carry out investigations into money laundering offenses.

Furthermore, the section addresses the appointment of investigating officers who are not federal or provincial government officers. In such cases, the Federal Government is responsible for determining the terms and conditions of their appointment. This provision ensures that appropriate arrangements are made for individuals who are not part of the government agencies but are appointed as investigating officers to fulfill their roles effectively.

Regarding the powers of the investigating officers, the section indicates that they can exercise the powers and discharge the duties conferred or imposed on them under the AMLA, subject to any conditions and limitations imposed by the Federal Government. This provision allows investigating officers to carry out their responsibilities in accordance with the provisions of the AMLA and ensures that their powers are properly regulated to prevent misuse or abuse.

218 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 4.
Substantive Issues

Section 24 pertains to the appointment and powers of investigating officers under a specific act. The purpose of this section is to provide a legal framework for investigating officers to carry out their duties under the said act effectively.

According to this section, the investigating or prosecuting agencies can nominate officers who they consider suitable to be appointed as investigating officers under this Act. Additionally, the Federal Government has the authority to empower officers not below BPS-18 of the Federal or Provincial Government to act as investigating officers under this Act.

If someone who is not a Federal or Provincial Government Officer is appointed as an investigating officer, the Federal Government shall determine the terms and conditions of their appointment. The investigating officer is subject to the conditions and limitations imposed by the Federal Government while exercising their powers and discharging their duties under this Act.

Therefore, the scope of this section is limited to the appointment and powers of investigating officers under this specific Act. The section clarifies who can be appointed as investigating officers, the terms and conditions of their appointment, and the powers they hold while investigating cases under the Act.

There are two elements of Section 24 which must be discussed: firstly, the power to appoint or nominate individuals to act as investigating officers and the identification of powers of these officers. While rules to nominate individuals have been discussed previously, it is important to identify the various powers that the AMLA 2010 establishes for investigating officers to carry out:

These include:

1. Power to require any person to produce before them any record or document that they deem necessary for the purposes of the investigation.
2. Power to enter and search any premises, building, or vehicle where they believe that any record, document, or other item relevant to the investigation may be found.
3. Power to seize and take possession of any record, document, or other item that they believe has a bearing on the investigation.
4. Power to freeze any bank account, transaction, or other asset that they suspect is involved in money laundering or terrorist financing.
5. Power to obtain information from any financial institution or designated non-financial business or profession regarding their customers or transactions that they suspect are involved in money laundering or terrorist financing.
6. Power to investigate and gather information on any property that they believe is proceeds of a crime or is intended to be used for money laundering.
7. Ability to seek assistance from any law enforcement agency or foreign government in conducting an investigation related to money laundering or terrorist financing.
8. Power to arrest a person suspected of committing a money laundering or terrorist financing offense.
9. Capacity to seek a warrant from a court of law to exercise their powers of search, seizure, or arrest.
10. Power to take any other action that they believe is necessary or appropriate for the purpose of the investigation.

Thus, a wide range of powers can be exercised by individuals nominated as investigating officers under this Section. However, it must be remembered that the limitations placed on powers to be exercised by investigating officers under the AMLA 2010 will apply to individuals nominated or appointed under this
Section as well. This means they cannot enter a place of worship without the written consent of the person in charge or the permission of the court. Investigating officers cannot arrest a person without a warrant, unless the person is committing or attempting to commit a money laundering or terrorist financing offense, or if the person has committed a previous offense and there is a likelihood of absconding.

Moreover, they cannot freeze a bank account or transaction for more than seven working days without a court order, and they must provide a receipt when seizing any record, document or item. They cannot use any force beyond what is necessary for entry and search, and they cannot disclose any investigation-related information to anyone, except as provided by the law. They cannot use information obtained during an investigation for any purpose other than the investigation, except with court permission. Investigating officers are prohibited from discriminating against anyone based on race, religion, gender, or nationality. They must follow the rules of evidence and procedures set forth by the law and respect the fundamental rights of the person being investigated, including the right to legal representation and the right against self-incrimination.

In addition to this, the Federal Government may also impose any restrictions they see fit on the powers to be exercised by the investigating officers nominated or appointed under this Section. This is a discretionary power and may be exercised by the Federal Government as they deem fit.

**Key cases**

*Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another (W.P. No. 1184/2021 & 1778/2021)*

Under the relevant section, the court has established certain principles to guide the application of the law. First and foremost, it is mandated that a specialized investigating agency, as defined in Section 2(xviii) of the Anti-Money Laundering Act (AMLA) 2010, must conduct a separate investigation. This ensures that the investigation is carried out by an agency specifically designated and equipped to handle money laundering cases.

Furthermore, a specialized investigating officer is appointed to handle property that is suspected to be involved in money laundering. This officer takes the necessary steps, such as attaching the property and notifying the accused person, to secure and preserve the property in question. The investigating officer also conducts an inquiry into the source of income or assets related to the property.

**International Best Practices**

**FATF Recommendations**

The Interpretive Note to Recommendation 30 provides that it is important for there to be specific law enforcement entities tasked with the responsibility of investigating money laundering, predicate offenses, and terrorist financing through financial investigations. Additionally, countries should designate competent authorities to identify, trace, and take action to freeze and seize property that may be subject to confiscation. Recommendation 30 extends to competent authorities, not solely law enforcement agencies, that are responsible for conducting financial investigations related to predicate offenses, insofar as they carry out functions covered under Recommendation 30.\(^{219}\)

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In accordance with this Recommendation, anti-corruption enforcement authorities with enforcement capabilities may be appointed to investigate money laundering and terrorist financing offenses connected to corruption offenses. These authorities should also possess the necessary authority to identify, trace, and take action to freeze and seize assets. Moreover, it provides that when employing multi-disciplinary groups in financial investigations, countries should consider the diverse range of law enforcement agencies and other competent authorities mentioned above.

Furthermore, the Recommendation provides that to effectively carry out their duties, law enforcement and prosecutorial authorities must be equipped with sufficient financial, human, and technical resources. Countries must establish procedures that guarantee the personnel of these authorities maintain excellent professional standards, including those regarding confidentiality, and are of high integrity and possess the necessary skills.

Moreover, the Recommendations have also identified the powers and responsibilities of law enforcement agencies. It states that countries are under a responsibility to ensure that law enforcement authorities designated for money laundering and terrorist financing investigations operate within the parameters of national AML/CFT policies. In cases related to major proceeds-generating offenses, these designated law enforcement authorities must carry out parallel financial investigations proactively when pursuing money laundering, predicate offenses, and terrorist financing. This applies even when the associated predicate offense occurs outside their jurisdiction.

Competent authorities should be held responsible for quickly identifying, tracing, and initiating action to freeze and seize property that is, or may become, subject to confiscation or suspected of being proceeds of crime. When necessary, countries must utilize permanent or temporary multi-disciplinary groups that specialize in financial or asset investigations.

In addition, countries must ensure that cooperative investigations take place with appropriate competent authorities in other countries, whenever necessary.

These requirements apply to those investigating officers that have been nominated or appointed under Section 24 of the AMLA 2010 as well. Largely, the powers already within the AMLA which have been granted to investigating officers are similar to those proposed under the FATF Recommendations, and thus, Section 24 remains in line with this guidance as well.

**United Kingdom**

The United Kingdom has introduced the Proceeds of Crime Act 2002 to combat money laundering and terrorism financing. The following powers have been granted to law enforcement officers under this law:

- **Police Officers:** Section 7 of POCA gives police officers powers to obtain a search warrant to enter premises and search for cash, assets, or other items that are believed to be connected to criminal activity.
- **Customs Officers:** Section 8 of POCA gives customs officers powers to stop, search, and detain persons and vehicles suspected of carrying cash or other items that are believed to be connected to criminal activity.
- **Crown Prosecutors:** Section 6 of POCA gives Crown Prosecutors powers to apply to a court for a civil recovery order to confiscate cash, assets, or other items that are believed to be the proceeds of crime.
- **Financial Investigators:** Section 341 of POCA empowers financial investigators appointed by a law enforcement agency with certain powers, including the power to require a person to provide information or produce documents, the power to enter premises to search for and seize
relevant documents or material, and the power to freeze bank accounts and other financial assets.

- **Confiscation Investigators**: Section 452 of POCA empowers confiscation investigators appointed by a court with certain powers, including the power to obtain information and documents from financial institutions and the power to require a person to provide information or produce documents.
- **Magistrates and Judges**: POCA grants magistrates and judges with the power to issue various orders, such as search warrants, production orders, restraint orders, and disclosure orders.

The powers granted to investigators granted under POCA are largely similar to those found within the AMLA 2010 as it also establishes the power to search, survey and seize for the purposes of an investigation relating to money laundering or terrorism financing. Moreover, they also have the powers which financial investigators in the UK also enjoy including the capacity to require a person or reporting entity to furnish information, search premises and seize documents as relevant under the investigation.

While POCA does not have a provision similar to Section 24 of the AMLA which allows the Government to nominate or appoint investigators, it defines an accredited financial investigator as,

“(3) An accredited financial investigator falls within this subsection if he is one of the following or is authorised for the purposes of this section by one of the following—

a. a police officer who is not below the rank of superintendent,

b. a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank,

c. an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 453.”

This means that certain controls are found within POCA as well to identify who a financial investigator can be and may be compared to the controls established within Section 24 of the AMLA 2010. Section 24 provides that the Federal Government may not appoint an officer below BPS-18 to act as an investigating officer, however, the conditions laid under the POCA are more stringent than those found within AMLA 2010 and thus, factors such as accreditation of financial investigators must be introduced within it as well.220

**Australia**

Under the Australian Anti-Money Laundering and Counter Terrorism Financing Act 2006, the obligations of police and customs officers have been identified and similar powers to investigators under the AMLA 2010 promulgated in Pakistan can be identified. These officers have been given the power to search, seize, question, arrest etc. with regards to suspicious activity within Australia as well as in connection to cross border movement of monetary instruments.

The law allows AUSTRAC which is responsible for preventing, detecting and responding to criminal abuse of the financial system to protect the community from serious and organised crime to appoint authorised officers under Section 145. An authorised officer for the purposes of the Australian law is an investigating officer and enjoys the same powers as well. These include monitoring, tampering or

interfering with things secured in the exercise of monitoring powers, power to ask questions and seek production of documents, arrest individuals in line with requisite rules etc.\textsuperscript{221}

Section 145 states that,

1. “The AUSTRAC CEO may, in writing, appoint as an authorised officer for the purposes of this Act:
   
a. a member of the staff of AUSTRAC; or  
b. a person whose services are made available to the AUSTRAC CEO under subsection 225(3), other than a person covered by paragraph 225(3)(g).

2. The AUSTRAC CEO must not appoint a person to be an authorised officer unless the person satisfies the conditions (if any) specified in the regulations.

3. In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the AUSTRAC CEO.”

This Section is similar to Section 24 of the AMLA 2010 and states that AUSTRAC may appoint authorised officers and grants the AUSTRAC CEO the power to control the activities and powers of the authorised officer. This may be seen similar to the powers granted to the Federal Government under Section 24 which states that the Federal Government or prosecuting agencies may nominate and appoint investigating officers and the Federal Government may place limitations on the powers to be exercised by the investigating officer.

\textsuperscript{221}’What Does Austrac Do?’ (Dow Jones Professional, 30 March 2023)  
<https://www.dowjones.com/professional/risk/glossary/regulatory-bodies/austrac-definition/> accessed 13 July 2023
# Chapter 5

Attachment and Management of Properties

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Overview

Chapter 5 of the commentary delves into the process of ‘Attachment and Management of Properties’ under the ambit of the AMLA, 2010.

Starting with Section 8 of the AMLA, we find provisions which empower investigating officers, with the sanction of the court, to temporarily attach properties suspected to be involved in money laundering. This preventative measure aims to safeguard the assets implicated in money laundering while investigations are ongoing. This attachment is time-bound, underlining the urgency and significance of timely investigations and outcomes in such cases. It also underscores the necessity for transparency, as regular progress reports are to be submitted to the court, thereby maintaining a careful balance between investigation and rights of ownership.

Turning our attention to Section 9, this part of the AMLA outlines the procedural steps in the investigation of properties suspected to be implicated in money laundering. Once a property has been attached, the investigating officer is required to serve a notice to the concerned individual, calling upon them to clarify the sources of income used to acquire the attached property. The officer then takes into account the response, provides a hearing for the involved person, and subsequently records a finding about the nature of the property. Judicial oversight and involvement becomes evident here, as any order of attachment or retention is subject to court confirmation, ensuring a balance of power and a safeguard against arbitrary action.

Section 10 transitions from the investigation phase to the consequences following a successful investigation, that is, the vesting of property in the Federal Government. When an order of forfeiture is made under Section 9(6), the rights and title to the attached property are transferred to the Federal Government, unencumbered by any existing claims. This section serves as a warning against evasion attempts, declaring that encumbrances or leaseholds created to avoid the provisions of the AMLA can be voided by the court.

Lastly, Section 11 of the AMLA governs the management of forfeited properties. This section confers the Federal Government with the authority to appoint administrators or trustees to oversee the management and disposal of these properties. The discretionary power of the administrators is also touched upon, as they are allowed to sell properties that are perishable or those where the cost of custody outweighs their value, thereby maximizing the value extracted from seized assets and minimizing wastage.
Relevant Definitions

**Acquire:** In common parlance, acquired means to take or obtain. Black’s Law Dictionary defines the word acquire as, “to gain by any means, usually by one’s own exertions, to get as one’s own; to obtain by search, endeavour, practice our purchase; to receive or gain in whatever manner; come to have.” In the American case of Clarno v. Gamble–Robinson Co, acquire was defined as to become the owner of property, to make property one’s own etc. In Crutchfield v. Johnson & Latimer, as well it was defined as “to gain ownership of.” Thus, to acquire in the context of the offence of money laundering may mean to gain ownership of, or a property right in subject matter which is the proceed of crime.

**Administrator:** An administrator of attached property, appointed by the courts, is a person or entity designated by a court to manage and administer a property that has been attached in a legal proceeding. When a property is attached, it means that it has been seized or placed under the control of the court as part of a legal process, often to secure a debt or satisfy a judgment. The appointment of an administrator of attached property typically occurs when the court determines that it is necessary to safeguard the property during the legal proceedings. The administrator’s role is to take custody and control of the attached property and ensure its proper management until the court makes a final decision regarding its disposition.

**Attachment:** “attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under section 8. Black’s Law Dictionary defines attachment as “the act or process of taking, apprehending, or seizing property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used for acquiring jurisdiction over the property seized.”

**Dispose:** ‘Dispose,’ in the legal context, refers to the act of transferring or selling property under the management or control of administrators. This action is typically undertaken in the context of when an administrator is appointed by a court to oversee and administer property.

**Federal Government:** In the Mustafa Impex case, Justice Nisar of the Supreme Court stated that Article 90 of the Constitution clearly defines the Federal Government: ‘it consists of the Prime Minister and the Federal Ministers’. This change in definition was primarily influenced by two factors. Firstly, the 18th Constitutional amendment removed the delegation clause, which previously allowed the transfer of government functions to subordinate authorities and officers. Secondly, the 18th amendment modified Article 99, making it mandatory to follow rules when executing official instruments and orders by replacing the term ‘may’ with ‘shall’. Thus, making it compulsory to follow guidelines enshrined in the Rules of Business.

**Forfeiture:** This refers to the legal confiscation of assets by the state. This is a form of punishment where the state takes possession of property that is involved in money laundering or has a

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222 “Acquire” is referred to in Section 9 of the AMLA 2010.
223 “Administrator” is referred to in Sections 10 and 11 of the AMLA 2010.
224 “Attachment” is referred to in Sections 8 and 9 of the AMLA 2010.
225 Section 8 of the AMLA 2010: This section provides guidelines for an investigating officer to temporarily attach properties suspected to be involved in money laundering. With court approval, an officer can secure a property for up to 180 days based on investigation or prosecution agency reports, and this period can be further extended by the court for another 180 days. Within 48 hours of the attachment, a copy of the order and the report should be sent to the head of the investigating agency. This attachment order expires either after the specified period or when findings are made under section 9(2), whichever comes first. Notably, this rule does not prevent any interested party from enjoying the immovable property. Furthermore, the officer who attaches the property is required to provide the court with a monthly progress report on the investigation.
226 “Dispose” is referred to in Section 11 of the AMLA 2010.
227 “Federal Government” is referred to in Sections 9, 10, and 11 of the AMLA 2010.
228 Mustafa Impex, Karachi v. The Government of Pakistan through Secretary Finance, Islamabad - 2016 PLD 808
229 “Forfeiture” is referred to in Sections 9 and 10 of the AMLA 2010.
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corresponding value. This means that if a person is found guilty of money laundering, the state has the right to seize their property that is connected to the crime or has a value equivalent to the proceeds of the crime.

Investigating Officer: This refers to a designated law enforcement officer responsible for conducting thorough investigations into suspected instances of money laundering. These officers should possess specialized knowledge and expertise in financial crimes and should be trained to analyze complex financial transactions, follow money trails, and gather evidence to build strong cases against individuals or organizations engaged in money laundering activities.

An “investigating officer” means the officer nominated or appointed under section 24 of the AMLA 2010. Subsection (1) of section 24 of AMLA, authorizes designated investigating and prosecuting agencies to nominate their investigating officers competent to conduct investigation under respective law of the agency. For example, under section 5 of FIA Act, 1974, an officer not below the rank of sub-inspector can conduct investigation meaning thereby the sub-inspector or above can conduct investigating under FIA Act, 1974. Since, FIA is designated investigating and prosecuting agency under AMLA, therefore, the officers of rank of Sub-Inspector and above can conduct money laundering investigation under AMLA.

Investigating or Prosecuting Agency: An “investigating or prosecuting agency” means the National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation – Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under AMLA.

Leasehold: Leasehold is a kind of property interest. A lease between a landlord and a tenant creates both a contractual interest and a property interest, the property interest here is called leasehold.

Offence of Money Laundering: The offence of money laundering is defined in Section 3 of the AMLA 2010. According to this section, a person is considered guilty of the offence of money laundering if they engage in any of the following activities:

1. Acquiring, converting, possessing, using, or transferring property, knowing or having reason to believe that such property is proceeds of crime. This means that if a person knowingly handles property that has been obtained through criminal activity, they are committing the offence of money laundering.

2. Concealing or disguising the true nature, origin, location, disposition, movement, or ownership of property, knowing or having reason to believe that such property is proceeds of crime. This refers to actions taken to hide the fact that property is derived from criminal activity.

230 “Investigating Officer” is referred to in Sections 8 and 9 of the AMLA 2010.
231 Section 24 of the AMLA 2010: Appointment of investigating officers and their powers.—(1) The investigating or prosecuting agencies may nominate such persons as they think fit to be the investigating officers under this Act from amongst their officers. (2) The Federal Government may, by special or general order, empower an officer not below BPS-18 of the Federal Government or of a Provincial Government to act as an investigating officer under this Act. (3) Where any person other than a Federal or Provincial Government Officer is appointed as an investigating officer, the Federal Government shall also determine the terms and conditions of his appointment. (4) Subject to such conditions and limitations as the Federal Government may impose, an investigating officer may exercise the powers and discharge the duties conferred or imposed on him under this Act.
232 “Investigating or Prosecuting Agency” is referred to in Section 8 of the AMLA 2010.
233 “Leasehold” is referred to in Section 10 of the AMLA 2010.
234 “Offence of Money Laundering” is referred to in Sections 8 and 9 of the AMLA 2010.
3. Holding or possessing on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime. This means that if a person holds property for someone else, and they know or have reason to believe that this property is the result of criminal activity, they are committing the offence of money laundering.

4. Participating in, associating with, conspiring to commit, attempting to commit, aiding, abetting, facilitating, or counseling the commission of the acts specified in the above clauses. This means that if a person is involved in any way with the activities described above, they are committing the offence of money laundering.

**Official Gazette:** The Gazette of Pakistan is the official government gazette of the Government of Pakistan. This Gazette provides information about government acts, ordinances, regulations, orders, S.R.Os, notifications, appointments, promotions, leaves, and awards. The official gazette plays a crucial role in the legal and administrative framework of Pakistan. It serves as a means to disseminate information and make official announcements accessible to the general public, government departments, legal professionals, and other interested parties.

**Perishable:** Perishable property refers to items or assets that have a limited shelf life or a high risk of deterioration, spoilage, or decay if not properly preserved or maintained. These properties are typically susceptible to damage, loss of value, or becoming unfit for use or consumption within a relatively short period. Examples of attached properties which are perishable may include agricultural produce, animals etc.

**Property:** Property encompasses a wide range of assets, both tangible and intangible, that are subject to legal ownership rights. Tangible property includes physical objects like land, buildings, and personal belongings, while intangible property encompasses intellectual property, financial instruments, contractual rights, and securities. Property also includes legal documents such as deeds, titles, and other instruments that serve as evidence of ownership or interest in a specific property or asset. Furthermore, it extends to monetary instruments, including cash and equivalents, regardless of their physical location or material nature. In simpler terms, property refers to everything you own, whether it’s something you can touch like houses and cars or something intangible like ideas and patents. It also includes documents that prove ownership and even money.

**Property involved in money laundering:** The term “property involved in money laundering” is a broad term that encompasses any property that is connected to the crime of money laundering. This can include:

1. Proceeds of Crime: This refers to any property or economic advantage derived from the commission of a criminal act. For example, if a person sells illegal drugs and uses the money earned to buy a car, that car is considered a proceed of crime.

2. Property Derived or Obtained from Money Laundering: This refers to any property that is obtained, directly or indirectly, as a result of money laundering. For example, if a person launders money through a business and uses the laundered money to buy a house, that house is considered property derived from money laundering.

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235 “Official Gazette” is referred to in Section 11 of the AMLA 2010.
236 “Perishable” is referred to in Sections 9 and 11 of the AMLA 2010.
237 “Property” is referred to in Sections 8, 9, 10, and 11 of the AMLA 2010.
238 Section 2(XXX) of the AMLA 2010: “property” means property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets including cash and monetary instruments, wherever located.
239 “Property Involved in Money Laundering” is referred to in Sections 8 and 9 of the AMLA 2010.
3. Property Used or Intended to be Used in Commission of Money Laundering: This refers to any property that is used, or intended to be used, to facilitate the crime of money laundering. For example, if a person uses a computer to conduct fraudulent transactions as part of a money laundering scheme, that computer is considered property used in the commission of money laundering.

4. Property Involved in a Predicate Offence: A predicate offence is a crime that is a component of a more serious crime. For example, if a person commits fraud (which is a predicate offence) and then launders the money gained from that fraud, any property bought with that money is considered property involved in a predicate offence.

5. Property Involved in a Foreign Serious Offence: This refers to property that is connected to a serious crime that has been committed in a foreign country. For example, if a person in another country launders money and then transfers that money to a bank account in Pakistan, the money in that bank account is considered property involved in a foreign serious offence.

In all these cases, it does not matter who currently holds or has held the property. If the property is connected to the crime of money laundering, it is considered “property involved in money laundering”.

It is important at this juncture to note that there is a clear distinction between “proceeds of crime” and “property involved in money laundering”. Proceeds of crime denotes the financial gains or assets obtained through illegal means. These gains can arise from various unlawful activities, and the term encompasses a wide range of assets acquired through such actions. It includes both tangible and intangible resources that result from illegal conduct. This is essentially the money or other assets gained from the commission of a crime. For example, if someone robs a bank and uses the money to buy a car, that car is considered the “proceeds of crime”.

On the other hand, “property involved in money laundering” is a broader concept that includes not just the proceeds of crime, but also any property derived or obtained from the offence of money laundering itself, and any property used or intended to be used in the commission of the offence of money laundering, a predicate offence, or a foreign serious offence. So, using the same example, if that car purchased with the stolen money was later used to commit another crime (like drug trafficking), it would then be considered "property involved in money laundering".

In summary, while “proceeds of crime” refers specifically to assets gained from criminal activity, “property involved in money laundering” is a wider term that encompasses any property associated with the broader process of money laundering, whether it’s the proceeds of crime, assets derived from money laundering, or assets used in the commission of such offences.

Reason to believe: Reason has been defined as “a faculty of the mind by which it distinguishes truth from falsehood.” Thus, it may be defined as the ability which enables the possessor to deduce inferences from facts or from propositions. Belief has been defined as, “a conviction of the truth of a proposition, existing subjectively in the mind, induced by argument, persuasion or proof addressed to the judgement.” It states that knowledge is an assurance of a fact or proposition founded on perception by the senses or intuition, whereas belief is an assurance gained by evidence. Thus, the phrase “reason to believe” in the context of the offence of money laundering may mean having the ability to subjectively deduce or infer a proposition through evidence.

240 Section 2(2xxi) of the AMLA 2010: “property involved in money laundering” means, regardless of who holds or has held the property, proceeds of crime, property derived or obtained directly or indirectly from the offence of money laundering and property used or intended to be used in commission of the offence of money laundering, a predicate offence or a foreign serious offence;

241 “Reason to Believe” is referred to in Section 8 of the AMLA 2010.
Explanation-I of section 3 of AMLA states that “the knowledge, intent or purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984).”

Section 26 of Pakistan Penal Code defines reason to believe as under:

“A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.”.

In accordance with FATF standard, the knowledge, intent, purpose may be inferred from “objective factual circumstances. Following are the types of objective factual circumstance:

- Willful blindness
- Deliberate avoidance of knowledge of the facts
- Purposeful indifference

In accordance with the judgement of the Supreme Court of Pakistan242, the term “reason to believe” can be classified at a higher pedestal than a mere suspicion and allegation but not equivalent to proven evidence. Even the strongest suspicion cannot transform in “reason to believe”.

**Receivers:**243 Receivers, as defined in Order XL of the CPC of 1908, are individuals appointed by the court to fulfill certain responsibilities and exercise specific powers regarding a property or assets. These appointments typically occur in legal disputes or special situations where the court deems it necessary. The duties of a receiver, outlined in Section 3 of Order XL, encompass several key obligations. Firstly, a receiver must provide suitable security, as determined by the court, to ensure proper accounting for any funds or assets received pertaining to the property. Additionally, they are required to submit regular accounts in accordance with the court's directions. The receiver must also make payments as directed by the court. Lastly, the receiver holds responsibility for any losses incurred by the property due to their deliberate wrongdoing or significant negligence. Moreover, under Order XL Rule 1 of the CPC, the court has the authority to grant additional powers to a receiver. These powers may include initiating or defending legal actions, managing and protecting the property, preserving its condition, and collecting rents and profits generated by it. In summary, receivers, within the legal framework, are individuals appointed by the court to carry out specific duties and exercise certain powers to safeguard, manage, and preserve a property or assets involved in a legal dispute or other circumstances deemed appropriate by the court.

**Reasonable notice:**244 Reasonable notice refers to the amount of advance notice that is considered fair, appropriate, and sufficient in a given situation or context. It is the notice period that allows an individual or party to adequately prepare, respond, or take necessary action based on the information provided. The specific duration of reasonable notice can vary depending on various factors, including the nature of the matter, the legal requirements or contractual agreements involved, industry practices, and the expectations of the parties involved. What constitutes reasonable notice can be subjective and may be subject to interpretation or legal considerations in certain situations.

**Seizure:**245 If during the search, the investigating officer discovers documents, records, or property that they reasonably believe to be connected to the money laundering offense, they are empowered to seize and secure such evidence. This step is crucial for preserving the integrity of the evidence and ensuring its availability for subsequent investigations or legal proceedings. The seizure of relevant evidence

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242 Chaudhry Shujat Hussain v The State – 1995 SCMR 1249
243 “Receivers” is referred to in Sections 11 of the AMLA 2010.
244 “Reasonable Notice” is referred to in Section 11 of the AMLA 2010.
245 “Seizure” is referred to in Sections 9, 10, and 11 of the AMLA 2010.
strengthens the investigative process and contributes to the prosecution of money laundering offenders.
Section 8 – Attachment of Property involved in Money Laundering

8. Attachment of Property involved in Money Laundering:* 246—

1) An investigating officer may, on the basis of the report in his possession received from the concerned investigating or prosecuting agency, by order in writing, with prior permission of the Court, provisionally attach a property, which he reasonably believes to be the property involved in money laundering for a period not exceeding one hundred and eighty days from the date of the order; Provided that the Court may grant further extension for a period up to one hundred and eighty days.

2) The investigating officer shall, within forty-eight hours immediately after attachment under sub-section (1), forward a copy of the order and the report referred to in that sub-section to the head of the concerned investigating agency in a sealed envelope.

3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of the finding made under sub-section (2) of section 9 whichever is earlier.

4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

5) The investigating officer who provisionally attaches any property under sub-section (1) shall submit to the Court monthly report of the progress made in the investigation.

Analysis of Section 8 of the AMLA 2010

Section 8 of the Anti-Money Laundering Act outlines the provisions for the attachment of property involved in money laundering. According to this section, an investigating officer, with prior permission from the court, can provisionally attach a property believed to be connected to money laundering based on the report in their possession. This attachment remains in effect for a maximum period of 180 days, which can be further extended by the court. The investigating officer must promptly notify the head of the concerned investigating agency about the attachment. The attachment order ceases to have effect either after the specified period or upon the finding made under section 9(2) of the Act, whichever comes earlier. Importantly, the section ensures that the person interested in enjoying the immovable property under attachment can still exercise their rights, and the investigating officer is required to provide monthly reports on the progress of the investigation to the court.

Section 8(1) of the Anti-Money Laundering Act primarily aims to empower investigating officers with the authority to provisionally attach property suspected to be involved in money laundering. This authority, subject to prior court approval, serves as a preventive measure to protect the property from being disposed of or transferred during the ongoing investigation. The attachment is limited to 180

*246 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 5.
days, with the possibility of an extension for another 180 days, ensuring that the property isn't indefinitely frozen.

Section 8(2) establishes the requirement for the investigating officer to forward a copy of the attachment order and the report within 48 hours to the head of the concerned investigating agency. This provision aims to maintain transparency and facilitate effective communication between the investigating officer and the agency, keeping them informed about the progress of the case and ensuring that the attachment is based on legitimate grounds.

In Section 8(3), a time limit is set for the attachment order's effectiveness, ensuring that the property isn't unduly restrained. The order will cease to have an effect either after the specified time period or upon the Court's findings under section 9(2), whichever comes first. This provision strikes a balance between the needs of the investigation and the protection of the property owner's rights.

In summary, the purpose of Section 8 is to strike a balance between effectively investigating potential money laundering cases and protecting the rights of individuals with an interest in the attached property. This balance is achieved through a combination of time limits, Court oversight, and the protection of interested persons' rights.

**Key Cases**

*Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another (W.P. No. 1184/2021 & 1778/2021)*

The case of Muhammad Rafique v. DG, FIA has a connection to Section 8 of the Anti-Money Laundering Act (AMLA) which pertains to the attachment of property involved in money laundering. In the case, the petitioner argued that a second FIR was registered under Section 4 of AMLA 2010 on the same facts as the first FIR. However, the court held that the investigating officer (IO) in cases of 'special crimes' had the authority to attach any property based on a report in his possession received from the concerned investigating or prosecuting agency or with prior permission of the Court (the permission from the court for provisional attachment of property involved in money laundering is mandatory even if the IO has a report from the concerned investigation and prosecution agency), if he reasonably believed that the property was involved in money laundering, for a period not exceeding 180 days from the date of the order.

The court's decision in this case reinforces the provisions of Section 8 of AMLA. The section allows an investigating officer, with prior permission from the Court, to provisionally attach a property believed to be involved in money laundering for a period of up to 180 days. The court emphasized that the principles for quashing an FIR were limited in cases where no offense is made out from the bare reading of the FIR, where there is no legal authority for registration of a criminal case, where registration of

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247 W.P. No. 1184/2021 & 2021
the FIR was mala fide or an abuse of process of law, or where no other alternative remedy was provided to deal with the situation raised in any criminal case. However, the court held that these principles were not applicable in cases related to money laundering, as it required a thorough investigation.

Therefore, in the specific context of the case, the court found that the subsequent registration of the second FIR under AMLA was not contrary to the principles laid down by the Supreme Court. The court declined to quash the second FIR, stating that the grounds raised by the petitioner for quashing the FIR were not legally justiciable. The case highlights the significance of Section 8 of AMLA, which grants investigating officers the power to provisionally attach properties involved in money laundering, subject to the permissions and limitations outlined in the section. 248

Shoaib Ahmed Shaikh v. Federation of Pakistan

The petitioners’ accounts had been provisionally attached by the Federal Investigation Agency (FIA) for an investigation. 249 They were asked to prove that the money in the accounts was not earned through criminal activity. However, the court stated that the mere passing of a provisional attachment order under Section 8 of the Anti-Money Laundering Act, 2010 did not harm the petitioners. This order would lose its effectiveness after a maximum of 90 days if proceedings were not finalized according to the provisions of the AMLA 2010.

The court clarified that the legislature had created a complete mechanism for addressing the grievances of the petitioners. After completing proceedings under Section 9 of the AMLA 2010, the investigating officer must also approach the court to confirm the provisional attachment order. The petitioners’ premature appearance before the High Court meant they had bypassed the legal remedy provided in the law and invoked the constitutional jurisdiction of the High Court. Therefore, they could not challenge a provisional attachment order that had not yet been confirmed. The petitioners had been given a fair opportunity to present their case and demonstrate to the Investigating Officer and Trial Court that the money in the accounts in question had no connection to the alleged offense. Consequently, the constitutional petition was dismissed. 250

Therefore, the case highlights the procedural requirements and the significance of Section 8 of AMLA in relation to provisional attachment orders, emphasizing the need for adherence to the legal remedy provided within the law.

International Best Practices

International best practices related to the provisional attachment of property in a money laundering context have been developed and influenced by various international organizations, conventions, and jurisdictions. We will focus on the recommendations provided by the Financial Action Task Force (FATF) and practices in selected common law jurisdictions, namely the United Kingdom and the United States.

FATF Recommendations

Recommendation 4 deals with the confiscation and provisional measures, emphasizing the need for countries to adopt measures that allow for the freezing or seizing of property suspected of being involved in money laundering or related offenses. 251 Key aspects of FATF’s recommendations include:

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248 Muhammad Rafique v. Director General FIA, 2023 PCrLJ 38 IHC
249 2016 PLD 607
250 Shoaib Ahmed Shaikh v. Federation of Pakistan, 2016 PLD 607 Khi. HC
251 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendations
1. Adoption of measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention: Countries should adopt legislative measures similar to those recommended in these international conventions to enable their competent authorities to freeze or seize and confiscate property related to money laundering and terrorism financing.

2. Confiscation of property without prejudicing the rights of bona fide third parties: Countries should ensure that the confiscation of property related to money laundering and terrorism financing is carried out without prejudicing the rights of bona fide third parties.

3. Identification, traceability, and evaluation of property subject to confiscation: Countries should provide their competent authorities with the authority to identify, trace, and evaluate property that is subject to confiscation.

4. Provisional measures to prevent dealing, transfer, or disposal of property: Countries should provide their competent authorities with the authority to carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer, or disposal of property subject to confiscation.

5. Preventing or voiding actions that prejudice the country’s ability to confiscate property: Countries should provide their competent authorities with the authority to take steps that will prevent or void actions that prejudice their ability to freeze, seize, or recover property subject to confiscation.

6. Appropriate investigative measures: Countries should provide their competent authorities with the authority to take any appropriate investigative measures.

7. Non-conviction-based confiscation: Countries should consider adopting measures that allow for the confiscation of proceeds or instrumentalities without requiring a criminal conviction (non-conviction-based confiscation).

8. Requirement to demonstrate lawful origin of property: Countries should consider adopting measures that require an offender to demonstrate the lawful origin of property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

The United Kingdom

Key features of the UK’s approach under the Proceeds of Crime Act 2002 (POCA) include:

1. Restraint Orders: Under Section 41 of POCA, law enforcement authorities can apply for a restraint order to freeze property suspected to be involved in money laundering when a criminal investigation is underway, or charges are being considered. Restraint orders can be sought from the Crown Court and help ensure that assets are not disposed of or transferred during the investigation or pending trial.

2. Property Freezing Orders: Part 5 of POCA allows for civil recovery of the proceeds of unlawful conduct. Authorities can apply for a property freezing order under Section 245A when there is reasonable suspicion that the property is recoverable (obtained through unlawful conduct). Property freezing orders help preserve assets for potential confiscation or recovery through civil proceedings.

3. Disclosure Orders: Section 357 of POCA allows for the issuance of disclosure orders in the context of a money laundering investigation. These orders require individuals or entities to provide relevant information to assist in the identification, tracing, or recovery of property suspected to be involved in money laundering.

4. Legal Safeguards: POCA provides various legal safeguards to protect the rights of property owners and persons with an interest in the attached property. For example, Section 47 of POCA allows for the discharge or variation of a restraint order if it is no longer appropriate.

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252 Proceeds of Crime Act, 2002
5. **International Cooperation:** The UK has a strong focus on international cooperation in the context of money laundering and asset recovery, working closely with foreign jurisdictions and international organizations, such as the Financial Action Task Force (FATF) and Europol. POCA includes provisions for mutual legal assistance, asset sharing, and recognition of foreign restraint and confiscation orders.

### The United States of America

In the United States, asset forfeiture is governed by various federal statutes, including the Comprehensive Crime Control Act of 1984, the USA PATRIOT Act, and the Money Laundering Control Act. Key aspects of the U.S. approach to provisional attachment include:

1. **Asset Forfeiture:** The U.S. employs a robust asset forfeiture regime that allows for both civil and criminal forfeiture proceedings. This approach enables federal authorities to seize property subject to forfeiture, even when the owner is not charged or convicted, as long as the property is shown to be connected to the illegal activity.\(^{253}\)

2. **Seizure Warrants:** U.S. law enforcement authorities can obtain seizure warrants from a federal court, which enable them to seize property suspected to be involved in money laundering or related offenses. Judicial oversight ensures due process and protects the rights of property owners.\(^{254}\)

3. **Restraining Orders:** Federal authorities can seek restraining orders, injunctions, or other measures to preserve the availability of property for forfeiture (18 U.S.C. § 983(j)). These orders can be obtained before or after the initiation of forfeiture proceedings, and they help to prevent the dissipation of assets during the investigation or trial.\(^{255}\)

4. **Parallel Investigations:** U.S. authorities often conduct parallel investigations involving both criminal and civil forfeiture actions. This approach maximizes the chances of recovering the proceeds of crime, as it allows authorities to pursue asset recovery through multiple legal avenues.\(^{256}\)

5. The U.S. emphasizes international cooperation in its anti-money laundering efforts, engaging in information sharing and mutual legal assistance with foreign jurisdictions. Additionally, the U.S. is an active member of the Financial Action Task Force (FATF) and other international organizations focused on combating money laundering and terrorist financing.\(^{257}\)

6. **Dedicated Task Forces and Units:** The U.S. has established dedicated task forces and units, such as the Financial Crimes Enforcement Network (FinCEN) and the Department of Justice's (DOJ) Asset Forfeiture and Money Laundering Section, to coordinate and enhance anti-money laundering efforts at the federal level.\(^{258}\)

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\(^{253}\) The U.S. federal asset forfeiture regime is primarily governed by the Comprehensive Crime Control Act of 1984 (Title 18 U.S.C. Chapter 46), which lays out the basis for civil and criminal forfeiture proceedings.

\(^{254}\) The legal basis for seizure warrants can be found in the Federal Rules of Criminal Procedure, Rule 41, which governs the issuance of search and seizure warrants, and 18 U.S.C. § 981(b), which specifically covers warrants for the seizure of property subject to civil forfeiture.

\(^{255}\) The legal basis for restraining orders, injunctions, and other measures to preserve the availability of property for forfeiture is 18 U.S.C. § 983(j).

\(^{256}\) Parallel investigations are not explicitly defined in a specific statute but are derived from the broad powers granted to federal law enforcement and prosecutorial agencies under various federal laws, such as the Comprehensive Crime Control Act of 1984 and the Money Laundering Control Act (18 U.S.C. §§ 1956 and 1957). These laws empower federal agencies to conduct simultaneous civil and criminal investigations and prosecutions related to money laundering offenses and asset forfeiture.

\(^{257}\) The legal basis for international cooperation in anti-money laundering efforts can be found in various statutes, such as the USA PATRIOT Act (Title III, the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001) and 18 U.S.C. § 981(i), which provides for the enforcement of foreign forfeiture orders.

\(^{258}\) The Financial Crimes Enforcement Network (FinCEN) derives its authority from the Currency and Financial Transactions Reporting Act of 1970 (31 U.S.C. §§ 5311–5332), while the Department of Justice's (DOJ) Asset Forfeiture and Money Laundering Section operates under the authority of the Attorney General and various federal statutes related to asset forfeiture and money laundering.
7. *Legal Safeguards:* U.S. forfeiture laws provide legal safeguards to protect the rights of property owners, including the right to contest a forfeiture action and seek the release of seized property. For example, under 18 U.S.C. § 983, property owners have the right to contest a civil forfeiture action and request the return of seized property if the government cannot establish that the property is subject to forfeiture.\(^{259}\)

\(^{259}\) Legal safeguards for property owners in forfeiture proceedings are primarily found in 18 U.S.C. § 983, which provides various procedural protections, such as the right to contest a civil forfeiture action and request the return of seized property if the government cannot establish that the property is subject to forfeiture.
Section 9 – Investigation

9. Investigation. 260 —

1) The investigating officer shall, not later than seven days from the date of order of attachment made under sub-section (1) of section 8 or, seizure of property under section 14 or section 15, serve a notice of not less than thirty days on the person concerned. The notice shall call upon such person to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 8, or, seized under section 14 or section 15, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money laundering and forfeited to the Federal Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served upon all persons holding such property.

2) The investigating officer shall, after —

a) considering the reply, if any, to the notice issued under subsection (1);

b) hearing the aggrieved person; and

c) taking into account all relevant materials placed on record before him;

record a finding whether all or any other properties referred to in the notice issued under sub-section (1) are properties involved in money laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not a property involved in money laundering.

3) Where the investigating officer on the basis of report received from the concerned investigating agency determines under sub-section (2) that a property is the property involved in money laundering, he shall, apply to the Court for an order confirming the attachment of the property made under subsection (1) of section 8 or retention of property or record seized under section 14 or section 15.

3A) The Court may, after giving opportunity of hearing to the persons concerned with the property attached under sub-section (1) of section 8 or retained or seized under section 14 or section 15, pass an order confirming the attachment, retention, seizure or as the case may be, release of the property. The attachment or retention or seizure of the property shall—

a) continue during the pendency of the proceedings relating to any predicate offence or money laundering before a Court; and

260 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 5.
b) become final if it is proved in the Court that the property is the property involved in money laundering."

4) Where the provisional order of attachment made under subsection (1) of section 8 has been confirmed under sub-section (3A), the investigating officer shall forthwith take possession of the attached property:

Provided that where the property seized is perishable in nature or subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the Court may, on the application of the investigating officer, order immediate sale of the property in any manner deemed appropriate in the circumstances.

5) Where on conclusion of a trial for any predicate offence and money laundering, the person concerned is acquitted, the attachment of the property or retention or seizure of the property or record under sub-section (3A) and net income, if any, shall cease to have effect.

6) Where the attachment of any property or retention or seizure of the property or record becomes final under clause (b) of sub-section (3A), the Court shall make an order for forfeiture of such property.

7) After passing the order of forfeiture under sub-section (6), the Court shall direct the release of all properties other than the properties involved in money laundering to the persons from whom such properties were seized.

**Analysis of Section 9 of the AMLA 2010**

Section 9 of the AMLA 2010 outlines the investigation process. The investigating officer serves a show cause notice to the person involved, calling for information on the source of income and assets related to the attached or seized property. After considering the person's reply and relevant materials, the officer determines if the properties are involved in money laundering. If so, they apply to the court under section 9(3) of AMLA for an order to confirm the attachment or retention. The court confirms the attachment, which remains in effect until the conclusion of legal proceedings. If the property is proven to be involved in money laundering, it becomes a final attachment and is forfeited in favor of Federal Government. Upon forfeiture, non-involved properties are released to their owners.

Section 9 of the AMLA 2010 plays a vital role in combating money laundering by outlining the investigation process and the actions taken regarding properties suspected to be involved in illicit financial activities. This section empowers the IO to serve a notice to the person concerned, following the issuance of an attachment order under Section 8 or the seizure of property under Sections 14 or 15 of the AMLA 2010. The notice serves as a means to gather information and evidence related to the sources of income, earnings, and assets used to acquire the attached or seized property.

The IO is required to serve the notice within seven days of the attachment or seizure order and must allow a minimum of thirty days for the person to respond. The notice requests the person to disclose the sources of their income, earnings, and assets, provide evidence, and furnish other relevant information and particulars. Additionally, the person is given an opportunity to show cause as to why the property should not be declared as involved in money laundering and subsequently forfeited to the Federal Government.

It is important to note that if the notice identifies someone as holding the property on behalf of another person or if the property is jointly held, copies of the notice must be served to all relevant parties. This
ensures that all individuals with a stake in the property are aware of the investigation and have the opportunity to provide their input.

The IO plays a crucial role in the investigation process. After considering the reply to the notice, hearing the aggrieved person, and reviewing all relevant materials, the IO must record a finding under Section 9(2) of the AMLA, 2010 on whether the property is involved in money laundering. This finding is based on the evidence presented, the information disclosed, and the particulars furnished by the concerned person. If the IO determines that the property is indeed involved in money laundering, an application under Section 9(3) of the AMLA, 2010 is made to the court for an order confirming the attachment or retention of the seized property, as per the provisions of Sections 14 and 15 of the AMLA.

The court under Section 9(3A) of the AMLA, 2010, upon receiving the application, will examine the case and provide an opportunity for all concerned parties to be heard. After considering the arguments and evidence presented, the court may pass an order confirming the attachment, retention, seizure, or release of the property. This order remains in effect throughout the proceedings relating to any predicate offense or money laundering that are being pursued in court. Furthermore, the order becomes final if it is proven in court that the property is indeed involved in money laundering.

It is worth mentioning that during the investigation process, a person who claims an interest in the attached property shall not be deprived of the rights attached to immovable property. This provision ensures that individuals with legitimate ownership or interest in the property are not unjustly affected during the investigation.

In situations where the attached property is perishable, subject to decay, or the expenses of keeping it in custody are likely to exceed its value, the IO may apply to the court for the immediate sale of the property. This provision allows for the efficient handling of assets that are susceptible to rapid depreciation or incur substantial costs for storage. Examples of such perishable assets could include vehicles, vessels, or other time-sensitive properties.

The AMLA also addresses the issue of the release of properties. If, upon conclusion of a trial for any predicate offense and money laundering, the person concerned is acquitted, the attachment, retention, seizure, and any associated net income will cease to have effect. This provision ensures that individuals who have been cleared of any wrongdoing are not unfairly burdened by the continued attachment or retention of their properties.

However, it is important to note that if the court determines that the property is indeed involved in money laundering, the court shall make an order for the forfeiture of such property. The forfeiture process involves the permanent loss of ownership and control over the property. Once the court passes the order of forfeiture under sub-section (6) of Section 9, it directs the release of all properties, except those involved in money laundering, to the persons from whom such properties were seized.

In a nutshell, Section 9 of the AMLA establishes a comprehensive framework for the investigation, attachment, retention, seizure, and release of properties suspected to be involved in money laundering. The section ensures that due process is followed, providing opportunities for individuals to present their case and protecting the rights of those who are innocent of any wrongdoing. By incorporating these safeguards and procedures, the AMLA aims to effectively combat money laundering and the illicit acquisition of assets through illegal means.
**Interconnected Provisions**

In conjunction with Section 9, the AMLA 2010 establishes a comprehensive framework that enables effective investigation, attachment, retention, and seizure of properties suspected to be involved in money laundering. These provisions promote transparency, accountability, and fair treatment while also encouraging cooperation from relevant entities to combat money laundering effectively. The following provisions are interconnected with Section 9 of the AMLA 2010:

a. Section 8 of AMLA 2010 empowers the IO to apply for a 180–day attachment order for the property when it is reasonable to believe the involvement of property in money laundering. However, it is done on the basis of report that the IO receives from the investigating or prosecuting agency. It is also incumbent on that particular officer to keep the court posted on the progress of investigation, ensuring transparency and accountability.

b. Section 9 is an extension of Section 8 and focuses on ensuring fair treatment of individuals whose property is attached based on suspicion. This provision provides an opportunity for those individuals to be heard, allowing them to present their case and provide relevant information or evidence. The essence of Section 9 lies in establishing a structured investigatory process and safeguarding the rights of individuals whose property is under suspicion. Moreover, the investigatory process that is set out in this provision connects to Sections 13, 14 and 15 which are summarized below:

- Section 13 lays down the "power of survey" of a place where a money laundering offence has been suspected or where relevant records are located is wide-ranging and empowers an investigating officer to enter any place for inspecting the records, verifying any information or transaction related to the proceeds of crime and furnishing information useful or relevant to any proceedings under AMLA 2010. However, the three powers shall be exercised with the permission of the court based on the material in possession of IO that gives rise to a reason to believe an offence of money laundering has been committed.\(^{261}\)

- Under section 14, the court may authorize the IO or a subordinate officer for "search and seizure" where the IO based on the material in possession alongside a reason to believe of the commission of the offense of money laundering can:
  
  - Enter and search any place properties or record
  - Break open the lock of any safe where keys are not available
  - Seize any record or property
  - Examine any person, who is found to be in possession or control of any such record or property.\(^{262}\)

In cases where the search is urgent section 14(2) allows a senior officer to authorize the investigating officer to begin the search.

- Section 15 of the AMLA 2010 provides for a search of a person where the investigating officer has suspicion that any person has secreted about the person or anything under his possession, ownership or control, any record or property which may be useful for any proceedings, one may search that person and seize such

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\(^{261}\) Section 13 Anti-Money Laundering Act (AMLA) 2010

\(^{262}\) Ibid.
record or property. Statement of the person shall also be recorded who had the records or property involved in money laundering and found or seized in the course of the search.

c. Section 19 governs the retention of seized or attached property following search or seizure. The investigating officer can also retain the person for 180 days. Notably, the retention of property seized under Section 14 (search and seizure) of the AMLA 2010 is for 90 days. A court can grant an extension if required — for instance for production at a trial fixed for a later date or as prima facie property involved in money laundering needed to further the investigation.

d. Section 25 of AMLA supports the investigation by mandating for all financial institutions, reporting entities, government functionaries, and authorities to render complete assistance to law enforcement agency for the purpose of an investigation for money laundering.

The interconnected provisions of the AMLA, including Sections 8, 13, 14, 15, 19, and 25, significantly impact the applicability and effectiveness of Section 9. While Section 8 enables the IO to initiate the attachment process, Sections 13, 14, and 15 provide the necessary powers for survey, search, and seizure of property based on reasonable suspicion. Section 19 governs the retention of seized or attached property, ensuring its availability for investigation and trial purposes. Lastly, Section 25 emphasizes the cooperation of financial institutions, reporting entities, and authorities in supporting the investigation process. Together, these provisions establish a comprehensive framework that safeguards the rights of individuals while empowering law enforcement agencies to combat money laundering effectively, thus strengthening the overall applicability and impact of Section 9 in the fight against illicit financial activities.

Other Overlapping Laws

The investigation process under Section 9 of the AMLA is intertwined with various overlapping laws, such as the Qanun E Shahadat Order (QSO) 1984, Criminal Procedure Code (Cr.P.C.) 1898, Pakistan Penal Code (PPC), Prevention of Electronic Crimes Act, 2016 (PECA), and Investigation Right to Fair Trial Act 2013 (IFTA). These legal provisions encompass a range of aspects, including the admissibility of evidence, procedures for witness statements, seizure and search of data, surveillance powers, international cooperation, and the recognition of evidence obtained from modern devices. Together, they form a comprehensive legal framework that supports the effective investigation and prosecution of money laundering offenses while safeguarding the rights of individuals involved. The following legal provisions apply to investigations which aids the means and methods of investigation set out in section 9:

a. Investigation is an expansive process and various general alongside special laws form an effective legal framework. Similarly, in the money laundering investigations, QSO 1984 would apply for the evidence collected during investigation. Moreover, Cr.P.C. 1898 being the general law for criminal investigations and its application remains intact at all times.

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263 Ibid, Section 17.
264 Ibid, Section 17(3) and (4).
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in the criminal justice system. Section 161\(^{265}\), 162\(^{266}\) and 172\(^{267}\) of the Cr.P.C under which the statements of witnesses are recorded apply to the investigations accordingly.

b. Article 2(c) of the QSO, 1984, states that evidence includes oral and documentary evidence. Oral evidence or testimonial evidence is a person’s testimony offered to prove the truth of the matter asserted.\(^{268}\)

c. Section 9 and 9A of the AMLA specifically involve the collection and presentation of "documentary evidence." According to Article 2(1)(c)(ii) of the QSO, documentary evidence encompasses all documents produced for inspection by the court, which are essential in establishing the elements of money laundering offenses.

d. Notably, documentary evidence holds significant weight in legal proceedings and cannot be refuted by oral evidence alone.\(^{269}\) A document that is once brought on record can be given effect to by the Court even in the absence of a plea by a party to such effect.\(^{270}\) The physical presence of a person may or may not be necessary. Merely production of documents may serve the purpose of investigation. Summons or orders include the place and time to produce documents.\(^{271}\)

e. According to the Pakistan Penal Code (PPC), a document is defined as “any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.”\(^{272}\)

f. When a person is found with funds or other property disproportionate to one’s known source of income, the evidence becomes directly relevant as circumstantial evidence. However, mere presence of unexplained funds or other cannot conclusively establish the commission of money laundering unless a nexus is shown with the predicate offence.\(^{273}\)

g. The Prevention of Electronic Crimes Act, 2016, (PECA) permits Courts to issue warrants to seize and search through any data that 'may reasonably be required' for a criminal investigation.\(^{274}\) It also allows a law enforcement officer to require a person to hand over data without the production of a warrant if the officer believes that such data is 'reasonably required' for a criminal investigation. This power is entirely discretionary, with the only caveat being that the officer is required to provide a notice to the Court of such a seizure within 24 hours of acquisition.

h. Section 32 of the PECA provides far-ranging powers to authorized officers to conduct searches and seizure of data however it is mandatory for them to follow the guidelines provided under section 35.\(^{275}\) By adding such condition the legislative intent has been to

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\(^{265}\) Section 161, Criminal Procedure Code 1898 [Compulsory to record statements of the witnesses or accused or any other suspect. Reduce the statements of such people into writing except for those who give their statements by reason of their duty, e.g., medical officer, FSL & DNA expert, serologist, etc. Statements under this Section must be recorded and written by the IO.]

\(^{266}\) Ibid, Section 162 [Such statements may become relevant as to their admissibility when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing.]

\(^{267}\) Ibid, Section 172 [IO is required to make a separate record of such statements and is expected to include them in the case diary maintained under Section 172.]


\(^{269}\) Mazool Hussain v. Abid Hussain, PLD 2008 SC 571.

\(^{270}\) Muhammad Farooq v. Sana Rizwan, PCrLJ 2018 KHC 1676.

\(^{271}\) Pakistan Penal Code, 1860. (PPC)

\(^{272}\) Rafi Ullah v. The State, 2019 PCrLJ 1608, 1609; Maryam Nawaz Sharif v. Chairman NAB, PLD 2020 Lah 205, 225.


\(^{274}\) Ibid, Section 35(2) of the PECA.
take all precautions to maintain the integrity and secrecy of the information and data that has been seized or collected.

i. Section 39 of PECA allows for real-time monitoring and collection of data if a Court is satisfied that such monitoring and collection is necessary for a criminal investigation. This can go on for a period of 7 days. The Court may extend the surveillance period if it is satisfied as to the efficacy of the monitoring and is of the belief that continued monitoring is necessary.276

j. The government is allowed to share any data obtained from its investigation with any foreign government or international agency under Section 42 if such sharing would, in the opinion of the Federal Government, further the aims of the law.277

k. The investigation agency may also employ surveillance and interception provided by Investigation Right to Fair Trial Act 2013 (IFTA).

l. Section 9 of AMLA read with section 9A also renders any evidence obtained from modern devices or techniques admissible according to Article 164 of the QSO. Apart from the conventional oral or documentary evidence required to prove an offence, Pakistan’s criminal justice system has gradually acknowledged the admissibility of evidence that falls within the confines of this provision.

m. Any evidence obtained from modern devices or techniques is admissible as per Art. 164 of the QSO. Apart from the conventional oral or documentary evidence required to prove an offence. Pakistan’s criminal justice system has gradually acknowledged the admissibility of evidence that falls within the confines of this provision.

n. Under the QSO, electronic evidence which is forensically analyzed from the concerned forensic agency/wing may constitute documentary evidence within the meaning of Art. 2(1)(b) and (c). It may be constituted as an electronic information/document under Art. 46-A of the QSO. This evidence would have to be proven in accordance with the provisions of the QSO altogether with Chapter V of the QSO, in particular, which outlines provisions relating to documentary evidence.

The convergence of the above-mentioned laws with Section 9 of the AMLA 2010 enhances the investigative process, ensures the reliability of evidence, and strengthens the overall fight against money laundering within the criminal justice system of Pakistan.

277 Ibid.
278 Investigation Right to Fair Trial Act 2013 (IFTA), Article 3(g)(ii); [Symbolic/Non-Symbolic System Based Communications Surveillance includes 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.]
279 Ibid., Symbolic/Non-Symbolic System Based Communications [data, information or material in any documented form, whether written, through audio visual device, CCTV, still photography, observation or any other mode of modern devices or techniques obtained under this 71 Act; and (b) documents, papers, pamphlets, booklets]
Key Cases

Shoaib Ahmed Shaikh v. Federation of Pakistan

In the case of Shoaib Ahmed Shaikh v. Federation of Pakistan, the application of Section 9 of the Anti-Money Laundering Act, 2010 (AMLA 2010) was brought into focus. The petitioner’s accounts had been provisionally attached by the Federal Investigation Agency (FIA) as part of an ongoing investigation. The FIA required the petitioner to provide evidence demonstrating that the funds in the accounts were not obtained through criminal activities. However, the court clarified that the mere issuance of a provisional attachment order under Section 8 of the AMLA 2010 did not cause any harm to the petitioners. This order would lose its effectiveness after a maximum of 90 days if the proceedings were not concluded in accordance with the provisions of the AMLA 2010.

The court emphasized that the legislature had established a comprehensive mechanism to address the grievances of individuals affected by provisional attachment orders. As part of this mechanism, after completing the proceedings under Section 9 of the AMLA 2010, the investigating officer is required to approach the court to seek confirmation of the provisional attachment order. In this particular case, the petitioners’ premature appearance before the High Court meant that they had bypassed the legal remedy provided by the law and invoked the constitutional jurisdiction of the High Court. As a result, they could not challenge a provisional attachment order that had not yet been confirmed by the appropriate court.

The court emphasized that the petitioners had been given a fair opportunity to present their case and provide evidence to the investigating officer and trial court, demonstrating that the funds in the accounts in question had no connection to the alleged offense. Therefore, the court dismissed the constitutional petition, highlighting that the petitioners had failed to avail themselves of the legal remedy provided in the AMLA 2010 and had prematurely sought relief through constitutional jurisdiction.

International Best Practices

FATF Recommendations

Recommendation 24 – Access to beneficial ownership information: The FATF calls for countries to ensure that competent authorities have timely access to adequate, accurate, and up-to-date information on the beneficial owners of legal persons and arrangements. This information is crucial for tracing assets, identifying true owners of properties, and uncovering complex money laundering schemes involving shell companies and other legal structures.

Linking this recommendation to Section 9 of the AMLA 2010, it is evident that Section 9 aligns with the FATF’s call for countries to assess and mitigate the risks of money laundering and terrorist financing through legal persons. By establishing mechanisms for investigating and attaching properties suspected of involvement in money laundering, Section 9 supports the objective of preventing the misuse of legal entities. Moreover, the provision empowers competent authorities, such as investigating officers, to access and examine relevant records, transactions, and information pertaining to the proceeds of crime. In doing so, Section 9 facilitates the identification and verification of beneficial ownership and control, ultimately enhancing transparency and accountability in the fight against money laundering and terrorist financing.

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280 Shoaib Ahmed Shaikh v. Federation of Pakistan, 2016 PLD 607 Khi. HC
281 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendations
**Recommendation 30 - Specialized investigative authorities:** The FATF's Recommendation 30 emphasizes the need for countries to establish designated and specialized authorities responsible for conducting effective investigations into money laundering, predicate offenses, and terrorist financing. These specialized authorities play a crucial role in developing proactive parallel financial investigations, particularly in cases involving major proceeds-generating offenses. Furthermore, these authorities should possess the necessary expertise, resources, and legal powers to conduct comprehensive investigations, which may extend beyond national borders in instances where the associated predicate offense occurs outside their jurisdictions.

Linking this recommendation to Section 9 of the AMLA 2010, it is evident that Section 9 aligns with the FATF's call for countries to ensure that designated law enforcement authorities have the responsibility for investigating money laundering and associated offenses within the framework of their national AML/CFT policies. Section 9 empowers competent authorities, such as investigating officers, to promptly identify, trace, and initiate actions to freeze and seize property that is suspected to be proceeds of crime or subject to confiscation. By equipping these authorities with the necessary tools and legal provisions, Section 9 facilitates the expeditious investigation and recovery of illicitly obtained assets, thereby undermining the financial foundations of criminal activities.

To further enhance the effectiveness of Section 9 and comply with Recommendation 30, countries should consider establishing permanent or temporary multi-disciplinary groups specializing in financial or asset investigations. These collaborative entities can bring together expertise from various fields, such as finance, law enforcement, and intelligence, to tackle complex money laundering cases and ensure a comprehensive approach to investigation. Additionally, fostering cooperative investigations with competent authorities from other countries, when necessary, reinforces international collaboration and strengthens the collective efforts against money laundering and terrorist financing.

By implementing and enforcing Section 9 of the AMLA 2010 in accordance with Recommendation 30, countries can bolster their ability to combat financial crimes, preserve the integrity of their financial systems, and contribute to global efforts in countering money laundering and terrorist financing.

**Recommendation 38 - Asset management and preservation:** The FATF stresses the importance of properly managing and preserving assets seized or confiscated during investigations to prevent their dissipation or deterioration. This includes implementing procedures for the identification, tracing, freezing, seizure, and confiscation of assets, as well as providing for the management and, ultimately, the disposal of confiscated assets.

Linking this recommendation to Section 9 of the AMLA 2010, it is evident that Section 9 aligns with the FATF’s call for asset management and preservation. Section 9 empowers competent authorities, such as investigating officers, to take expeditious actions for the freezing and seizure of assets suspected to be proceeds of crime or subject to confiscation. By providing a legal framework for asset preservation, Section 9 ensures that assets connected to money laundering offenses are safeguarded during the investigative process.

By incorporating the principles of Recommendation 38 into the implementation of Section 9, countries can enhance their ability to disrupt and dismantle money laundering networks. Proper asset management and preservation not only serve as a deterrent to criminals but also ensure that seized or confiscated assets can be effectively utilized for the benefit of society. This integration of asset management measures within Section 9 further strengthens the overall effectiveness of the AMLA 2010 in combating money laundering and terrorist financing.
**United States**

In the United States, the Bank Secrecy Act (BSA) and the USA PATRIOT Act have provisions that establish deadlines for specific stages of investigations, particularly concerning reporting requirements and information sharing between financial institutions and law enforcement agencies. These provisions are aimed at promoting timely and effective responses to suspicious activities and transactions that may be indicative of money laundering or terrorist financing.

Under the BSA and the USA PATRIOT Act, financial institutions are required to file Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs) within specific timeframes after detecting potentially suspicious or large-scale transactions. These reports serve as vital sources of information for law enforcement agencies in identifying and investigating possible cases of money laundering or other illicit financial activities.

Similarly, law enforcement agencies are expected to respond promptly to these reports, ensuring that the information is adequately analyzed and acted upon. Timely responses enable law enforcement to take necessary actions, such as initiating parallel financial investigations, freezing assets, and initiating criminal proceedings when warranted.

Comparing these provisions to Section 9 of the AMLA 2010, both frameworks recognize the importance of setting deadlines and time-bound requirements to facilitate effective investigations and prevent undue delays. While Section 9 of the AMLA 2010 primarily focuses on the attachment, investigation, and forfeiture of properties involved in money laundering, the provisions in the United States emphasize the reporting obligations of financial institutions and the subsequent response by law enforcement agencies.

By imposing deadlines for filing reports and responding to them, both the AMLA 2010 and the U.S. legislation aim to ensure the prompt exchange of information between relevant stakeholders. These provisions contribute to the overall effectiveness of anti-money laundering measures by enabling timely detection, investigation, and prevention of financial crimes.

**United Kingdom**

In the United Kingdom, there are certain provisions that share similarities with Section 9 of the AMLA 2010. One such provision is the existence of specialized investigative authorities. The National Crime Agency (NCA) and its Economic Crime Command are dedicated to investigating complex and high-profile cases of money laundering. This specialization allows the NCA to develop expertise, allocate sufficient resources, and coordinate efforts with other law enforcement agencies, regulators, and private sector partners. Similarly, under Section 9 of the AMLA 2010, investigating officers are designated with the responsibility of conducting thorough investigations into money laundering offenses. These officers are expected to possess the necessary knowledge and skills to carry out comprehensive inquiries and gather relevant evidence.

Another comparable provision in the United Kingdom is the establishment of a public register of beneficial ownership information. Known as the "Persons of Significant Control" (PSC) register, it is maintained by Companies House. This register requires companies to disclose information about individuals who hold significant control or ownership over the company. Access to this register aids investigators in tracing assets and identifying the true owners of properties involved in money laundering.

While Section 9 of the AMLA 2010 primarily focuses on the investigation and attachment of properties connected to money laundering, the UK’s PSC register complements these efforts by providing a transparent mechanism to access and verify ownership details. Although the AMLA 2010 does not
explicitly require the establishment of a public register, the objective of obtaining accurate and up-to-date information on beneficial ownership aligns with the FATF’s Recommendation 24, which emphasizes transparency and access to beneficial ownership information.

These provisions in the United Kingdom demonstrate the shared goal of conducting effective investigations and combating money laundering. While the specific structures and mechanisms may differ, the principles of having specialized investigative authorities and facilitating access to beneficial ownership information serve to enhance transparency, identify illicit assets, and prevent money laundering activities.

**Australia**

In Australia, provisions similar to Section 9 of the AMLA 2010 can be found in the Proceeds of Crime Act 2002. One such provision is the appointment of a trustee to manage restrained assets. When assets are subject to restraint orders, the court has the authority to appoint a trustee who is responsible for overseeing the proper management, preservation, and maintenance of these assets. This ensures that their value is maintained throughout the legal proceedings.

Similarly, Section 9 of the AMLA 2010 empowers the investigating officer to attach and seize properties suspected to be involved in money laundering. Once the provisional attachment order is confirmed, the investigating officer takes possession of the attached property. These measures are in place to prevent the dissipation or deterioration of assets during the course of the investigation and subsequent legal proceedings.

The appointment of a trustee in Australia serves a similar purpose as the provisions in Section 9 of the AMLA 2010. By entrusting the management of restrained assets to a qualified trustee, Australia aims to preserve the value of these assets until the conclusion of legal proceedings. This helps ensure that if the assets are ultimately forfeited or confiscated, their value remains intact and can be used for restitution or other purposes as determined by the national laws.

Both the Australian Proceeds of Crime Act 2002 and Section 9 of the AMLA 2010 recognize the importance of safeguarding assets that are subject to legal proceedings related to money laundering. The appointment of a trustee in Australia and the provision for the investigating officer to take possession of attached properties in Section 9 of the AMLA 2010 demonstrate a shared objective of preserving the value of assets involved in illicit activities until the legal process is concluded. These measures contribute to the effectiveness of combating money laundering and ensuring that the proceeds of crime are properly managed and used in accordance with the law.
Section 10 – Vesting of Property in Federal Government


Where an order of forfeiture has been made under sub-section (6) of section 9 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Federal Government free from all encumbrances:

Provided that where the Court, after giving an opportunity of being heard to any other person interested in the property attached under section 8, or seized under section 14, is of the opinion that any encumbrance on the property or leasehold interest has been created with a view to defeat the provisions of this Act, it may, by order, declare such encumbrance or leasehold interest to be void and thereupon the aforesaid property shall vest in the Federal Government free from such encumbrances or leasehold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances, which may be legally enforced against such person.

**Analysis of Section 10 of the AMLA**

**Vesting of property in the Federal Government**

Section 10 of the AMLA stipulates that when an order of forfeiture is issued under subsection (6) of section 9 for the property belonging to an individual, all rights and title to that property shall become the absolute possession of the Federal Government, free from any encumbrances. However, if the court, after providing an opportunity for other interested parties to be heard, determines that any encumbrance or leasehold interest was established with the intention to circumvent the provisions of the Act, it can declare such encumbrance or leasehold interest void. In such cases, the property will vest in the Federal Government without any encumbrances or leasehold interest. It is important to note that this section does not absolve any person from liabilities arising from such encumbrances, which may still be legally enforced against them.

Under section 10 of the AMLA, 2010 Federal Government assumes legal ownership of all properties that are subject to an order of forfeiture made under section 9(6). This provision aims to combat money laundering and ensure that illicitly obtained assets are appropriately seized and held by the government. However, the section also includes certain provisions to safeguard the rights of affected bona fide third parties and address their interests and liabilities.

1. **First Proviso: Protection of Bona Fide Third Parties**

The first proviso within section 10 ensures that bona fide third parties who may be affected by the forfeiture order have the opportunity to be heard by the Court before the order is finalized. This provision recognizes the importance of fairness and due process by allowing these individuals or entities to present their case and provide any evidence or arguments that may support their claim of legitimate ownership or interest in the property. The Court is empowered to carefully consider these submissions and make an informed decision regarding the forfeiture order, taking into account the rights and interests of the bona fide third parties.

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282 Words within this provision that are **bolded** are defined in the “Relevant Definitions” section of Chapter 5.
Furthermore, the Court is granted the authority, if necessary, to quash any interests claimed by affected bona fide third parties. This provision enables the Court to invalidate any encumbrances or claims on the property that are found to be illegitimate or linked to illicit activities. By doing so, the Court ensures that the forfeited properties are free from any encumbrances that may hinder the government’s ability to effectively manage and dispose of them in accordance with the law.

2. Second Proviso: Liability in Respect of Encumbrances

The second proviso within section 10 clarifies that the forfeiture order does not discharge any person from their liability in relation to encumbrances on the property. This provision emphasizes that while the ownership of the property is transferred to the Federal Government, any legal obligations or liabilities attached to encumbrances, such as mortgages or liens, remain in force. Therefore, the forfeiture order does not absolve any person from fulfilling their obligations or responsibilities associated with encumbrances that were validly created on the property prior to its forfeiture.

This proviso ensures that the interests of creditors or other parties with valid claims against the property are not compromised or prejudiced by forfeiture. It upholds the principle that lawful obligations should be honored even in cases where the property is subject to forfeiture due to its association with money laundering or illicit activities.

The Law on Forfeiture

The definition of forfeiture, as provided by the United Nations Office on Drugs and Crime (UNODC), aligns with the language used in section 10 of the Anti–Money Laundering Act 2010 (AMLA). According to the UNODC, forfeiture, also known as confiscation, refers to the permanent deprivation of property through a court order or administrative procedures. This process transfers the ownership of assets derived from criminal activity to the state. Section 10 of the AMLA reflects this definition by vesting forfeited property in the hands of the Federal Government.

The conditions for forfeiture of property are outlined in section 10, which specifies that an order for forfeiture can only be issued following a conviction under section 9(6) of the AMLA. This provision establishes that section 10 pertains to conviction-based confiscation. In other words, property can be forfeited only after an individual has been convicted of an offense under the AMLA.

The UNODC emphasizes that conviction-based confiscation should be complemented by non-conviction-based confiscation, which allows the state to temporarily seize or restrain certain property while legal proceedings are ongoing. Although the AMLA does not explicitly provide for non-conviction-based forfeiture, it does include provisions for the attachment, seizure, and retention of property.

Under section 8 of the AMLA, an investigating officer is empowered to attach property. This allows for the provisional restraint of assets during the investigation process. Additionally, section 15 allows for the seizure of property by authorized law enforcement agencies, while section 17 permits the retention of property during the course of legal proceedings.

However, it is important to note that property is only vested in the Federal Government once an individual is convicted of an offense under the AMLA. This means that non-conviction-based forfeiture, as advocated by the UNODC, is not explicitly provided for in the AMLA. The Act primarily focuses on conviction-based confiscation, ensuring that forfeiture occurs after a criminal conviction has been secured.

UNODC, Effective management and disposal of seized and confiscated assets (October 2017)
In summary, section 10 of the AMLA aligns with the UNODC’s definition of forfeiture as the permanent transfer of property derived from criminal activity to the state. The section establishes that forfeiture can only occur following a conviction under section 9(6) of the AMLA, indicating its conviction-based nature. While the AMLA does not explicitly include provisions for non-conviction-based forfeiture, it does provide mechanisms for the attachment, seizure, and retention of property during investigations and legal proceedings.

**Substantive Issues**

The provisions regarding forfeiture in the Anti-Money Laundering Act (AMLA) of Pakistan indeed differ from those in laws of some other jurisdictions. While section 10 of the AMLA outlines the vesting of title to the Federal Government upon a forfeiture order, it does not explicitly detail the specific requirements for forfeiture. In contrast, statutes in other jurisdictions often include comprehensive criteria that courts must consider when determining whether to issue a forfeiture order upon conviction.

In many legal systems, the process of asset forfeiture typically involves multiple stages, such as freezing or restraining assets prior to a conviction. These interim measures aim to preserve the property in question and prevent its dissipation or disposal before the final determination of the case. However, in the AMLA, the provisions on freezing and restraint appear later in the statute, separate from the provisions on forfeiture. This chronological arrangement may seem less logical, as forfeiture is usually the final stage of the asset forfeiture process.

Another substantive issue in the AMLA is the lack of explicit recognition of instrumentalities. Instrumentalities are assets, other than real property, that are used in the commission of a money laundering offense and substantially contribute to the offense’s commission. These assets can play a crucial role in facilitating criminal activities involving other properties. Consequently, it is essential for the Federal Government to immobilize and address these instrumentalities effectively. However, the AMLA does not explicitly address the treatment of instrumentalities, which is a significant omission from a comprehensive anti-money laundering framework.

To address these substantive issues, potential amendments to the AMLA could include provisions that clearly specify the requirements for forfeiture, drawing from international best practices. This would provide courts with guidance and establish a transparent and consistent framework for determining forfeiture orders. Additionally, the provisions on freezing and restraint could be repositioned earlier in the statute, ensuring they align chronologically with the overall asset forfeiture process.

Furthermore, recognizing and addressing instrumentalities within the AMLA is crucial. By explicitly including instrumentalities and outlining the measures for immobilizing and managing these assets, the statute can effectively disrupt and prevent the further commission of money laundering offenses.

Expanding the scope of the AMLA to address these substantive issues would enhance the effectiveness and comprehensiveness of the legislation, aligning it with international standards and best practices in the field of anti-money laundering.
**Key Cases**

No such substantive case law on the matter.

**International Best Practices**

**FATF Recommendations**284

The Financial Action Task Force has proposed certain recommendations for effective forfeiture and asset recovery management.

**Recommendation 4** provides that states must implement measures which allow the competent authorities to freeze, seize and confiscate the property laundered; proceeds from, or instrumentalities used in or intended for use in, money laundering, or predicate offences.

This Recommendation highlights the necessary stages for effective confiscation of property used in money laundering. A state must provide measures to (1) freeze, (2) seize and then finally (3) confiscate criminal property and instrumentalities. The inclusion of the phrase ‘property and instrumentalities’ highlights the need to immobilize both for the effective neutralization of criminal activity. Apart from this, Recommendation 4 also asks states to consider adopting measures for non-conviction-based confiscation either within criminal proceedings or outside of the criminal justice system.

**Model Provisions**285

The UN Model Law section on confiscation of property is reproduced below:

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**Section 59. Confiscation Order of Conviction.**

(1) A confiscation order is an order in rem, following conviction for an offence, to forfeit to the State property that is the proceeds or instrumentalities of such offence.

(2) The court may make an order under this Section if the enforcement authority has applied to the court for an order under Section 55 or, in the absence of an application, if the court believes it is appropriate to make an order.

(3) Where the court is satisfied, on a balance of probabilities, that property is proceeds of crime in respect of an offence for which the defendant has been convicted, the court shall order that it be confiscated.

(4) Where the court is satisfied, on a balance of probabilities, that property is an instrumentality of crime in respect of an offence for which the defendant has been convicted, the court may order that it be confiscated.

(5) In considering whether to issue a confiscation order, the court may have regard to:
   
   (a) the rights and interests of third parties in the property;
   
   (b) the gravity of the offence concerned;
   
   (c) any extraordinary hardship, beyond that which might ordinarily be expected to flow from the operation of this section, that may reasonably be expected to be caused to any person by the operation of the order; and

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(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(6) In determining whether property is an instrumentality of such an offence, unless satisfied to the contrary, the court may infer that the property is an instrumentality of crime if it was in the defendant's possession at the time of or immediately after the commission of the offence for which the defendant was convicted.

(7) In determining whether property is proceeds of such an offence, unless satisfied to the contrary, the court may infer that the property was derived, obtained or realised as a result of or in connection with the commission of the offence, if it was acquired or possessed by the defendant, during or within a reasonable time after the period of the commission of the offence.

(8) Where the court orders the confiscation of property other than money, the court shall specify in the order the amount that it considers to be the value of the property at the time of its order.

(9) Where the court makes a confiscation order, the court may give such directions as are necessary or convenient for giving effect to the order.

Analyzing, section 59 establishes the framework for issuing confiscation orders after a conviction for an offence, allowing for the forfeiture of property identified as proceeds or instrumentalities of the crime. The court may order the confiscation if satisfied, on a balance of probabilities, that the property is connected to the offense. Factors such as the rights of third parties, the gravity of the offense, potential hardship, and the intended use of the property are considered. The section also provides guidance on inferring instrumentality or proceeds based on possession or acquisition timing. The court can specify the value of non-monetary property and issue necessary directions for implementing the confiscation order.

The UN Model Law provides a list of criteria that a Court may consider when passing an order for confiscation. This provides guidelines to the relevant Court when making a decision on confiscation, allowing for consistency in the application of the law.

The UN Model Law section on vestiture of property to the Government is reproduced below:

Section 61. Effect of Confiscation Order

(1) Subject to subsection (2), where a court makes a confiscation order against any property, the property vests absolutely in [insert name of State] by virtue of the order.

(2) Where the property is property the title to which is passed by registration in accordance with the provisions of [insert name of State’s land registration act], the property vests in [insert name of State] in equity by virtue of the order and vests at law when the applicable registration requirements have been met.

(3) For property of the kind set forth in subsection (2), [insert name of authority within State that should hold title] is entitled to be registered as owner of the property, and the enforcement authority is authorised to do anything necessary or convenient to secure such registration including executing instruments for transferring an interest in the property.

(4) Where the court makes a confiscation order against property, the property shall not, except with the leave of the court and in accordance with any directions of the court, be disposed of, or otherwise dealt with before the expiration of the appeal period applicable to the confiscation order, or, if an appeal is made, before the appeal is finally determined.
Analyzing, section 61 of the legislation deals with the consequences of a confiscation order. It states that when a court issues a confiscation order against property, that property becomes the absolute possession of the state. However, if the property requires registration according to the state’s land registration act, it becomes the equitable property of the state, with full legal ownership being established upon meeting the registration requirements. The relevant authority within the state is entitled to be registered as the owner of such property, and the enforcement authority is empowered to undertake necessary actions, including executing transfer instruments, to facilitate the registration process. Additionally, the section prohibits the disposal or handling of the confiscated property without the court's permission until the appeal period expires or, if an appeal is filed, until the appeal is finally resolved.

This section differentiates between property vested in the state and property that is vested to another entity. Property may either be vested in the state automatically upon forfeiture, or it may be property that can be transferred by registration to another entity; while the registration of those properties are underway, the state holds equitable title over them. The section also stipulates that a confiscation order is only finalized once an appeal decision is made.

The UN Model Law also creates sections for civil forfeiture. The main section outlining the state’s authority to conduct civil forfeiture is reproduced below:

**Section 80 – Civil Forfeiture Order**

(1) An order for civil forfeiture is an order in rem, granted by a court with civil jurisdiction to forfeit to the State property that is proceeds [or instrumentalities] or terrorist property.

(2) The court, on an application by the enforcement authority, shall grant a civil forfeiture order in respect of property within the jurisdiction of [insert name of the State], where the court finds, on a balance of probabilities, that such property is proceeds [Option: instrumentalities] and/or terrorist property.

(3) For the purposes of proceedings for civil forfeiture, the enforcement authority is defined as [insert name of authority that the State has decided to use to institute for civil forfeiture actions].

(4) In order to satisfy the court under subsection (2) above:

   (a) that property is proceeds, it is not necessary to show that the property was derived directly or indirectly, in whole or in part, from a particular criminal offence, or that any person has been charged in relation to such an offence; only that it is proceeds from some criminal offence or offences;

   (b) [Option: (b) that property is an instrumentality, it is not necessary to show that the property was used or intended to be used to commit a specific criminal offence, or that any person has been charged in relation to such an offence; only that it was used or intended to be used to commit some criminal offence or offences;]

   (c) that property is terrorist property, it is not necessary to show that the property:

      i. was derived from a specific terrorist act as long as it is shown it was derived from some terrorist act; or

      ii. has been or is being or is intended to be used by a terrorist organisation, or to commit a specific terrorist act, as long it is shown that it has been, is being or is intended to be used by some terrorist organization or to commit some terrorist act; or
iii. is owned or controlled by or on behalf of a specific terrorist organisation, as long as it is shown to be owned or controlled by or on behalf of some terrorist organization; or

iv. has been provided or collected for the purpose of supporting a specific terrorist organisation or funding a specific terrorist act, as long as it is shown to have been provided or collected for the purpose of providing support to some terrorist organisation or funding some terrorist act or that any person has been charged in relation to such conduct.

(5) An application for civil forfeiture may be made in respect of property into which original proceeds have been converted either by sale or otherwise.

(6) For the purposes of civil forfeiture, an offence shall also include conduct that has occurred in a country outside [insert name of the State] and is unlawful under the law of that country as long as it occurred in [insert name of the State], it would have constituted an offence under the law of [insert name of the State] and under Section 79 of this Part. The court shall determine on a balance of probabilities whether such conduct has occurred.

(7) For the purposes of making a determination under subsection (2) above, proof that a person was convicted, found guilty or found not criminally responsible is proof that the person committed the conduct.

(8) Property may be found to be proceeds under subsection (2) even if a person was acquitted of the offence, or if the charge was withdrawn before a verdict was returned, or if the proceedings were stayed.

(9) **Variant 1:** Orders for civil forfeiture can be sought in respect of property whenever obtained.

**Variant 2:** A civil forfeiture proceeding shall not be commenced after the [insert number of years] anniversary of the date that the property became a proceed, [Option: instrumentality] and/or terrorist property.

(10) Orders for civil forfeiture may be granted with respect to property acquired or used before the Act came into force.

(11) An order for civil forfeiture may be sought where the conduct on which the application for forfeiture is based was committed by a person now deceased.

(12) **Option:** [A civil forfeiture action [Option (add also): to recover proceeds] shall not be brought where the value or aggregate value of the property concerned is less than [insert amount]].

Section 80 of the legislation introduces the concept of civil forfeiture and outlines the procedures and criteria for obtaining a civil forfeiture order. Under this section, a civil forfeiture order can be granted by a court with civil jurisdiction to forfeit property to the state if is determined, on a balance of probabilities, that the property constitutes proceeds or instrumentalities of a criminal offense or terrorist property. The enforcement authority, as defined by the legislation, can apply for such an order, and the court is required to grant it if the necessary criteria are met. Notably, for the purposes of civil forfeiture proceedings, it is not necessary to establish a direct link between the property and a specific criminal offense or terrorist act, but rather it is sufficient to demonstrate a connection to some criminal offense or terrorist act. The section also clarifies that civil forfeiture proceedings can be initiated even if the original proceeds have been converted or if the offense occurred outside the jurisdiction but would have been an offense if it had occurred within it. The section further addresses matters such as the burden of proof, the timing of civil forfeiture applications, the inclusion of conduct by deceased persons, and the value threshold for initiating forfeiture actions. Overall, Section 80 provides the legal framework for civil forfeiture, allowing the state to seize and forfeit property that is connected to criminal activities or terrorism.
6. Making of order

(1) The Crown Court must proceed under this section if the following two conditions are satisfied.

(2) The first condition is that a defendant falls within any of the following paragraphs—

(a) he is convicted of an offence or offences in proceedings before the Crown Court;
(b) he is committed to the Crown Court for sentence in respect of an offence or offences under [section 3, 4 or 6] [F2[F1section 3, 3A, 3B, 3C, 4, 4A or 6] of the Sentencing Act] [any provision of sections 14 to 20 of the Sentencing Code];
(c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).

(3) The second condition is that—

(a) the prosecutor... asks the court to proceed under this section, or
(b) the court believes it is appropriate for it to do so.

(4) The court must proceed as follows—

(a) it must decide whether the defendant has a criminal lifestyle;
(b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
(c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

(5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—

(a) decide the recoverable amount, and
(b) make an order (a confiscation order) requiring him to pay that amount.

[Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.]

(6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with

(6A) The court must also treat the duty in subsection (5) as a power if—

(a) an order has been made, or it believes an order may be made, against the defendant under section 4 (criminal unlawful profit orders) of the Prevention of Social Housing Fraud Act 2013 in respect of profit made by the defendant in connection with the conduct, or
(b) it believes that a person has at any time started or intends to start proceedings against the defendant under section 5 (civil unlawful profit orders) of that Act in respect of such profit.

(7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

(8) The first condition is not satisfied if the defendant absconds (but section 27 may apply).

(9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).
Commentary on the Anti-Money Laundering Act 2010

defendant’s criminal lifestyle, assessing their benefit from criminal conduct, and calculating the recoverable amount. It also addresses considerations related to victims, other related orders, burden of proof, defendant absconding, and the interpretation of terms used in the section.

The first condition for the Crown Court to proceed under Section 6 is satisfied when the defendant falls into certain categories, such as being convicted of an offense, committed to the court for sentencing, or committed for consideration of a confiscation order. The second condition is met when the prosecutor requests the court to proceed or when the court deems it appropriate to do so.

Once the court proceeds, it must determine whether the defendant has a criminal lifestyle. If a criminal lifestyle is established, the court then examines whether the defendant has benefited from their general criminal conduct. If no criminal lifestyle is found, the court assesses whether the defendant has benefited from their particular criminal conduct.

If the court concludes that the defendant has indeed benefited from the conduct, it proceeds to determine the recoverable amount and issues a confiscation order, requiring the defendant to pay that amount. However, the court may exercise discretion and consider proportionality in enforcing the order, especially if it would be disproportionate to require the defendant to pay the recoverable amount.

In instances where a victim of the conduct has initiated or intends to initiate proceedings against the defendant for loss, injury, or damage associated with the conduct, the court treats its duty to issue a confiscation order as a power. Additionally, if there are other orders or potential proceedings related to unlawful profit under the Prevention of Social Housing Fraud Act 2013, the court similarly treats its duty as a power.

All questions arising under subsections (4) and (5) are decided on a balance of probabilities, ensuring a standard of proof for the court’s determinations. It is important to note that if the defendant absconds, the first condition for proceeding under Section 6 is not satisfied, although Section 27 may still apply.

In conclusion, this highlights the need for adequate non-conviction-based confiscation measures in the interim while criminal proceedings are underway. It also recognizes the difficulties of a ‘beyond reasonable doubt’ burden of proof which may lengthen proceedings, allowing the accused to potentially accumulate further proceeds until a conviction is passed. These comprehensive guidelines on confiscation are lacking in the Pakistani statute, creating opportunities for arbitrary decision-making.
Section 240 from the POCA 2002 also provides for civil recovery against property that has not yet been made subject to criminal proceedings, but that the enforcement authority believes to have been obtained through unlawful conduct.

Section 240 – General Purpose of this Part
(1) This Part has effect for the purposes of—
(a) enabling the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,
(b) enabling [property] which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a magistrates’ court or (in Scotland) the sheriff [and, in certain circumstances, to be forfeited by the giving of a notice].
(2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

Under Part 5 of the Proceeds of Crime Act 2002, the primary purpose is to enable the enforcement authority to recover property acquired through unlawful conduct or gross human rights abuse or violations in civil proceedings. It allows for the forfeiture of such property in civil proceedings before a magistrates’ court or the sheriff (in Scotland). One notable aspect of this part is the authority granted to the enforcement agency to initiate non-conviction-based forfeiture proceedings against the property even before a criminal conviction is obtained.

This provision empowers the enforcement agency to take action against property that is suspected to have been obtained through unlawful conduct or gross human rights abuse or violations, regardless of whether any criminal proceedings have been initiated or concluded. This means that the enforcement authority can pursue the recovery and forfeiture of such property through civil proceedings, even in the absence of a criminal conviction.

By allowing non-conviction-based forfeiture, the legislation recognizes the need to address the proceeds of crime or property connected to gross human rights abuses promptly. It enables the enforcement agency to take proactive measures to recover and forfeit such property, ensuring that it does not remain in the hands of those who may have obtained it through illegal or unethical means.

While the specific criteria for determining what constitutes unlawful conduct or gross human rights abuse or violations are not discussed in this particular section, it is essential to note that the Act provides a framework for identifying and addressing such cases. The inclusion of gross human rights abuse or violations highlights the commitment to combating serious offenses and ensuring that ill-gotten gains or property linked to such offenses are effectively dealt with.

Overall, Part 5 of the Proceeds of Crime Act 2002 grants significant authority to the enforcement agency, allowing them to take civil action to recover and forfeit property obtained through unlawful conduct or gross human rights abuse or violations, even without a criminal conviction. This provision serves as a powerful tool in combating illicit activities, safeguarding the integrity of the legal system, and addressing the consequences of serious crimes and human rights abuses.
11. Management of forfeited properties. —

(1) The Federal Government may, by order published in the Official Gazette, appoint as many trustees and receivers as it thinks fit to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (1) of section 9 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Federal Government may direct, to dispose of the property which is vested in the Federal Government under section 10: Provided that, where the property seized is perishable in nature or subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the Administrator may sell it at once after reasonable notice to the Federal Government.

Analysis of Section 11 of the AMLA 2010

Section 11 of the AMLA 2010 addresses the management of forfeited properties. The Federal Government has the authority to appoint trustees and receivers as Administrators to handle the functions related to the forfeited property. The appointed Administrator is responsible for receiving and managing the property according to prescribed conditions. Additionally, the Administrator must follow the directives of the Federal Government regarding the disposal of the property that is vested in the government under Section 10. In cases where the seized property is perishable or maintaining it would incur excessive costs, the Administrator can sell it after providing reasonable notice to the Federal Government.

The Rules outline the specific powers and duties of the Administrator, as detailed in section 3. The Administrator must take immediate possession of the forfeited property, and look after all the administrative requirements of the property, including its maintenance. The Administrator is also empowered to dispose of the property, or to arrange for the storage of said property as may be necessary.

To ensure proper accountability, the Rules stipulate the establishment of designated accounts where the proceeds from the forfeited properties are deposited. Each investigating or prosecuting agency will have a designated account, which will be subjected to periodic audits and inspections. Together with section 11, the Rules provide guidelines for how to manage properties that have been forfeited by the Federal Government upon a money-laundering conviction. The section and the Rules together seek to regulate the state’s conduct when determining how to effectively dispose of the forfeited property.

However, a notable shortcoming of Section 11 is the absence of a designated authority that oversees the management of all forfeited assets. Currently, Pakistan lacks a recognized statutory body responsible for this purpose. While the Asset Recovery Unit (ARU) was established by the Federal Cabinet in 2018 to recover the alleged stolen assets held abroad, it lacks a legislative foundation. Therefore, it is crucial

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286 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 5.
287 S.R.O 654 (1)/2021
288 S.2 xviii of the Act
to establish a statutory body to effectively manage forfeited properties in line with international standards.

Moreover, the existence of multiple investigating agencies empowered by the AMLA creates challenges in terms of accountability and transparency. The establishment of a Fund connected to these agencies further complicates matters. Without a dedicated oversight authority that can mandate audits for transparency, accountability measures may be inadequate. Additionally, the appointment of individual Administrators through court orders makes it difficult to hold them collectively accountable for their actions.

To address these shortcomings, it is recommended that legislation be enacted to establish a centralized authority responsible for the management of forfeited properties. This authority should have clear mandates, powers, and accountability mechanisms to ensure effective and transparent management of these assets. Additionally, establishing a robust oversight framework, such as an independent auditing body, would enhance accountability and prevent any potential misuse or mismanagement of the forfeited assets.

By addressing these issues and strengthening the regulatory framework, Pakistan can ensure the efficient management and disposal of forfeited properties, promoting the integrity of the anti-money laundering regime and the successful recovery of illicitly obtained assets.

**Context from the CPC, 1908**

Order XL of the CPC in Pakistan deals with the appointment of receivers. According to this order, the court has the power to appoint a receiver for any property, either before or after a decree, if it deems it just and convenient. The Administrator appointed under Section 11(1) of the AMLA is responsible for receiving and managing the property that is the subject of an order made under Section 9(6) of the AMLA. This is similar to the role of a receiver appointed under Order XL of the CPC, who is entrusted with the possession, custody, and management of the property.

The court can also remove a person from the possession or custody of the property and entrust it to the receiver for management. The receiver is granted various powers, such as bringing and defending suits, realizing, managing, protecting, preserving, and improving the property, collecting rents and profits, and executing necessary documents. The court may confer these powers based on the owner’s authority or modify them as it sees fit.

However, the court cannot remove a person from the possession or custody of the property if that person does not have the present right to do so as a party to the suit. The court is also empowered to determine the remuneration to be paid to the receiver for their services, either through a general or special order.

Every appointed receiver is required to furnish security as directed by the court, to account for the property’s receipts, and to submit accounts at the court’s specified intervals and in the prescribed format. The receiver must also make payments as directed by the court and is responsible for any loss caused to the property due to willful default or gross negligence.

If a receiver fails to submit accounts or make the required payments, or if they cause loss to the property through willful default or gross negligence, the court may attach the receiver’s property, sell it, and utilize the proceeds to settle any outstanding amounts or compensate for any losses incurred. Any remaining balance, if applicable, will be paid to the receiver.

In cases where the property is land paying revenue to the government, or land for which the revenue has been assigned or redeemed, and if the court determines that the interests of those involved would
be best served by the management of the Collector, the court may appoint the Collector as the receiver with the Collector's consent.

**International Best Practices**

International best practices in the management and disposal of seized and confiscated assets highlight the importance of specialized asset management offices. The UNODC produced a report on ‘Effective management and disposal of seized and confiscated assets’ in 2017. In Chapter IV, titled ‘Institutional Arrangements to Support the Management and Disposal of Seized and Confiscated Assets’, the UNODC recommends the creation of specialized asset management offices that work exclusively to oversee the management of seized and confiscated assets. These offices can be integrated within existing government structures or established as stand-alone authorities, depending on the volume and complexity of cases.

Belgium’s Central Office for Seizure and Confiscation within the Public Prosecutor’s Office and the US Asset Forfeiture Program created within the Department of Justice are examples of specialized asset management offices integrated within pre-established government structures. These offices have designated responsibilities for managing seized and confiscated assets, ensuring efficient and transparent processes.

On the other hand, countries like Canada, Colombia, and France have opted for stand-alone asset management offices. These offices, such as the Seized Property Management Directorate in Canada, the Society for Special Assets in Colombia, and the Agency for the Recovery and Management of Seized and Confiscated Assets in France, operate independently and derive their jurisdiction from legislation. They have their own set of rules and regulations governing asset management and disposal. This model proves effective, particularly for jurisdictions dealing with a high volume of cases, as it allows for specialized expertise and dedicated resources.

Drawing from these international examples, it is evident that the establishment of specialized asset management offices, whether integrated within existing government structures or operating as stand-alone authorities, can enhance the management and disposal of seized and confiscated assets. By centralizing expertise and resources, these offices can ensure consistent and effective practices in accordance with established regulations and international standards.

In the context of Section 11 of the AMLA 2010, which lacks a designated authority overseeing the management of forfeited assets, adopting the best practices of creating a specialized asset management office becomes crucial. The establishment of such an office, either within an existing government structure or as a stand-alone authority, would provide a dedicated entity responsible for the efficient management, preservation, and disposal of forfeited properties. This would enhance transparency, accountability, and adherence to international standards, ultimately strengthening Pakistan’s anti-money laundering framework and facilitating the proper utilization of forfeited assets.

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289 UNODC Report (2017), 47
290 UNODC Report (2017), 49
291 UNODC Report (2017), 51
292 UNODC Report (2017), 51
293 UNODC Report (2017), 52
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Model Provisions

Group of Eight States

The Group of Eight (G8) was an international forum consisting of eight major economies, including Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. The G8 focused on addressing global economic issues, promoting cooperation, and discussing policies on various topics. As part of their efforts to combat money laundering, corruption, and other financial crimes, the G8 developed the Best Practice Principles on Tracing, Freezing, and Confiscation of Assets.

These principles provide guidelines for member states to effectively trace, freeze, and confiscate assets derived from criminal activities. While the primary focus is on the initial stages of asset recovery, the principles also touch upon the management of forfeited properties. Member states are encouraged to establish comprehensive legal frameworks that facilitate the confiscation and disposal of assets, ensuring that recovered assets are used for legitimate purposes.

The principles emphasize the establishment of systems for the effective management of forfeited assets. This may involve the creation of specialized units or agencies responsible for the administration, maintenance, and disposal of confiscated assets. Transparent and accountable procedures for asset disposal are recommended, including mechanisms such as public auctions or sales to maximize asset value.

Furthermore, the principles underscore the importance of utilizing confiscated assets for legitimate purposes. Member states are advised to allocate these assets to compensate victims of crime, support law enforcement efforts, fund social programs, or invest in crime prevention initiatives. Transparency and accountability in the allocation and utilization of forfeited assets are encouraged.

When comparing the G8 Best Practice Principles on Tracing, Freezing, and Confiscation of Assets with Section 11 of the Pakistani AMLA 2010, some similarities and differences can be identified. Both provide guidance on the management of forfeited properties, emphasizing the need for effective systems and procedures. The G8 principles encourage the establishment of specialized units or agencies for asset administration, maintenance, and disposal, while Section 11 of the AMLA allows for the appointment of trustees and receivers to perform similar functions. Transparent and accountable procedures for asset disposal are recommended by both, with the G8 principles suggesting mechanisms like public auctions, and the AMLA allowing for the sale of perishable or costly-to-maintain assets. However, the G8 principles place additional emphasis on utilizing confiscated assets for legitimate purposes, such as victim compensation and funding social programs, while Section 11 of the AMLA does not explicitly mention such allocations.

By addressing the management of forfeited properties, the G8 Best Practice Principles aim to ensure that confiscated assets not only serve as a deterrent to criminal activities but also contribute to the broader goals of justice, victim compensation, and societal benefits. Although the G8 was restructured in 2014 and the principles are no longer actively maintained or updated by the G8, they continue to serve as a valuable reference for asset recovery efforts globally.

European Union

Section 11 of the AMLA 2010 draws parallels to the requirements set forth in Article 1 of European Union Decision 2007/845/JHA. This article mandates European Union Member States to establish or designate a national Asset Recovery Office dedicated to facilitating the tracing, identification, and recovery of proceeds of crime and other crime-related assets. The primary objective is to support the freezing, seizure, or confiscation orders issued by competent judicial authorities during criminal or civil proceedings, in accordance with national law.
The designated Asset Recovery Offices play a crucial role in fulfilling several functions. Firstly, they are responsible for tracing criminal proceeds, enabling the effective identification of assets linked to criminal activities. Additionally, these offices promote the utilization of asset recovery laws by fostering improved coordination among law enforcement personnel. This includes training police officers, investigating magistrates, judges, and prosecutors in the intricacies of asset recovery legislation. Furthermore, these offices exert influence on government policy, ensuring the development of robust frameworks for asset recovery. Lastly, they play a pivotal role in coordinating international cooperation efforts in asset recovery, facilitating collaboration and information exchange between jurisdictions.

By incorporating the principles outlined in Article 1 of European Union Decision 2007/845/JHA, Section 11 of the AMLA 2010 aligns with international best practices, emphasizing the establishment of dedicated asset recovery offices to effectively manage and maximize the recovery of illicitly obtained assets. These provisions contribute to enhanced coordination, expertise, and cooperation among relevant stakeholders involved in the asset recovery process, bolstering efforts to combat money laundering and related crimes.

Organization of American States

The Organization of American States (OAS) has developed comprehensive model regulations pertaining to money laundering offenses associated with drug trafficking and related crimes. These regulations, which resonate with the principles enshrined in Section 11 of the AMLA 2010, delineate various provisions for the management and disposal of forfeited assets. By examining these regulations, it becomes evident that they emphasize the establishment of a specialized enforcement agency entrusted with the multifaceted responsibilities of the asset recovery process.

One crucial aspect highlighted in these regulations is the disposition of forfeited property. The options presented encompass retaining the property for official use or transferring it to any government agency that directly or indirectly participated in the freezing, seizure, or forfeiture proceedings. Additionally, the sale of forfeited property is considered, with the resulting proceeds being allocated to relevant government agencies. In some cases, these proceeds can be deposited into a designated fund dedicated to combatting illicit trafficking, preventing the unlawful use of drugs, facilitating treatment and rehabilitation efforts, and fostering social reintegration of affected individuals.

Furthermore, the regulations recognize the potential role of private entities dedicated to combating the unlawful use of drugs, treatment, rehabilitation, and social reintegration. They permit the transfer of forfeited property or its proceeds to such entities, thereby ensuring that the recovered assets are reinvested in initiatives aligned with the prevention of drug-related crimes.

The regulations also emphasize the importance of international cooperation and collaboration. They facilitate the sharing of forfeited assets or their proceeds with countries that assisted or participated in the investigation or legal proceedings leading to the forfeiture, based on their level of involvement. Additionally, intergovernmental bodies specialized in combating illicit trafficking, preventing drug abuse, and supporting treatment and rehabilitation efforts may be recipients of the forfeited assets or their proceeds.

Another noteworthy provision within these regulations pertains to the creation of a national forfeiture fund. This fund serves as a mechanism to administer forfeited assets and authorize their allocation towards programs related to the administration of justice, training, combating illicit drug trafficking, prevention, prosecution, as well as social programs encompassing education, health, and other

296 UNODC Report (2017), 6
designated purposes determined by each government. This approach ensures that the assets recovered from criminal activities are reinvested into initiatives that contribute to the overall welfare of society.

In summary, the OAS model regulations on money laundering offenses exhibit strong alignment with Section 11 of the AMLA 2010. They reinforce the necessity of establishing specialized enforcement agencies to manage the asset recovery process effectively. Moreover, they underscore the significance of disposal obligations that aim to channel forfeited assets towards public goods and reinvestments in efforts against money laundering, drug trafficking, and related offenses.
Overview

In the fight against money laundering, the judicial process plays a crucial role. It is through this process that allegations are inquired/investigated, evidence is evaluated, and judgments are announced. The AMLA, 2010, provides a comprehensive framework for this process, outlining the role of the courts, the synchronization of existing procedural law with the novelties it introduced, the rights of the accused, and the protections afforded to those enforcing the Act. This chapter delves into these judicial provisions and procedures, providing a holistic understanding of their implications and applications in the fight against money laundering in Pakistan.

Section 20 is the cornerstone of the Act’s jurisdictional provisions. It stipulates that the Court of Sessions, established under the Code of Criminal Procedure, 1898, shall exercise jurisdiction within its territorial limits to try and try offences punishable under the AMLA. However, it also provides exceptions based on the nature of the predicate offence, which can significantly impact the jurisdictional landscape for money laundering cases. This section is pivotal in setting the stage for the adjudication of money laundering cases and related matters, thereby playing a crucial role in the enforcement of the Act.

Section 22 outlines the applicability of the Code of Criminal Procedure, 1898, to proceedings under the AMLA, provided they are not inconsistent with the Act’s provisions. This section ensures a seamless integration of the AMLA with existing criminal procedural law, thereby facilitating its effective enforcement. It also provides for the appointment of a Public Prosecutor and delineates their roles and responsibilities in conducting proceedings under the Act, thus ensuring that the prosecution of offences under the Act is handled by competent and experienced legal professionals.

Section 23 provides the right of appeal against the final decision or order of the Court to the High Court within a specified period. This provision safeguards the rights of the accused and ensures that they have an avenue to challenge decisions brought against them.

Section 35 offers legal protection to the Federal Government, its officers, and other related entities for actions taken in good faith under the Act. This section is crucial as it shields those involved in the enforcement of the Act from legal action, thereby encouraging proactive and decisive action against money laundering.

Section 36 ensures the validity of notices, summons, orders, documents, or other proceedings issued or taken under the Act, despite any mistakes, defects, or omissions. This provision is crucial in ensuring that procedural errors do not impede the enforcement of the Act.

Finally, Section 38 provides for the continuity of proceedings in the event of the death or insolvency of a person whose property has been attached under the Act or who has preferred representation to the Court. This provision ensures that legal proceedings under the Act are not unduly disrupted by such events.

Together, these sections provide a comprehensive and robust framework for the judicial process under the AMLA, 2010. They collectively ensure the effective enforcement of the Act, from the initiation of proceedings to the final stages of adjudication and appeal by providing clear guidelines on jurisdiction, the application of procedural law, the role of the Public Prosecutor, the right of appeal, legal protections for those enforcing the Act, the validity of legal documents, and the continuity of proceedings. These sections play a pivotal role in Pakistan’s anti-money laundering legal framework.
Relevant Definitions

**Aggrieved:** This term refers to an individual who has experienced some form of loss or injury. It includes someone who, dissatisfied with a decision or delay from a court, has the right to appeal to a higher court. In the context of the AMLA 2010, any person aggrieved by the final decision, or the order of the Court may prefer an appeal to the High Court within 60 days from the communication of the decision or order on any question of the law or fact arising out of such decision or order.

**Appeal:** An appeal refers to the act of an individual lodging a complaint with a higher court against a decision made by a lower court, based on the belief that an injustice has occurred and seeking its reversal or correction. In situations where a person has been adversely affected by the delay or failure of a reporting entity, they are granted the right to file an appeal to the relevant authority. Additionally, if an individual is dissatisfied with a decision made by a court, they have the option to appeal to the High Court within a 60-day period from the date of communication of the decision. The appeal must be presented in written form by the appellant.

**Appellant:** The appellant is the individual initiating the appeal and may also be granted release on bail. Furthermore, the appellant can be described as the party who transfers an appeal from one court or jurisdiction to another of higher authority.

**Arrest:** Arrest refers to the legal act of depriving a person of their liberty in accordance with authorized methods and under the authority of the law. It involves detaining the individual so that they can be held accountable for criminal charges or civil demands. There are two types of arrests: those made with a written warrant and those made without a warrant. Following arrest, the person must be promptly brought before the court without undue delay to prevent the occurrence of further offenses. In cases where a warrant has been issued, there is a prescribed procedure for the arrest. The arresting police officer or authorized person must physically touch or confine the individual to indicate the arrest. If resistance is encountered, the officer may use necessary force, limited to what is required to prevent escape. The person being arrested must be informed of the grounds for their arrest and shown the warrant. A search is conducted, during which all articles except clothing are removed and kept in custody.

**Attachment:** “Attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under section 8. Black’s Law Dictionary defines attachment as “the act or process of taking, apprehending, or seizing property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used for acquiring jurisdiction over the property seized.”
**Bail**

Bail is the legal process of releasing an individual from custody with the assurance that they will appear in court as required to safeguard their liberty. It is important to note that bail cannot be granted to someone who is not in custody, absent from court, or if no case has been registered against them. A bailable offense is one that is comparatively less serious in nature than other offenses. Once arrested, a person can only be discharged through their own bond, on bail, or by special order from the Magistrate. In cases where the accused is charged with a non-bailable offense that carries the possibility of the death penalty or life imprisonment, bail can only be granted if there are reasonable grounds to believe that the accused may not be guilty of the alleged crime.

**Bond**

Bond refers to a legal arrangement that allows for the release of a person who has been arrested on suspicion of providing false information regarding their name or residence to a police officer. Once their true identity and address are verified, the individual can be released by executing their bond. Discharge from arrest can occur through one's own bond, bail, or by special order from the Magistrate. The bond is to be submitted to the court that issued the arrest warrant. Discharge from arrest can occur through one's own bond, bail, or by special order from the Magistrate. The bond is to be submitted to the court that issued the arrest warrant. Failure to comply with the bond's conditions by appearing in court can result in the person's arrest through a warrant and their subsequent appearance before the court. Additionally, if the conviction is overturned for any reason, the bond becomes null and void.

The amount of the bond is determined on a case-by-case basis, considering the specific circumstances of each case, and it must not be excessive. The purpose of the bond is to ensure the person's good behavior, but the Magistrate reserves the right to reject it if they deem the individual unfit for such an arrangement.

**Confiscation**

Confiscation entails the act of seizing and condemning private property that has been forfeited for public use. Confiscation refers to the judicial process that occurs at the conclusion of a criminal trial, whereby the Court has the authority to issue an order regarding any property or document that was involved in an offense. The Court may choose to dispose of the property through destruction, confiscation, or return it to the rightful owner.

**Document**

In the context of Section 36 of the AMLA, the term "document" encompasses any written, electronic, or recorded record that is furnished, made, issued, or taken in pursuance of the provisions of the Act. This includes notices, summonses, orders, and other proceedings that may be generated during the enforcement of the AMLA.

**Federal Government**

In the Mustafa Impex case, Justice Nisar of the Supreme Court stated that Article 90 of the Constitution clearly defines the Federal Government: ‘it consists of the Prime Minister and the Federal Ministers’. This change in definition was primarily influenced by two factors. Firstly, the 18th Constitutional amendment removed the delegation clause, which previously allowed the transfer of government functions to subordinate authorities and officers. Secondly, the 18th amendment modified Article 99, making it mandatory to follow rules when executing official instruments and orders by replacing the term ‘may’ with ‘shall’. Thus, making it compulsory to follow guidelines enshrined in the Rules of Business.

**FMU (Financial Monitoring Unit)**

“FMU” means the Financial Monitoring Unit established under section 6 of the AMLA 2010. The Financial Monitoring Unit (FMU) is established by the Federal Government and operates independently within Pakistan, headed by a Director General appointed in consultation with the State Bank of Pakistan (SBP). The FMU’s responsibilities include receiving and

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305 “Bail” is referred to in Section 22 of the AMLA 2010.
306 Sections 59 and 63 of the Code of Criminal Procedure, 1898.
307 “Bond” is referred to in Section 22 of the AMLA 2010.
308 “Confiscation” is referred to in Section 22 of the AMLA 2010.
309 Code of Criminal Procedure, 1898.
310 “Document” is referred to in Section 36 of the AMLA 2010.
311 “Federal Government” is referred to in Sections 22, 23, and 35 of the AMLA 2010.
analyzing Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) from reporting entities, maintaining a comprehensive database of reports and related information, cooperating with international financial intelligence units, framing regulations for report receipt, and exercising necessary powers to achieve the objectives of the Anti-Money Laundering Act. Additionally, the FMU can convey matters for regulatory or administrative action, order the temporary freezing of suspicious properties, and represent Pakistan in international forums related to money laundering and financing of terrorism.

Forfeiture\[314\]: This refers to the legal confiscation of assets by the state. This is a form of punishment where the state takes possession of property that is involved in money laundering or has a corresponding value. This means that if a person is found guilty of money laundering, the state has the right to seize their property that is connected to the crime or has a value equivalent to the proceeds of the crime.

Good faith\[315\]: "Good faith" is a legal concept that is generally associated with acting honestly, without fraud or deceit, and in a manner that is believed to be lawful and morally correct. It implies that the actions were undertaken with genuine intent, a sense of fairness, and in compliance with the requirements or objectives of the Act. The concept of "bona fide" is closely related to good faith and is often used interchangeably. Bona fide refers to actions or intentions that are sincere, genuine, and made in good faith without any ulterior motives or deceptive practices. It emphasizes the absence of deceit or fraud and underscores the honest and sincere nature of the individual’s actions. The principles of good faith and bona fide guide legal decision-making by promoting trust, fairness, and the avoidance of dishonest conduct.

Investigating Officer\[316\]: This refers to a designated law enforcement officer responsible for conducting thorough investigations into suspected instances of money laundering. These officers should possess specialized knowledge and expertise in financial crimes and should be trained to analyze complex financial transactions, follow money trails, and gather evidence to build strong cases against individuals or organizations engaged in money laundering activities.

An “investigating officer” means the officer nominated or appointed under section 24 of the AMLA 2010.\[317\] Subsection (1) of section 24 of AMLA, authorizes designated investigating and prosecuting agencies to nominate their investigating officers competent to conduct investigation under respective law of the agency. For example, under section 5 of FIA Act, 1974, an officer not below the rank of sub-inspector can conduct investigation meaning thereby the sub-inspector or above can conduct investigating under FIA Act, 1974. Since, FIA is designated investigating and prosecuting agency under AMLA, therefore, the officers of rank of Sub-Inspector and above can conduct money laundering investigation under AMLA.

Notice\[318\]: In legal terminology, a notice typically refers to a formal communication or written document provided to an individual or entity to convey information, rights, obligations, or intentions. Notices serve as a means of informing parties about legal proceedings, actions, or decisions that may affect their rights or require their attention. The legal definition of notice may vary slightly across

\[314\] “Forfeiture” is referred to in Section 22 of the AMLA 2010.
\[315\] “Good Faith” is referred to in Section 35 of the AMLA 2010.
\[316\] “Investigating Officer” is referred to in Section 35 of the AMLA 2010.
\[317\] Section 24 of the AMLA 2010: Appointment of investigating officers and their powers. — (1) The investigating or prosecuting agencies may nominate such persons as they think fit to be the investigating officers under this Act from amongst their officers. (2) The Federal Government may, by special or general order, empower an officer not below BPS-18 of the Federal Government or of a Provincial Government to act as an investigating officer under this Act. (3) Where any person other than a Federal or Provincial Government Officer is appointed as an investigating officer, the Federal Government shall also determine the terms and conditions of his appointment. (4) Subject to such conditions and limitations as the Federal Government may impose, an investigating officer may exercise the powers and discharge the duties conferred or imposed on him under this Act.
\[318\] “Notice” is referred to in Section 36 of the AMLA 2010.
jurisdictions, but in general, it encompasses the idea of communication that effectively conveys information to the intended recipient. A notice should be written in clear and unambiguous language, providing sufficient details to ensure that the recipient is adequately informed of the subject matter, purpose, and implications of the notice.

Offence of Money Laundering\textsuperscript{319}: The offence of money laundering is defined in Section 3 of the AMLA 2010. According to this section, a person is considered guilty of the offence of money laundering if they engage in any of the following activities:

1. Acquiring, converting, possessing, using, or transferring property, knowing or having reason to believe that such property is proceeds of crime. This means that if a person knowingly handles property that has been obtained through criminal activity, they are committing the offence of money laundering.

2. Concealing or disguising the true nature, origin, location, disposition, movement, or ownership of property, knowing or having reason to believe that such property is proceeds of crime. This refers to actions taken to hide the fact that property is derived from criminal activity.

3. Holding or possessing on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime. This means that if a person holds property for someone else, and they know or have reason to believe that this property is the result of criminal activity, they are committing the offence of money laundering.

4. Participating in, associating with, conspiring to commit, attempting to commit, aiding, abetting, facilitating, or counseling the commission of the acts specified in the above clauses. This means that if a person is involved in any way with the activities described above, they are committing the offence of money laundering.

Official Assignee/Receiver\textsuperscript{320}: The term "official assignee" refers to an officer appointed by the court to manage the affairs of an insolvent individual or a bankrupt estate. The official assignee is typically responsible for handling the distribution of assets, collection of debts, and administration of the insolvent person's financial affairs. In the context of insolvency or bankruptcy proceedings, the official assignee plays a crucial role in ensuring a fair and orderly process. They are appointed to safeguard the interests of the creditors and manage the assets of the insolvent individual or the bankrupt estate.

Order\textsuperscript{321}: the legal context, an ‘order’ typically refers to a formal directive or decision issued by a court, administrative agency, or other authorized body that has the force of law. An order sets out specific instructions, requirements, or prohibitions that must be followed by the parties involved in a legal proceeding or situation. Orders can be issued at various stages of a legal process, such as during pre-trial proceedings, trial, or post-trial judgments. Case management: Courts may issue orders regarding the scheduling of hearings, deadlines for submissions, or the production of evidence.

In the context of Section 36 of the AMLA, the term ‘order’ refers to any directive or decision issued under the provisions of the Act. The provision emphasizes that a mistake, defect, or omission in such an order, as long as it is in substance and effect in conformity with the intent and purpose of the AMLA, should not render the order invalid. This ensures that technical errors or minor deficiencies do not undermine the validity or enforceability of the order as long as it aligns with the overall objectives of the AMLA.

\textsuperscript{319} "Offence of Money Laundering" is referred to in Section 20 of the AMLA 2010.

\textsuperscript{320} "Official Assignee/Receiver" is referred to in Section 38 of the AMLA 2010.

\textsuperscript{321} "Order" is referred to in Sections 23, 35, 36, and 38 of the AMLA 2010.
**Predicate Offence**\(^{322}\): A “predicate offence” refers to an underlying criminal activity from which the illicit proceeds or funds subject to money laundering are derived. It denotes the primary criminal act that generates the unlawfully obtained funds. Predicate offences encompass a wide range of illegal activities and can vary in nature. In simpler terms, a predicate offence refers to the original crime that generates the illegal funds that are later involved in money laundering.\(^ {323}\)

**Property**\(^ {324}\): Property encompasses a wide range of assets, both tangible and intangible, that are subject to legal ownership rights. Tangible property includes physical objects like land, buildings, and personal belongings, while intangible property encompasses intellectual property, financial instruments, contractual rights, and securities. Property also includes legal documents such as deeds, titles, and other instruments that serve as evidence of ownership or interest in a specific property or asset. Furthermore, it extends to monetary instruments, including cash and equivalents, regardless of their physical location or material nature. In simpler terms, property refers to everything you own, whether it’s something you can touch like houses and cars or something intangible like ideas and patents. It also includes documents that prove ownership and even money.\(^ {325}\)

**Public Prosecutor**\(^ {326}\): A public prosecutor is an individual who, having practiced as an advocate in the High Court for a minimum of 7 years, possesses the necessary competence to represent the state in legal proceedings. Public prosecutors are authorized to present plead and conduct prosecutions in all courts on behalf of the state.\(^ {327}\) With the consent of the Court and prior to the delivery of a judgment, a public prosecutor has the authority to withdraw from the prosecution of any individual.

**Search**\(^ {328}\): According to Black's Law Dictionary, A "search" refers to the examination of a person's residence, buildings, property, or their person, including vehicles, aircraft, packages, luggage, or other possessions. If a police officer has a warrant of arrest, and has reasonable grounds to believe that a suspicious individual is in a specific place, then the police officer has a legal right to enter that place and search for him.

**Seizure**\(^ {329}\): If during the search, the investigating officer discovers documents, records, or property that they reasonably believe to be connected to the money laundering offense, they are empowered to seize and secure such evidence. This step is crucial for preserving the integrity of the evidence and ensuring its availability for subsequent investigations or legal proceedings. The seizure of relevant evidence strengthens the investigative process and contributes to the prosecution of money laundering offenders.

**Summons**\(^ {330}\): Summons is a mandate of the court meant to apprise and call upon the defendant to appear and answer the claim on the date fixed. The court may also direct to file written statement on the said date. The summons should show what claim the defendant is called upon to answer and on what date he is to be heard.\(^ {331}\)

**Suit**: In the specific context of Section 35, the term "suit" refers to a legal action or proceeding initiated in a court of law. It includes any legal proceedings or actions brought before the court seeking relief, such as filing a complaint, seeking remedies, or challenging the validity or modification of any proceeding or order made under the mentioned Act.

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\(^ {322}\) “Predicate Offence” is referred to in Section 20 of the AMLA 2010.

\(^ {323}\) Section 2(xxvi) of the AMLA 2010: “predicate offence” means an offence specified in Schedule-I to this Act;

\(^ {324}\) “Property” is referred to in Section 38 of the AMLA 2010.

\(^ {325}\) Section 2(xxx) of the AMLA 2010: “property” means property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets including cash and monetary instruments, wherever located.

\(^ {326}\) “Public Prosecutor” is referred to in Section 22 of the AMLA 2010.

\(^ {327}\) Section 22(2) of the AMLA 2010

\(^ {328}\) “Search” is referred to in Section 22 of the AMLA 2010.

\(^ {329}\) “Search” is referred to in Section 22 of the AMLA 2010.

\(^ {330}\) “Summons” is referred to in Section 36 of the AMLA 2010.

\(^ {331}\) Civil Procedure Code (CPC), Order V, Rule 1
Territorial Jurisdiction\textsuperscript{332}: This refers to the authority given to a court to make judgments or decisions based on events or actions that occur within a specific geographical area or territory. It is a fundamental aspect of the law as it ensures that legal decisions are made by the appropriate authority within the specific location where the events or actions took place. If a court or legal entity attempts to exercise authority outside of its territorial jurisdiction, its decisions or judgments may be deemed invalid.

Additionally, subject matter jurisdiction complements territorial jurisdiction by determining the types of cases that a court has the power to hear and decide based on the subject matter or nature of the dispute. While territorial jurisdiction focuses on the geographical location where events or actions occurred, subject matter jurisdiction defines whether a court has the legal authority to adjudicate a particular type of case, irrespective of the location. Together, these two principles ensure that legal decisions are made by the appropriate authority both in terms of geographic scope and the specific subject matter involved.

Withdraw\textsuperscript{333}: Withdrawal, in the context of legal proceedings, refers to the act of removing or dismissing something, such as a complaint. When it comes to criminal prosecution, withdrawal from prosecution occurs when the claimant or prosecutor chooses to discontinue the legal proceedings against one or more individuals. This decision effectively withdraws the allegations or charges previously made.

\textsuperscript{332} “Territorial Jurisdiction” is referred to in Section 20 of the AMLA 2010.
\textsuperscript{333} “Withdraw” is referred to in Section 22 of the AMLA 2010.
Section 20 – Jurisdiction

(1) The Court of Sessions established under the Code of Criminal Procedure, 1898 (V of 1898) shall, within its territorial jurisdiction, exercise jurisdiction to try and adjudicate the offences punishable under this Act and all matters provided in, related to or arising from this Act: Provided, —

(a) where the predicate offence is triable by any court other than the Court of Session, the offence of money laundering and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence; and

(b) where the predicate offence is triable by any court inferior to the Court of Session, such predicate offence, the offence money laundering and all matters connected therewith or incidental thereto shall be tried by the Court of Session.

Analysis of Section 20 of the AMLA

Section 20 of the AMLA, 2010 explains the jurisdictional purview of the Court of Sessions, as established under the Code of Criminal Procedure, 1898. The Court of Sessions is vested with the authority to adjudicate and try offenses that fall under the ambit of the AMLA within its territorial jurisdiction.

However, the section provides two exceptions to this general rule:

a) In instances where the predicate offence\(^{335}\) (the initial criminal act that resulted in the generation of funds to be laundered) is within the jurisdiction of a court other than the Court of Session, the responsibility to try the offence of money laundering and all matters associated with it shall fall upon the court that is trying the predicate offence.

b) Conversely, if the predicate offence falls within the jurisdiction of a court that is subordinate to the Court of Session, the Court of Session shall assume jurisdiction over the predicate offence, the offence of money laundering, and all matters associated with it.

In summary, this section is designed to ensure that offences of money laundering and the predicate offences are tried by the most appropriate court, based on the nature and jurisdiction of the predicate offence.

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\(^{334}\) Words within this provision that are **bolded** are defined in the “Relevant Definitions” section of Chapter 6.

\(^{335}\) Section 2(xxvi) of the AMLA 2010: “predicate offence” means an offence specified in Schedule-I to this Act;
**Key Cases**

**Muhammad Rafique & Khalid Mehmood vs. Director General, FIA, Islamabad & Another (W.P. No. 1184/2021 & 1778/2021)**

The Court laid down the following principles that should be considered when interpreting the AMLA, 2010:

**Principle 2:** All offenses defined in AMLA, 2010, including predicate offenses listed in Schedule–I, must be tried under this law.

Section 20 is in line with this principle as it specifies that the Court of Sessions shall exercise jurisdiction over offences punishable under the AMLA, 2010. This includes predicate offences listed in Schedule–I. By assigning jurisdiction to the Court of Sessions, Section 20 ensures that all offenses defined in the AMLA, 2010, are tried under this law.

**Principle 8:** The court, under AMLA, 2010, can proceed with attachment, retention, seizure, and forfeiture of property, including in cases of predicate offenses and money laundering, after the conclusion of the trial, following proper hearing rights for the accused.

This principle is directly related to Section 20 as it gives the Court of Sessions the authority to proceed with attachment, retention, seizure, and forfeiture of property in cases of predicate offences and money laundering. Section 20 establishes the Court of Sessions’ jurisdiction over these cases, meaning that it also has the authority to order such actions.

**Principle 19:** AMLA, 2010 overrides any inconsistent provisions of other laws. It is in addition to, not derogation of, laws such as the Anti–Narcotics Force Act, 1997, Control of Narcotic Substances Act, 1997, Anti–Terrorism Act, 1997, NAO, 1999, and other laws related to predicate offenses. The Court of Session established under the Criminal Procedure Code, 1898 has jurisdiction to try and adjudicate offenses punishable under AMLA, 2010. If the predicate offense is triable by a court other than the Court of Sessions, the court trying the predicate offense will also handle the offense of money laundering, unless it is not inferior to the Court of Session.

**Deputy Director, Anti Money Laundering, Intelligence and Investigation, Inland Revenue, Lahore. v Learned Special Judge, Customs, Taxation and Anti–Smuggling, Lahore, etc.**

In the case, a significant legal dispute arose concerning the jurisdiction of courts under the AMLA 2010. The crux of the dispute was the interpretation of Section 20 of the AMLA, 2010, which outlines the jurisdiction for trying and adjudicating offences under the Act. The Lahore High Court was tasked with determining whether the Special Judge (Customs, Taxation and Anti–Smuggling) had the jurisdiction to try offences under the AMLA 2010, specifically predicate offences relating to tax evasion listed in Schedule I of the Act.

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336 Please note that the list of principles laid down by the Court are more extensive than the list provided, which has been necessarily truncated to only include those principles relevant to Section 9A of the AMLA 2010.

337 [Deputy Director, Anti Money Laundering, Intelligence and Investigation, Inland Revenue, Lahore Versus Learned Special Judge, Customs, Taxation and Anti–Smuggling, Lahore, etc](https://sys.lhc.gov.pk/appjudgments/2021LHC382.pdf)
The Honorable Judge of the Lahore High Court ruled in favor of the Inland Revenue Board of Lahore. The court held that, as per section 20(1)(a) of the AMLA 2010, the learned Special Judge (Customs, Taxation and Anti-Smuggling) has exclusive jurisdiction to try the offences of the AMLA, including predicate offences relating to tax evasion. The court further noted that all matters connected with or incidental to these offences also fall under the jurisdiction of the Special Judge.

The court criticized the lower court’s dismissal of the appellant’s application on the grounds that it had no jurisdiction unless a predicate offence was pending before it. The Lahore High Court deemed this dismissal as "illegal, perverse and not sustainable."

This case serves as a crucial interpretation of Section 20 of the AMLA, 2010. It underscores the principle that the jurisdiction for trying offences under the Act depends not only on the nature of the offence but also on the court that has the authority to try the predicate offence. In this instance, the Lahore High Court ruled that the Special Judge (Customs, Taxation and Anti-Smuggling) has exclusive jurisdiction to try the offences of the AMLA that are related to tax evasion and all matters connected therewith or incidental thereto.

**International Best Practices**

**The United States of America**

In the United States, money laundering cases are typically tried in federal court because money laundering is a federal crime. The specific court would be a U.S. District Court, as these are the trial courts of the federal court system. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. Three territories of the United States -- the Virgin Islands, Guam, and the Northern Mariana Islands -- have district courts that hear federal cases, including money laundering cases.

However, it’s important to note that state courts can also have jurisdiction over money laundering cases if the alleged criminal activity violates state law. The specific state court would depend on the state’s court structure, as this can vary from state to state. In both federal and state systems, the case would typically be heard by a trial court of general jurisdiction, meaning a court that has the authority to hear a wide range of cases. In the federal system, this would be a U.S. District Court, while in a state system, it could be a Superior Court, a Circuit Court, or a Court of Common Pleas, depending on the state.

The ‘trial court of general jurisdiction’ in the United States, as mentioned above, is largely analogous to Pakistan’s Court of Session as described in Section 20 of the AMLA 2010. In both cases, these courts have broad authority to hear a wide range of cases, including those related to money laundering. They are the primary courts for handling such cases within their respective jurisdictions. However, there are also some differences due to the distinct legal systems of the two countries. For instance, the Court of Session in Pakistan is established by the Provincial Government and is part of the country’s unified judicial system, whereas the U.S. has a federal system with separate state and federal courts.

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**Canada**

The Criminal Code of Canada contains a money laundering offence and establishes all the essential provisions required to seize, restrain, and ultimately forfeit “proceeds of crime”. This forms the procedural foundation for most money laundering investigations in Canada.340

The court has jurisdiction to accept applications to challenge the seizure or restraint orders. A person affected by the seizure can seek to overturn the order or, alternatively, seek payments from the targeted assets to cover reasonable living, business, and legal expenses.

Any proceeds investigation can proceed simultaneously with the investigation of a predicate offence. It can follow the predicate offence, or it can be a stand-alone investigation. This is because the possession offence is itself a predicate charge. The Canadian system is flexible. A criminal could be charged and convicted of the single predicate offence and all of their proceeds of crime could be forfeited. This forfeiture must occur at the time of sentence for the offence. The onus on the prosecutor is to establish that the property is proceeds from the offence charged, on a balance of probabilities standard of proof.

In addition, Canadian law, for any drug or organized crime offence, provides that "offence-related property", sometimes referred to as an instrumentality, can be seized, restrained, and subsequently forfeited upon conviction.

The Court of Session in Pakistan and the Canadian courts that handle money laundering cases, both have the authority to try and adjudicate offences related to money laundering. However, there are differences in the structure and operation of the legal systems in the two countries. The Court of Session in Pakistan is a specific court established under the Code of Criminal Procedure, 1898, and it has jurisdiction within its territorial boundaries.

In Canada, on the other hand, the court system is more decentralized, with different levels of courts (provincial and federal) having jurisdiction over different types of cases. Money laundering cases can be tried in any court that has jurisdiction over criminal cases, which could be a provincial court or a federal court, depending on the specifics of the case. It is important to note that in Canada, the trial court handling the predicate offence (the underlying crime from which the proceeds were derived) typically retains jurisdiction to try the money laundering offence, ensuring a comprehensive examination of the entire criminal activity.

So, while there are similarities in that both the Court of Session in Pakistan and the Canadian courts have the authority to try money laundering cases, the specific structure and operation of the courts within their respective legal systems are different. It’s important to note that the comparison is not entirely analogous due to these differences in legal systems, court structures, and procedures.

**India**

In India, money laundering cases are tried under the Prevention of Money Laundering Act, 2002 (PMLA). The PMLA is a comprehensive law enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering.341

The Supreme Court of India has clarified the manner in which territorial jurisdiction of courts in respect of an offense under the PMLA is to be determined. According to the Supreme Court’s interpretation, the court which takes cognizance of the PMLA offense would have to be the court that

340 Section 462.31 (1) of the Criminal Code of Canada
341 Prevention of Money Laundering Act, 2002
takes cognizance of the scheduled offense, and not vice versa. This means that the court handling the original crime also handles the subsequent money laundering case, similar to the provision in the AMLA.

However, the Indian system also allows for a criminal court to exercise territorial jurisdiction in six circumstances, including where an offense is committed, where the consequence of the offense is felt, where the accused is located, where the victim of the offense is located, where the property which was the subject matter of the offense was found, or where the property which formed part of the offense was required to be returned. This provides a broader scope for determining jurisdiction compared to the AMLA.

**Where an offense is committed:** This is the most straightforward basis for jurisdiction. If the act of money laundering is committed within the territory of a particular court, that court has jurisdiction over the case. This could involve the actual process of laundering money, such as the deposit, withdrawal, or transfer of illicit funds.

**Where the consequence of the offense is felt:** This allows a court to claim jurisdiction if the effects or consequences of the money laundering are felt within its territory. For example, if the laundered money is used to finance criminal activities within the court's territory, that court could potentially claim jurisdiction, even if the actual laundering took place elsewhere.

**Where the accused is located:** This gives a court jurisdiction if the person accused of money laundering is located within its territory. This could apply even if the money laundering activities took place in a different jurisdiction.

**Where the victim of the offense is located:** In the context of money laundering, determining the "victim" can be complex, as the crime often involves the masking of illicit funds obtained through other criminal activities. However, if it can be shown that a person or entity within the court’s territory has been harmed as a result of the money laundering (for example, if the laundered funds were obtained through fraud or theft from a victim in that territory), the court could claim jurisdiction.

**Where the property which was the subject matter of the offense was found:** If the assets or property involved in the money laundering are located within the court’s territory, the court can claim jurisdiction. This could apply even if the actual laundering activities took place elsewhere.

**Where the property which formed part of the offense was required to be returned:** This allows a court to claim jurisdiction if there is a need to recover or seize assets related to the money laundering within its territory. This could be relevant in cases where the laundered money or assets purchased with the laundered money are located within the court’s territory.

These six circumstances provide a broad scope for determining jurisdiction in money laundering cases in India. This flexibility can be particularly important in dealing with money laundering, which is often a complex, cross-border crime that can involve multiple jurisdictions. It allows the Indian legal system to effectively respond to different situations and ensure that money laundering cases can be appropriately prosecuted.  

While both the Court of Session in Pakistan and the Special Courts in India have the authority to try money laundering cases, the specific structure and operation of the courts within their respective legal...
systems are different. The Court of Session in Pakistan operates within a specific territorial boundary and is the primary court for handling money laundering cases, unless the predicate offense is within the jurisdiction of another higher court. On the other hand, the Special Courts in India can exercise jurisdiction based on a variety of factors, providing a more flexible approach to handling money laundering cases.
Section 22 – Application of Code of Criminal Procedure, 1898 to Proceedings before Courts

22. Application of Code of Criminal Procedure, 1898 to Proceedings before Courts. —\(^{343}\)

1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) shall, in so far as they are not inconsistent with the provisions of this Act, apply to arrest, bail, bonds, search, seizure, attachment, forfeiture, confiscation, investigation, prosecution and all other proceedings under this Act.

2) The Federal Government may appoint a person who is an advocate of a High Court to be a Public Prosecutor on such terms and conditions as may be determined by it and any person so appointed shall be competent to conduct proceedings under this Act before a Court and, if so, directed by the Federal Government, to withdraw such proceedings:

Provided that a person shall not be qualified to be appointed as a Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years in the High Court;

Provided that an advocate who has been appointed as prosecutor by the investigating or prosecuting agencies shall be qualified to be appointed as Public Prosecutor under this section notwithstanding the requirements of the first proviso.

3) Every person appointed as a Public Prosecutor under this section shall be deemed to be a public prosecutor within the meaning of clause (t) of sub section (1) of section 42 of the Code of Criminal Procedure, 1898 (Act V of 1898), and the provisions of that Code shall have effect accordingly.

4) When a Prosecutor appointed under sub-section (1), is, for any reason, temporarily unable to conduct proceedings before the Court, the proceedings shall be conducted by such person as may be authorized in this behalf by the Court.

Analysis of Section 22 of the AMLA

Section 22 of the AMLA 2010 stipulates that the provisions of the Code of Criminal Procedure, 1898, shall apply to various aspects of proceedings under the AMLA, including arrest, bail, search, seizure, investigation, prosecution, and more. It further outlines the qualifications and role of Public Prosecutors appointed by the Federal Government, who are authorized to conduct proceedings under the AMLA before the courts.

Section 22 of the AMLA of 2010 is pivotal in outlining role of prosecution of money laundering cases by identifying the prosecuting officer responsible for trying such cases in accordance with the AMLA and CrPC, 1898. This section not only outlines the role of the courts but also sets forth the requirements for qualifying as a Public Prosecutor.

The provision emphasizes that the application of the CrPC in prosecuting money laundering cases must be in accordance with the provisions of the AMLA 2010. This ensures that the procedural rules and

\(^{343}\) Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 6.
guidelines outlined in the AMLA and consistent provisions of CrPC are to be followed for prosecution of offences under AMLA.

Under the AMLA 2010, the role of Public Prosecutor is performed by officers appointed by the Federal Government. These officers must have a minimum of seven years of practice as advocates in the High Courts of Pakistan. By requiring a high level of legal experience, the section ensures that the appointed Public Prosecutors possess the necessary skills and knowledge to effectively handle money laundering cases.

In line with Section 493 of the CrPC, the Public Prosecutor, once appointed, has the authority to appear and plead before any court where a case under their charge is under inquiry, trial, or appeal. They are not required to provide written authority for such appearances. Additionally, if a private person instructs a pleader to prosecute in any court pertaining to a case under the charge of the Public Prosecutor, the Public Prosecutor is responsible for conducting the prosecution, while the pleader acts under their directions.

Overall, Section 22 of the AMLA serves to ensure that money laundering cases are prosecuted in a fair and effective manner. By aligning the application of the CrPC with the specific provisions of the AMLA, appointing qualified Public Prosecutors, and empowering them with the authority to conduct prosecutions, this section strengthens the legal framework for combating money laundering in Pakistan. The following table highlights specific provisions of the CrPC and their relevance to money laundering cases under the AMLA.

<table>
<thead>
<tr>
<th>CrPC Provision</th>
<th>Description and Relevance to Money Laundering</th>
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</thead>
<tbody>
<tr>
<td>Sections 46–73</td>
<td>These provisions govern the procedures and guidelines for arrest, including the power of arrest, the rights of the arrested person, and the process of remand.</td>
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<tr>
<td>Sections 88–90</td>
<td>These provisions govern the attachment of property, including the procedures for attaching properties suspected to be involved in money laundering and the process for challenging the attachment.</td>
</tr>
<tr>
<td>Sections 91–105</td>
<td>These provisions outline the procedures for obtaining search warrants, conducting searches, and seizing assets or evidence related to money laundering offenses.</td>
</tr>
<tr>
<td>Sections 154–176</td>
<td>These provisions provide guidelines for investigation procedures, including the powers of investigation agencies, procedures for recording statements, collecting evidence, and conducting inquiries related to money laundering offenses.</td>
</tr>
<tr>
<td>Sections 225–237</td>
<td>These provisions govern prosecution procedures, including the initiation of prosecution, presenting evidence, conducting trials, and determining the guilt or innocence of the accused.</td>
</tr>
</tbody>
</table>
### Sections 436 – 450

These provisions deal with bail provisions, including conditions for granting bail, the process for seeking bail, and the considerations that the court must take into account when deciding on bail applications.

### Section 441

This provision specifies the requirements for executing bonds, including the amount of the bond and the consequences of breaching the terms of the bond.

### Sections 451–459

These provisions deal with forfeiture and confiscation of property, including the procedures for initiating forfeiture proceedings, the rights of the affected parties, and the process for confiscating assets acquired through money laundering.

### Scope of Powers/Functions of LEAs as related to this Section.

Section 22 of the AMLA 2010 not only defines the role of Public Prosecutors but also establishes the scope of powers and functions of various law enforcement agencies (LEAs) involved in combating money laundering in Pakistan.

The AMLA designates several investigation agencies to carry out the enforcement of its provisions. These agencies include the Federal Investigation Agency (FIA), the Anti-Narcotics Force (ANF), the National Accountability Bureau (NAB), and the Federal Board of Revenue (FBR). Each agency has its specific jurisdiction and mandate within the framework of the AMLA.

The Financial Monitoring Unit (FMU) plays a crucial role in coordinating with LEAs for money laundering investigations. It acts as a liaison between the LEAs and the financial sector, providing intelligence and support. The FMU shares actionable reports with the LEAs when it comes across any relevant information during its operations. Additionally, the FMU responds to requests from LEAs for intelligence related to money laundering cases.

The investigation powers conferred upon LEAs under the AMLA 2010 are extensive and vital for effective enforcement. These powers include:

- **Attachment of Property**: LEAs have the authority to attach properties involved in money laundering. This power enables them to prevent the disposal of assets related to illicit financial activities, ensuring that they remain available for investigation and subsequent legal proceedings.
- **Investigation of Money Laundering Cases**: LEAs are empowered to investigate cases related to money laundering. They conduct thorough inquiries, gather evidence, and build a strong case against individuals or entities involved in illicit financial transactions.
- **Power of Survey**: LEAs can conduct surveys to gather information and identify potential sources of illicit funds. This power allows them to collect data from various sources, including financial institutions, to identify suspicious transactions and entities involved in money laundering.
- **Search and Seizure**: LEAs possess the authority to carry out search and seizure operations. They can search premises, seize relevant documents, records, assets, or any other evidence connected to money laundering activities.
COMMENTARY ON THE ANTI-MONEY LAUNDERING ACT 2010

e. Powers of Arrest: LEAs have the power to arrest individuals suspected of being involved in money laundering offenses. This includes apprehending individuals during the course of investigations, based on evidence and reasonable grounds for suspicion.

f. Retention of Property and Records: LEAs can retain properties and records that are relevant to money laundering investigations. This ensures that crucial evidence is preserved for legal proceedings and prevents the disposal or destruction of such evidence.

The scope of powers and functions granted to LEAs under the AMLA 2010 equips them with the necessary tools to investigate, prevent, and prosecute money laundering offenses effectively. These powers, combined with the coordination and support provided by the FMU, enable LEAs to carry out their duties in combating money laundering and ensuring the integrity of the financial system.

Appointment and Duties of Officers Under the Law

Appointment as a Public Prosecutor: Public Prosecutors are appointed by the provincial government under Section 492 of CrPC. As regards to the role of prosecutors in the Provincial High Courts, the Agency of Law Officers consists of the Advocate General, Additional Advocates General and Assistant Advocate General. They represent the State/Provincial Government not only in criminal matters, but also in civil matters where the interest of the Provincial Government is involved, in the High Courts.

The Federation of Pakistan is represented by the Central Law Officers, appointed by the President of Pakistan under the Central Law Officers Ordinance, 1970, who are designated as Attorney General, Additional Attorneys, or Deputy Attorneys General or Assistant Attorney’s General. Besides the Provincial High Courts, the Attorney General, Deputy Attorneys Generals and the Standing Counsel represent the Federal of Pakistan in the Apex Court, i.e., the Supreme Court of Pakistan not only in criminal matters but also in civil matters involving the interest of the federal government. The Law and Justice Division of the Government of Pakistan appoints/nominates Special Public Prosecutors from amongst some eminent lawyers to conduct the trial of criminal cases which involve public importance and heinousness of crimes. These Special Public Prosecutors represent the State in cases investigated by the investigation agency under the legal guidance of public prosecutors.

This procedure is in line with general provisions of the CrPC and relevant prosecution laws where applicable.

Powers of a Public Prosecutor: Section 493 of CrPC provides that the Public Prosecutor may plead in all courts in cases under his charge and pleaders privately instructed to be under his direction.

Key Cases

The Lahore High Court in its recent judgement said that the Directorate General Intelligence & Investigation of Inland Revenue can initiate proceedings against the people who had possibly laundered tax-evaded money under the AMLA 2010. The judgement said, “Directorate I&I is an

344 RSIL, Guide For The Effective Investigation and Prosecution of Money Laundering and Terrorist Financing, Volume 1
345 2008 PLD 28 Peshawar

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investigating and prosecuting agency\textsuperscript{346} as it is part of the FBR and is expected to have expertise in such matters.\textsuperscript{346}

\textit{International Best Practices}

\textbf{United States}

The United States, through its Bank Secrecy Act (BSA), has established a comprehensive anti-money laundering regime.\textsuperscript{347} Similar to Section 22, the BSA incorporates the provisions of the Code of Criminal Procedure into its proceedings. The U.S. also emphasizes the role of specialized prosecutors, such as those from the Department of Justice, in handling money laundering cases. This approach ensures expertise and effective enforcement of money laundering laws.

Under the BSA, specialized prosecutors from the Department of Justice (DOJ) are assigned to handle money laundering cases. These prosecutors possess expertise in financial crimes and work closely with law enforcement agencies, financial institutions, and other relevant entities to investigate and prosecute money laundering offenses. This specialized approach ensures effective enforcement of anti-money laundering laws.

Similarly, Section 22 of the AMLA in Pakistan designates Public Prosecutors to conduct proceedings before the courts in relation to money laundering cases. The provision specifies that the appointed Public Prosecutors must be advocates with a minimum of seven years of practice in the High Courts. This requirement ensures that the prosecutors have the necessary legal expertise to effectively handle money laundering cases in accordance with the AMLA.

A key similarity between the BSA provision and Section 22 is their emphasis on specialized prosecutors. By assigning prosecutors with specific knowledge and experience in financial crimes, both frameworks recognize the complexities and unique nature of money laundering cases. These specialized prosecutors possess the necessary skills to navigate the complexities of financial transactions and present strong cases in court.

However, a notable difference between the BSA provision and Section 22 is the structure of the prosecuting agencies. In the United States, the Department of Justice plays a prominent role in handling money laundering cases. In contrast, Section 22 of the AMLA does not explicitly establish a specific agency responsible for prosecuting money laundering offenses. Instead, the provision focuses on the qualifications and role of Public Prosecutors.

Drawing upon the United States’ BSA provision, the Pakistani AMLA could consider the establishment of a dedicated agency or further specialization within existing agencies to handle money laundering cases. This specialized agency could work in collaboration with the Public Prosecutors and other law enforcement agencies to enhance the investigation and prosecution of money laundering offenses.

\textbf{Canada}

Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) provides valuable insights into the incorporation of criminal procedure provisions.\textsuperscript{348} Similar to Section 22 of the AMLA, the PCMLTFA mandates the application of the Criminal Code in money laundering proceedings. It also establishes the Financial Transactions and Reports Analysis Centre of Canada.

\textsuperscript{347} Bank Secrecy Act 1970 (US)
\textsuperscript{348} Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000
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(FINTRAC) as the primary agency responsible for combating money laundering. This centralized approach ensures efficient investigation and prosecution of money laundering offenses.

Under the PCMLTFA, the Criminal Code is applied to money laundering offenses, ensuring that the criminal procedure provisions are in line with established legal frameworks. This alignment helps to provide consistency and clarity in the handling of money laundering cases. Similarly, Section 22 of the AMLA recognizes the relevance of the Code of Criminal Procedure, 1898, in proceedings related to money laundering under the AMLA.

Furthermore, the PCMLTFA establishes the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) as the primary agency responsible for combating money laundering in Canada. FINTRAC acts as a financial intelligence unit, collecting and analyzing financial transaction reports from various entities, such as financial institutions and casinos. The information gathered by FINTRAC is then shared with law enforcement agencies for investigation and prosecution.

In comparison, Section 22 of the AMLA focuses primarily on the role of Public Prosecutors in conducting proceedings before the courts. It does not explicitly establish a specific agency responsible for prosecuting money laundering offenses in Pakistan. However, various investigation agencies, such as the FIA and the ANF, are designated under the AMLA to carry out enforcement and investigation activities related to money laundering.

One area of potential improvement for Section 22 of the AMLA could be the establishment of a dedicated agency, similar to FINTRAC in Canada, with the responsibility of coordinating and enhancing the investigation and prosecution of money laundering cases. This specialized agency could work in collaboration with Public Prosecutors and other law enforcement agencies to streamline efforts, collect and analyze financial intelligence, and ensure effective enforcement of anti-money laundering laws.

By drawing a comparison with the Canadian law, the Pakistani AMLA can consider the benefits of establishing a dedicated agency for combating money laundering. This agency could provide expertise, resources, and coordination to strengthen the overall anti-money laundering framework in Pakistan, ensuring that the investigation and prosecution of money laundering offenses are conducted efficiently and effectively.

FATF President’s paper: Anti-money laundering and counter-terrorist financing for judges and prosecutors

The FATF President’s Paper emphasizes several important considerations for judges and prosecutors involved in anti-money laundering and counter-terrorist financing cases. One key aspect is the provision of specialized training for investigators and prosecutors, with a particular focus on enhancing skills related to gathering information and evidence, utilizing financial investigative techniques, and effectively presenting complex cases before judges or juries.

Early involvement of the prosecutor in the investigative process is also highlighted as a crucial step. This allows the prosecutor to assess the admissibility of intelligence as evidence and determine the necessary steps for ensuring its admissibility in court. By engaging prosecutors at an early stage, the integrity and effectiveness of the evidentiary process can be strengthened.

International cooperation is another essential element emphasized in the paper. It encourages the consideration of informal methods of collaboration, such as establishing direct communication

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channels between FIUs, police agencies, or prosecutorial offices, prior to submitting formal MLA requests. These informal cooperation mechanisms facilitate timely and efficient exchange of information and coordination in cross-border cases.

The paper also highlights the importance of adopting a task force model for effective collaboration among various entities involved in anti-money laundering efforts. This model typically involves a combination of investigators, specialized law enforcement agencies (such as those focused on drug, tax, anti-corruption, or customs matters), prosecutorial offices, intelligence authorities, and financial analysts. Such multidisciplinary task forces enhance coordination, expertise sharing, and overall efficiency in combating money laundering and terrorist financing.

Furthermore, the establishment of specialized money laundering and terrorist financing investigation units, as well as the designation of specialized prosecutors to handle such cases, is identified as a good practice. This specialization enables focused attention on the complexities of money laundering and asset confiscation cases, leading to more effective and targeted prosecution efforts.

In terms of prosecutorial powers, the paper suggests that prosecutors should possess the authority to issue production orders or subpoenas, commonly used to compel financial institutions to provide relevant financial records. Additionally, prosecutors may be empowered to conduct searches that allow for the seizure of documents, assets, or other items as evidence or for potential confiscation purposes. However, the power to order restraint or seizure may rest with the court or judge in some jurisdictions, or it may be delegated to the prosecutor or investigating judge, depending on the specific legal framework in place.

Incorporating these recommendations and good practices highlighted in the FATF President’s Paper can significantly enhance the effectiveness and efficiency of anti-money laundering and counter-terrorism financing efforts, empowering judges and prosecutors to better tackle these illicit activities and contribute to a more robust legal framework for combating financial crimes.

**Role of Public Prosecution in EU’s Criminal Justice System**

The Public Prosecutors are given additional training to deal with offences relating to complicated financial transactions, such as money laundering and large-scale fraud. They have to specialize in fields that are highly technical or fall into the category of large-scale organized crime such as money laundering. There is a formation of truly multi-disciplinary teams to deal with financial crime and money laundering. The team consists of members from various backgrounds for example—chartered accountants, customs officers, and banking experts. The team should be led by prosecutors who are themselves, specialists. The system’s operational efficacy is greatly influenced by this combination of expertise in a single unit. The public prosecutor must have full authority to issue general instructions with the goal of making sure that crime policy priorities—which it frequently implements—are followed in every way before it can effectively exercise this authority. This authority extends beyond the public prosecutor's ability to issue instructions regarding specific cases. Depending on the government’s policy choices, the priority requirement might be, for instance, a concerted effort to solve certain types of crime (such as petty theft or money laundering); an emphasis on specific methods of evidence-gathering (such as the use of DNA profiling or specific questions to be asked in cases of burglary); the allocation of certain types of resources to certain investigations or to the detection of certain types of offence; or an effort to limit certain types of crime.
CARIN

It is a network of informal law enforcement and judicial professionals with expertise in asset tracing, freezing, seizure, and confiscation. A law enforcement official and a judicial specialist represent each one of the 54 Member States. The entire asset recovery process, including any necessary asset sharing between countries, is supported by CARIN contacts, from the first stage of the inquiry involving the tracing of assets through freezing and seizure, management, and eventually forfeiture/confiscation.

International Association of Prosecutors (IAP)

In addition to upholding the rule of law, fairness, impartiality, and respect for human rights, it is devoted to establishing and raising standards of professional behavior and ethics for prosecutors around the world and enhancing global cooperation in the fight against crimes such as money laundering. One of the most important IAP Objects is to “… promote and enhance those standards and principles which are generally recognized internationally as necessary for the proper and independent prosecution of offences.”

Model Provisions

The ‘Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures and Proceeds of Crimes’ mentions the term ‘enforcement authority’ or the ‘Director of Public Prosecutions’ to indicate multiple prosecuting units involved in seeking orders in connection with a criminal case. The Model Provisions makes it clear that the enforcement authority should be a legal office and not a police agency.

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350 CARIN Alliance Network, 'CARIN Alliance Network' https://www.carin.network/
351 International Association of Prosecutors, 'International Association of Prosecutors' https://www.iap-association.org/
Section 23 – Appeal to High Court

Any person aggrieved by final decision or order of the Court may prefer an appeal to the High Court within sixty days from the date of communication of the decision or order on any question of law or fact arising out of such decision or order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be submitted within a further period not exceeding sixty days.

Explanation — For the purposes of this section, “High Court” means —

(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Federal Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

Analysis of Section 23 of the AMLA

Section 23 of the AMLA 2010 establishes the right to appeal to the High Court within sixty days from the date of communication of a final decision or order of the Court. The appeal can be filed on any question of law or fact arising from the decision or order, with the provision for a further period not exceeding sixty days if there is sufficient cause preventing the appeal from being filed within the initial sixty-day period.

Section 23 of the AMLA 2010 encompasses the crucial aspect of the appellate jurisdiction of the High Court, in line with the constitutional provisions set forth in Article 199 of the Constitution of the Islamic Republic of Pakistan. The provision outlines the fundamental role of the Courts of Appeals, which is to assess whether the law was correctly applied in the Sessions Court by means of a thorough review process.

One of the primary objectives behind the establishment of the appellate system is to rectify any potential errors made during the trial court proceedings. By allowing appeals, the justice system aims to safeguard the public interest by preserving and enhancing public confidence in the judiciary. The opportunity to correct mistakes or address perceived injustices instills trust among citizens, as it demonstrates that the legal system is not infallible and is capable of self-correction.

Furthermore, the appellate court plays a pivotal role in providing guidance and establishing precedents for future cases. Through its decisions and judgments, the High Court can establish clear and consistent legal principles, ensuring that the law is applied uniformly across similar cases. This serves to enhance legal certainty, minimize discrepancies, and promote fairness in the administration of justice. The availability of well-defined guidelines derived from appellate cases also aids lower courts in their decision-making process, promoting consistency and predictability in the application of the law.

Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 6.
By offering a mechanism for review and redressal, the ability to appeal significantly contributes to the rule of law. It reinforces the notion that all individuals, regardless of their standing or circumstances, have the right to seek justice and have their cases examined by a higher judicial authority. This aspect of due process is essential for upholding the principles of fairness, equity, and access to justice within a legal system.

In summary, Section 23 of the AMLA recognizes and establishes the right to appeal to the High Court. This provision aligns with the constitutional framework of Pakistan and serves various essential characteristics of rule of law. It ensures that the law is applied correctly, safeguards public interest, enhances public confidence in the judiciary, provides guidance for future cases, and upholds the rule of law.

**Key Cases**

**Deputy Director, Anti-Money Laundering, Intelligence Investigation, Inland Revenue Vs. Special Judge, Customs, Taxation and Anti-Smuggling (2021 PCrLJ 946 Lahore High Court)**

The court of special judge (Customs, Taxation and Anti-smuggling) held that it had no jurisdiction to try a case of tax evasion and concealment of income (predicate offenses) under section 20 AMLA, unless such predicate offenses were pending before it. Appeal against the court was allowed and the matter was remanded to the special court on the grounds that s.20(1)(a) of AMLA 2010 gave the special judge jurisdiction to try cases of tax evasion and all matters related to it. When the court refused the application to attach a property under section 8 AMLA stating that it had no jurisdiction, the appellant appealed to the High Court under Section 23 AMLA. Resultantly, the High Court ruled that the Special Court gave a impugned decision which was consequently set aside.354

**Syed Jawad Arshad Vs. Federation of Pakistan & others and other petitions (C.P. No. D –1083 of 2020 & other petitions)**

In the decision given in the case of Syed Jawad Arshad Vs. Federation of Pakistan & others and other petitions (C.P. No. D –1083 of 2020 & other petitions) a Bench of the High Court of Sindh categorically observed that where the law empowers a Special Court to deal with the matter and if an order of that Special Court is further assailable in appeal /revision before the High Court, the adequate remedy with regard to the condition precedent as per Article 199 is not justified. The judgement said that in the instant matter also if the petitioners are aggrieved, they can file an appeal under Section 39 of AMLA before the High Court.355

**Dr. Sikandar Ali Mohi ud Din Vs. Station House Officer and others**

In Dr. Sikandar Ali Mohi ud Din Vs. Station House Officer and others, the judgement said,

“Perusal of AMLA also reveals that in case any adverse order is passed against a person that person has the remedy, under Section 23 of AMLA, to file an appeal before the High Court, hence it could not be said that the aggrieved persons are left remediless.”356

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354 2021 PCrLJ 946 Lahore High Court
355 C.P. No. D –1083 of 2020 & other petitions
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International Best Practices

Model Provisions

Section 74 of the "Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures and Proceeds of Crimes" addresses the right to appeal in relation to property freezing orders and civil forfeiture orders. According to this provision, an interested party who is affected by a decision of a high court in relation to a property freezing order or the grant/refusal of a civil forfeiture order has the right to appeal to the court of appeal or relevant appellate tribunal.

This provision bears resemblance to Section 23 of the AMLA 2010, which also grants the right to appeal against final decisions or orders of the court. However, while Section 23 of the AMLA 2010 focuses on appeals to the High Court within a specified timeframe, the Model Legislative Provision emphasizes appeals to the court of appeal or relevant appellate tribunal without mentioning a specific timeframe.

Additionally, Section 111 of the Model Legislative Provision addresses the procedure and appeal process, ensuring compliance with the Code of Civil Procedure of the concerned states. It states that the procedure under this section should align with the civil procedure rules. Moreover, it allows any person affected by an order made by a court under this section to appeal to the relevant court.

Although Section 111 does not explicitly link to Section 23 of the AMLA 2010, both provisions emphasize the importance of adhering to established procedural rules and providing an avenue for appeal to individuals affected by the court's orders. They highlight the significance of upholding justice and fairness within the anti-money laundering framework.

In summary, the provisions outlined in the "Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures and Proceeds of Crimes" regarding appeals and procedures share similarities with Section 23 of the AMLA 2010. They emphasize the right to appeal against court decisions, compliance with procedural rules, and the safeguarding of justice in the context of anti-money laundering efforts.

Australia

In Australia, the provision that grants the right to appeal against decisions made by the Administrative Appeals Tribunal (AAT) in the context of anti-money laundering and counter-terrorism financing is found in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act).  

Section 249 of the AML/CTF Act outlines the appeals process. According to this provision, a person who is dissatisfied with a decision of the AAT may appeal to the Federal Court of Australia. The appeal must be lodged within 28 days after the day the decision was communicated to the person or within such further period as the Court allows.

Comparing this provision with Section 23 of the Pakistani Anti-Money Laundering Act (AML) 2010, there are several similarities. Both provisions grant the right to appeal against a decision or order made by a lower court or administrative body. In both cases, the appeal must be filed within a specified timeframe, which is 60 days under Section 23 of the AML 2010 and 28 days under Section 249 of the AML/CTF Act.

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357 Anti-Money Laundering and Counter-Terrorism Financing Act, 2006
However, there are also differences between the two provisions. One notable difference is the level of court to which the appeal is made. In Pakistan, the appeal is made to the High Court, while in Australia, the appeal is made to the Federal Court of Australia. The jurisdiction and structure of these courts differ, as the High Court in Pakistan is the highest appellate court in the province, while the Federal Court of Australia is a separate federal court with appellate jurisdiction.

Another difference lies in the factors that may influence the time period for filing an appeal. Section 23 of the AMLA 2010 allows for a further period not exceeding 60 days to be granted by the High Court if there is sufficient cause preventing the filing of the appeal within the initial 60-day period. In contrast, Section 249 of the AML/CTF Act does not explicitly provide for an extension of the appeal period beyond the initial 28 days, although the Federal Court may exercise its discretion in exceptional circumstances.

In summary, while both Section 23 of the AMLA 2010 and Section 249 of the AML/CTF Act establish the right to appeal against decisions related to anti-money laundering matters, there are differences in the level of court to which the appeal is made and the availability of extensions to the appeal period. These variations reflect the unique legal frameworks and judicial systems of Pakistan and Australia.

Canada

In Canada, the provision that governs the right to appeal against decisions made by administrative bodies in the context of anti-money laundering is found in the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).358

Section 81 of the PCMLTFA outlines the appeals process. According to this provision, any person affected by a decision of an administrative body, such as the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), may, within 30 days after the day on which the decision was communicated to them, appeal to the Federal Court of Appeal.

Comparing this provision with Section 23 of the AMLA 2010, there are several similarities. Both provisions establish the right to appeal against a decision or order made by an administrative body. In both cases, the appeal must be filed within a specified timeframe, which is 60 days under Section 23 of the AMLA 2010 and 30 days under Section 81 of the PCMLTFA.

However, there are also differences between the two provisions. One significant difference is the level of court to which the appeal is made. In Pakistan, the appeal is made to the High Court, while in Canada, the appeal is made to the Federal Court of Appeal. The Federal Court of Appeal is a higher appellate court at the federal level in Canada.

Additionally, while Section 23 of the AMLA 2010 provides the High Court with discretion to allow a further period not exceeding 60 days if there is sufficient cause preventing the filing of the appeal within the initial 60-day period, Section 81 of the PCMLTFA does not explicitly provide for an extension of the appeal period beyond the initial 30 days.

Furthermore, it is important to note that the Canadian appeals process under the PCMLTFA may involve a more specialized administrative law framework, as appeals are made to the Federal Court of Appeal, which is a dedicated appellate court for federal matters. This specialized court may have specific rules and procedures in place for handling appeals related to administrative decisions, including those related to anti-money laundering.

In summary, both Section 23 of the AMLA 2010 and Section 81 of the PCMLTFA establish the right to appeal against decisions made by administrative bodies in the anti-money laundering context. They provide specific timeframes for filing appeals, but there are differences in the level of court involved, the availability of extensions to the appeal period, and the potential involvement of specialized administrative law frameworks in Canada’s case. These distinctions reflect the unique legal and judicial systems in Pakistan and Canada.

**India**

Section 26 of The Prevention of Money Laundering Act 2002 (PMLA) in India provides a comparable provision to Section 23 of the AMLA 2010, both concerning the right to appeal against decisions made by the respective authorities.¹⁹⁹

In India, Section 26 of the PMLA outlines the process for filing an appeal to the appellate tribunal by individuals, banking companies, financial institutions, or intermediaries who are aggrieved by an order made by the Director under sub-section (2) of section 13. The appeal must be filed within forty-five days from the date of receiving a copy of the order made by the Adjudicating Authority or Director.

Similarly, Section 23 of the AMLA 2010 in Pakistan allows any person aggrieved by the final decision or order of the Court to prefer an appeal to the High Court within sixty days from the date of communication of the decision or order. The appeal can be made on any question of law or fact arising out of the decision or order. Additionally, the High Court has the discretion to grant a further period of up to sixty days if the appellant can establish sufficient cause for not filing the appeal within the initial sixty-day period.

While both provisions establish the right to appeal against decisions made by the respective authorities, there are differences in the timeframes for filing the appeal. In India, the appeal must be filed within forty-five days, whereas in Pakistan, the appeal must be filed within sixty days. However, both provisions recognize the importance of allowing aggrieved parties a reasonable opportunity to seek redress and review of decisions that impact their rights or interests.

Furthermore, both India and Pakistan provide for the establishment of an appellate body to hear and determine these appeals. In India, the appellate tribunal serves as the designated forum, while in Pakistan, the appeals are made to the High Court. These specialized bodies ensure an independent review of decisions and contribute to upholding fairness and justice within the anti-money laundering frameworks of the respective countries.

In summary, while there are slight differences in the timeframes for filing appeals, Section 26 of the PMLA in India and Section 23 of the AMLA 2010 in Pakistan share the common objective of providing a mechanism for individuals and entities to appeal against decisions made by the authorities. These provisions underscore the commitment of both countries to combat money laundering and ensure fairness and the rule of law in their respective anti-money laundering frameworks.

¹⁹⁹ Prevention of Money Laundering Act, 2002
Section 35 – Bar of Jurisdiction

35.Bar of Jurisdiction. — 360

(1) No suit shall be brought in any Court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceedings shall lie against the Federal Government, or any officer of the Government, or FMU, its officers or any agency controlled or supervised by the Government, or members of the National Executive Committee or General Committee, for anything done or intended to be done in good faith under this Act.

(2) No Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the investigating officer and Committee or the Court is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Analysis of Section 35 of the AMLA

Section 35 establishes limitations and immunities regarding legal actions and proceedings. It prohibits suits to challenge proceedings or orders under the Act and shields the Federal Government, its officers, FMU, its officers, government-controlled agencies, and committee members from prosecution for actions taken in good faith under the Act. Courts lack jurisdiction to entertain suits on matters within the Act’s purview, and injunctions cannot be granted for actions authorized by the Act. These provisions safeguard government entities and officials from legal challenges while restricting court jurisdiction in specified Act-related matters.

Section 35 of the Anti-Money Laundering Act (AMLA) establishes important provisions regarding jurisdiction and immunity in relation to proceedings and actions carried out under the Act. Let’s analyze and expand on this section.

Subsection (1) states that no suit can be brought in any court to challenge or alter any proceeding or order made under the AMLA. This provision ensures the finality and integrity of the decisions made within the framework of the Act. It prevents individuals from initiating legal actions that seek to invalidate or modify the outcomes of proceedings conducted under the AMLA.

Furthermore, this subsection provides immunity to various entities and individuals, including the Federal Government, government officers, the Financial Monitoring Unit (FMU), agencies supervised by the government, and members of the National Executive Committee or General Committee. These individuals and entities are protected from prosecution, suits, or any other legal proceedings for acts done or intended to be done in good faith under the AMLA. This immunity is important for encouraging government agents to perform their duties diligently and without fear of personal legal repercussions, thus promoting the effective implementation of the Act.

Subsection (2) of Section 35 states that no court shall have jurisdiction to entertain any suit or proceedings concerning matters that fall within the authority of the investigating officer, Committee, or any court empowered by the AMLA. This provision limits the jurisdiction of courts to intervene in matters that are specifically designated under the Act. It ensures that only the designated authorities,

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360 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 6.
such as the Court of Sessions established under the Code of Criminal Procedure, have the power to handle cases related to the AMLA. This concentration of jurisdiction allows for specialized knowledge and expertise in dealing with the complexities of anti-money laundering measures.

Additionally, this subsection prohibits courts or other authorities from granting injunctions that could obstruct or interfere with actions taken or to be taken in accordance with the powers conferred by or under the AMLA. This provision ensures that the implementation of the Act proceeds smoothly without undue interference or obstruction from judicial orders. It promotes transparency, impartiality, and judicial independence by limiting the power of courts to grant injunctions in matters governed by the AMLA.

In summary, Section 35 of the AMLA serves to protect the integrity of proceedings and actions conducted under the Act. It restricts individuals from challenging or altering decisions made under the Act, provides immunity to government agents acting in good faith, limits the jurisdiction of courts to designated authorities, and prohibits courts from granting injunctions that may hinder the implementation of the Act. These provisions collectively aim to facilitate the effective enforcement of anti-money laundering measures while ensuring transparency and maintaining the independence of the judiciary.

**Breakdown of the substantive issues relating to Section 35**

**Bar by Special Statutory Provision:** A court’s jurisdiction can be barred by an express provision in a special law, such as the proviso (1) in the AMLA 2010. This provision may limit the jurisdiction of courts in matters related to the AMLA, but the extent of its impact and the specific situations where it applies require further clarification.

**Lack of accountability medium:** Section 35 provides immunity for bona fide actions to the Federal Government, its officers, FMU, agencies controlled or supervised by the Government, and members of the National Executive Committee or General Committee. While this immunity protects them from legal proceedings, it raises concerns about the lack of accountability for government institutions. The absence of a mechanism to hold these entities accountable may undermine transparency and public trust.

**Element of Good Faith:** The term "good faith" mentioned in Section 35 lacks clarity regarding its scope and application. While it holds significance in contractual obligations, determining the good faith of the officers mentioned in proviso (1) may be challenging. The Pakistan Penal Code’s Section 52 states that nothing is done or believed in 'good faith' if it is done or believed without due care and attention. However, the concept of 'due care and attention' remains vague and undefined, posing difficulties in assessing the officers' actions within the framework of good faith.

**International Best Practices**

Section 141 of the 'Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures and Proceeds of Crimes' includes provisions to protect the Competent Authority and individuals responsible for handling the assets of a listed party. It states that no action shall be taken against the Competent Authority for any actions or omissions performed in good faith while carrying out its functions or exercising its powers under the provisions. Similarly, no action shall be taken against any person who possesses, controls, or has custody of the assets of a listed party for any actions taken in good faith while fulfilling obligations under the provisions. These

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364 Section 52, Code of Civil Procedure 1908
provisions provide immunity to these entities and individuals, ensuring they can perform their duties without fear of legal repercussions\(^\text{362}\).

Furthermore, the section emphasizes the importance of protecting the Competent Authority and individuals handling the assets of a listed party. Similarly, Section 35 of the AMLA provides immunity from prosecution or legal proceedings for the Federal Government, its officers, FMU, agencies controlled or supervised by the Government, and members of the National Executive Committee or General Committee for actions performed in good faith under the Act. Both provisions aim to safeguard those involved in the implementation of anti-money laundering measures, recognizing the need to carry out their duties without fear of legal repercussions.

**India**

Section 41: Section 41 of the Prevention of Money Laundering Act 2002 (PMLA) establishes that no civil court has jurisdiction to entertain any suit or proceeding regarding matters that the Director, an Adjudicating Authority, or the Appellate Tribunal is empowered to determine under the Act\(^\text{363}\). Additionally, no injunction can be granted by any court or authority to obstruct or interfere with any action taken or to be taken in accordance with the powers conferred by the Act. This provision limits the jurisdiction of civil courts and ensures that matters related to the Prevention of Money Laundering Act are handled by the designated authorities rather than the civil courts.

Section 41 of the Act restricts the jurisdiction of civil courts in entertaining suits or proceedings related to matters that fall within the purview of the Director, Adjudicating Authority, or the Appellate Tribunal. Similarly, Section 35 of the AMLA bars any suit or modification of proceedings or orders made under the Act, limiting the scope of judicial intervention. These provisions aim to establish a specialized framework for adjudicating matters under the respective Acts, ensuring that disputes and legal challenges are handled by the designated authorities rather than civil courts.

Section 62: Section 62 of the Act provides a bar on suits in civil courts seeking to set aside or modify any proceeding or order made under the Act\(^\text{364}\). Furthermore, it states that no prosecution, suit, or other proceeding can be initiated against the Government or any officer of the Government for any actions undertaken or intended to be done in good faith under the Act. These provisions protect the Government and its officers from legal consequences for their actions being carried out in good faith while implementing the Act.

Additionally, it provides immunity to the Government and its officers from prosecution, suits, or other proceedings for actions undertaken or intended to be done in good faith under the Act. This parallels the protection offered by Section 35 of the AMLA to the Federal Government, its officers, and other entities for acts performed in good faith under the Act. Both provisions recognize the importance of allowing government institutions to carry out their functions without the threat of legal consequences, promoting effective implementation of the respective anti-money laundering legislation.


\(^{363}\) Prevention of Money Laundering Act 2002, s 41.

\(^{364}\) Prevention of Money Laundering 2002, s.62.
Section 36 – Notices, etc. not to be invalid on certain grounds

36. Notices, etc. not to be invalid on certain grounds – No notice, summons, order, document, or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect, or omission in such notice, summons, order, documents or other proceedings if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Analysis of the Section 36 of the AMLA

Section 36 of the AMLA addresses the validity of notices, summonses, orders, documents, or other proceedings issued or taken under the provisions of the Act. It states that such notices or proceedings shall not be deemed invalid solely due to any mistake, defect, or omission, as long as they are in substance and effect in conformity with the intent and purpose of the Act. This provision serves to protect the validity and enforceability of administrative actions carried out under the AMLA, ensuring that technical errors or deficiencies do not render them null and void.

Firstly, Section 36 acknowledges that mistakes, defects, or omissions may occur in the process of furnishing or issuing notices, summonses, orders, or other documents under the AMLA. It recognizes that perfection is difficult to achieve in practice, and minor errors or irregularities should not undermine the entire proceedings or hinder the intended purpose of the Act. By explicitly stating that such mistakes or defects shall not invalidate the notices or proceedings, Section 36 provides a degree of flexibility and allows for a practical approach to administrative actions under the AMLA.

The provision emphasizes that the focus should be on the substance and effect of the notices or proceedings rather than solely on technicalities. It underscores the intention of the Act to prevent money laundering and associated crimes, emphasizing the importance of upholding the overarching objectives and principles of the AMLA. As long as the notices or proceedings align with the intent and purpose of the Act, any mistakes, defects, or omissions should not undermine their validity.

Section 36 also promotes efficiency and avoids unnecessary delays or challenges to the administrative process. It discourages individuals or entities from raising objections or seeking invalidation based solely on minor technical errors. This provision ensures that the substantive matters at hand, such as preventing money laundering, investigating illicit activities, and implementing appropriate measures, remain the primary focus, rather than getting caught up in procedural technicalities.

However, it is essential to note that Section 36 does not provide blanket immunity for significant errors or deliberate misinterpretation of the Act’s provisions. It does not prevent authorities from adhering to the fundamental principles of fairness, due process, and the protection of individual rights. It is crucial that the notices, summonses, orders, or other proceedings issued or taken under the Act are not used as tools for arbitrary actions or violations of rights. While Section 36 aims to prevent unnecessary challenges based on minor technicalities, it should not be interpreted as a license for authorities to disregard essential procedural safeguards.

365 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 6.
In summary, Section 36 of the AMLA safeguards the validity of notices, summonses, orders, documents, or other proceedings by recognizing that minor mistakes, defects, or omissions should not invalidate them if they align with the intent and purpose of the Act. It promotes efficiency, avoids unnecessary delays, and ensures that the focus remains on the substantive objectives of preventing money laundering and related crimes. However, it is crucial to maintain a balance between procedural flexibility and the protection of individual rights, fairness, and due process.

**Substantive issues**

**Legal Certainty and Predictability:** While Section 36 aims to preserve the validity of notices, summonses, orders, or other proceedings despite minor mistakes or defects, it may raise concerns regarding legal certainty and predictability. The provision's language, particularly the phrase "in substance and effect," leaves room for interpretation and may lead to ambiguity in determining what constitutes conformity with the intent and purpose of the Act. Without clear guidelines or standards, there is a potential risk of inconsistent application and varying interpretations, which could undermine confidence and trust in the administrative process.

**Abuse of Power:** Section 36's provision for overlooking mistakes, defects, or omissions could potentially create a loophole for abuse of power. If authorities are allowed to disregard significant errors or deliberately misinterpret the Act's provisions under the pretext of minor technicalities, it may result in unjust outcomes and violations of individual rights. There is a need for safeguards to prevent authorities from exploiting this provision to legitimize arbitrary actions or evade accountability.

**Due Process and Procedural Fairness:** While Section 36 seeks to avoid unnecessary challenges based on technical errors, it must not undermine the principles of due process and procedural fairness. It is essential to ensure that individuals or entities affected by notices, summonses, or other proceedings have a fair opportunity to contest the substantive issues raised against them. Striking the right balance between efficiency and safeguarding individual rights is crucial to maintaining the integrity of the administrative process and uphold the rule of law.

**Judicial Review and Remedies:** Section 36 may raise questions about the availability and effectiveness of judicial review and remedies for individuals who believe their rights have been violated or their interests have been adversely affected. If the provision restricts or limits the grounds on which individuals can challenge the validity of notices or proceedings, it could impede access to justice and hinder the proper redressal of grievances. It is essential to ensure that individuals have avenues to seek judicial review and remedies in cases where substantial errors or violations have occurred.

In conclusion, while Section 36 of the AMLA intends to maintain the validity of administrative actions despite minor mistakes or defects, it poses substantive issues related to legal certainty, abuse of power, due process, and judicial review. Balancing the need for efficiency with the protection of individual rights and procedural fairness is crucial to address these concerns and maintain the integrity and effectiveness of the anti-money laundering framework.

**Section 99 of Code of Civil Procedure**

Section 99 of the Civil Procedure Code (CPC) and Section 36 of the Anti-Money Laundering Act (AMLA) both address the issue of procedural mistakes and their impact on the validity of legal proceedings. However, they differ in terms of the specific context and scope of application.

Section 99 of the CPC states that a decree shall not be reversed or substantially modified, nor shall a case be remanded on account of any error, defect, or irregularity in the proceedings, as long as such mistakes do not affect the merits of the case or the jurisdiction of the court. This provision emphasizes
that procedural errors alone should not invalidate a decree or require the case to be re–examined, as long as the errors do not impact the fundamental aspects of the case or the court's jurisdiction.

On the other hand, Section 36 of the AMLA deals with the validity of notices, summonses, orders, documents, or other proceedings issued or made under the provisions of the Act. It states that such notices or proceedings shall not be considered invalid merely due to mistakes, defects, or omissions, as long as they are in substance and effect in conformity with the intent and purpose of the AMLA. This provision ensures that technical errors or omissions in the documentation or proceedings under the AMLA do not render them automatically invalid, as long as they fulfill the substantive requirements and objectives of the Act.

In a comparative analysis, it can be observed that both provisions share a common intention of preserving the validity of legal proceedings despite procedural mistakes. They aim to prevent the unnecessary reversal or invalidation of decrees or proceedings based solely on minor errors or irregularities that do not impact the core aspects of the case or the purpose of the respective legislation.

**International Best Practices**

**Malaysia**

Section 58 of Malaysia's Anti–Money Laundering, Anti–Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) plays a crucial role in ensuring the validity of documents and proceedings under the Act. This provision protects against the automatic invalidation of such documents and proceedings based solely on defects, errors, or omissions that may be present. Instead, it emphasizes the importance of substantial compliance with the provisions and purposes of the Act.

By stating that no document or proceeding under the AMLA shall be invalidated solely due to defects, errors, or omissions, Section 58 recognizes the possibility of minor mistakes or technical deficiencies that may occur in the process. It acknowledges that perfection in the form or format of these documents or proceedings may not always be achievable, and that the focus should ultimately be on whether they fulfill the substantive requirements and objectives of the Act.

The provision further emphasizes the principle of substantial compliance, which means that as long as the document or proceeding is in substantial conformity with the provisions and purposes of the AMLA, it should not be deemed invalid. This allows for a flexible approach, taking into account the overall intent and spirit of the legislation, rather than overly strict adherence to technicalities that may not affect the substance or purpose of the Act.

Section 58 of Malaysia's AMLA serves to promote efficiency and avoid unnecessary delays or disruptions in the enforcement of anti–money laundering and counter–terrorism financing measures. It recognizes that minor defects, errors, or omissions should not undermine the legitimacy or effectiveness of the legal process if they do not substantially deviate from the requirements set forth by the AMLA.

However, it is important to note that while Section 58 provides protection against automatic invalidation, it does not absolve serious or substantial non–compliance with the provisions of the AMLA. If the defects, errors, or omissions significantly impact the integrity or purpose of the Act, the document or proceeding may still be subject to scrutiny and potential consequences.

In summary, Section 58 of Malaysia's AMLA safeguards the validity of documents and proceedings under the Act, ensuring that minor defects, errors, or omissions do not automatically invalidate them.

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366 Anti–Money Laundering, Anti–Terrorism Financing and Proceeds of Unlawful Activities Act, 2001
By emphasizing substantial compliance with the provisions and purposes of the legislation, this provision strikes a balance between technical precision and the broader goals of combating money laundering, terrorism financing, and unlawful activities.

**India**

Section 36 of the Prevention of Money Laundering Act, 2002 (PMLA) in India serves as a safeguard against the invalidation of notices, summonses, orders, and other proceedings based solely on defects, irregularities, or omissions. This provision recognizes that minor mistakes or procedural shortcomings should not automatically render these documents or proceedings invalid, as long as they are in substance and conformity with the provisions of the Act.

By explicitly stating that no notice, summons, order, or other proceeding shall be considered invalid due to defects, irregularities, or omissions, Section 36 aims to ensure that technical errors or procedural deficiencies do not hinder the effectiveness of the PMLA. It acknowledges that perfection in form or adherence to strict procedural requirements may not always be attainable, and that the focus should primarily be on whether these documents or proceedings fulfill the essence and objectives of the Act.

The provision emphasizes the importance of substance and conformity with the provisions of the PMLA. This means that as long as the essential requirements and objectives of the Act are met, any minor defects or irregularities should not be grounds for invalidation. This approach promotes efficiency and prevents unnecessary delays or disruptions in the enforcement of anti-money laundering measures.

Section 36 of the PMLA underscores the principle of substantial compliance, wherein the emphasis is placed on the overall intent and purpose of the legislation, rather than strict adherence to technicalities. It acknowledges that the primary objective of the PMLA is to combat money laundering and related offenses, and deviations from procedural requirements that do not affect the fundamental aspects of the case should not impede the progress of legal proceedings.

It is important to note that while Section 36 provides protection against the automatic invalidation of documents and proceedings, it does not condone significant non-compliance with the provisions of the PMLA. If the defects, irregularities, or omissions substantially undermine the integrity or purpose of the Act, the document or proceeding may still be subject to scrutiny and potential consequences.

In summary, Section 36 of the Prevention of Money Laundering Act, 2002 in India prevents the automatic invalidation of notices, summonses, orders, and other proceedings due to minor defects, irregularities, or omissions. By focusing on substance and conformity with the provisions of the Act, this provision ensures the efficiency and effectiveness of anti-money laundering measures while striking a balance between procedural precision and the broader objectives of the PMLA.
Section 38 – Continuity of Proceedings in the Event of Death or Insolvency

38. Continuity of proceedings in the event of death or insolvency –

(1) Where –

(a) any property of a person has been attached under this Act and no representation against the order attaching such property has been preferred; or
(b) any representation has been preferred to the Court, and

i. in case referred to in clause (a) such person dies or is adjudicated as insolvent before preferring representation to the Court; or
ii. in a case referred to in clause (b), such person dies or is adjudicated as insolvent during the pendency of representation, then it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer representation to the Court, or as the case may be to continue the representation before the Court, in the place of such person.

(2) Where –

(a) after passing of a decision or order by the Court, no appeal has been preferred to the High Court under section 23; or
(b) any such appeal has been preferred to the High Court, - then.

i. in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or
ii. in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated as insolvent during the pendency of the appeal before the High Court, then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provision of section 23 shall, so far as may be, apply, or continue to apply, to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Insolvency (Karachi Division) Act, 1909 (III of 1909) or the Provincial Insolvency Act, 1920 (V of 1920) as the case may be.

Analysis of Section 38 of the AMLA

Section 38 of the AMLA outlines the provisions related to the continuity of proceedings in the event of death or insolvency. It states that if the property of a person has been attached under the Act and no representation against the attachment order has been made, or if representation has been made but the person dies or is adjudicated as insolvent before or during the pendency of representation, then the legal representatives or the official assignee/receiver can step in and continue the representation or proceedings before the Court on behalf of the deceased or insolvent person. Similarly, if no appeal has been filed to the High Court after a decision or order by the Court, or if an appeal has been filed but the

367 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 6.
appellant dies or is adjudicated as insolvent before or during the pendency of the appeal, the legal representatives or the official assignee/receiver can file or continue the appeal before the High Court on behalf of the deceased or insolvent person. The powers of the official assignee/receiver in these situations are subject to the relevant insolvency laws. Section 38 of the AMLA addresses the issue of continuity of proceedings in the event of the death or insolvency of a person involved in a case under the Act. The section provides for the legal representatives or the official assignee/official receiver to step into the shoes of the deceased or insolvent person and continue the proceedings on their behalf. Let’s analyze this provision in detail:

Subsection (1) of Section 38 deals with the situation where a person's property has been attached under the AMLA, and no representation against the attachment order has been made, or a representation has been made but the person dies or is adjudicated as insolvent before it is presented to the Court. In such cases, the legal representatives of the deceased person or the official assignee/official receiver, as applicable, are permitted to prefer representation to the Court or continue the representation already initiated on behalf of the deceased or insolvent person. This ensures that the proceedings are not disrupted due to the death or insolvency of the concerned individual.

Subsection (2) of Section 38 applies to situations where a decision or order has been passed by the Court, and either no appeal has been filed to the High Court within the specified time or an appeal has been filed but the person entitled to file it dies or is adjudicated as insolvent before submitting the appeal to the High Court. Similarly, if the appeal is already pending before the High Court and the person who filed it dies or is adjudicated as insolvent during the appeal process, the legal representatives or the official assignee/official receiver, as applicable, can prefer or continue the appeal on behalf of the deceased or insolvent person. The provisions of Section 23, which deal with the right to appeal, will apply or continue to apply to such appeals.

Subsection (3) of Section 38 clarifies that the powers exercised by the official assignee or official receiver, as mentioned in Paragraphs 1 and 2, are subject to the provisions of the Insolvency (Karachi Division) Act, 1909 or the Provincial Insolvency Act, 1920, depending on the jurisdiction.

Section 38 ensures the continuity of proceedings in cases involving the attachment of property or appeals even if the involved person dies or is declared insolvent. It enables the legal representatives or the official assignee/official receiver to step into the shoes of the deceased or insolvent person and carry forward the proceedings. This provision prevents unnecessary delays and disruptions in the legal process, allowing for the smooth continuation of actions under the AMLA.

By allowing the legal representatives or the official assignee/official receiver to substitute the deceased or insolvent person, Section 38 maintains the integrity and efficiency of the proceedings. It ensures that the interests of all parties involved are protected and that justice is served despite the changes in the status of the person initially involved.

Additionally, the reference to the applicable insolvency laws in Paragraph 3 underscores the need to adhere to the specific provisions of the relevant insolvency legislation while exercising the powers conferred by Section 38. This ensures compliance with established insolvency procedures and safeguards the rights and interests of creditors and other stakeholders involved in insolvency proceedings.

In summary, Section 38 of the AMLA provides a mechanism for the continuation of proceedings in the event of the death or insolvency of a person involved in a case. It promotes efficiency, consistency, and fairness in the legal process, allowing for the representation of the deceased or insolvent person by their legal representatives or the official assignee/official receiver, as appropriate.
Substantive Issues

Firstly, under subsection (1), it is stated that if any property of a person has been attached under the Act and no representation against the attachment order has been made, or if representation has been made but the person dies or is declared insolvent before or during the pendency of representation, the legal representatives or the official assignee/receiver can step in and continue the representation or proceedings before the Court on behalf of the deceased or insolvent person. This issue involves the transfer of legal responsibility and rights from the deceased or insolvent person to their legal representatives or the official assignee/receiver.

Secondly, subsection (2) deals with the situation where no appeal has been filed to the High Court after a decision or order by the Court, or if an appeal has been filed but the appellant dies or is declared insolvent before or during the pendency of the appeal. In such cases, the legal representatives or the official assignee/receiver can file or continue the appeal before the High Court on behalf of the deceased or insolvent person. This issue relates to the continuation of legal actions and the substitution of the original party with the legal representatives or the official assignee/receiver.

Additionally, subsection (3) clarifies that the powers of the official assignee or the official receiver, as mentioned in subsections (1) and (2), are subject to the provisions of the Insolvency (Karachi Division) Act, 1909 or the Provincial Insolvency Act, 1920, depending on the applicable law. This issue highlights the need to adhere to the specific insolvency laws when exercising the powers conferred by Section 38.

International Best Practices

Malaysia

Section 49 of Malaysia’s Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act, 2001, recognizes that legal proceedings related to attachment orders under the Act should not come to a halt solely due to the death or insolvency of the person against whom the order has been made. This provision ensures that the proceedings can continue to address any illicit activities, money laundering, or terrorism financing despite the change in the person’s status.

According to Section 49, if a person against whom an attachment order has been made dies or becomes bankrupt before or during the pendency of representation, the legal representatives or the official assignee/receiver can step in and continue the proceedings on behalf of the deceased or insolvent person. This provision allows for the seamless continuation of the legal process and ensures that any investigations and actions initiated against the individual can proceed effectively.

The inclusion of legal representatives or the official assignee/receiver is crucial to ensure the proper handling and management of the deceased or insolvent person’s interests. These individuals are authorized to act on behalf of the deceased or insolvent person and safeguard their rights and assets during the proceedings.

The provision in Section 49 recognizes the significance of continuity in anti-money laundering and anti-terrorism financing efforts. By allowing legal representatives or the official assignee/receiver to continue the proceedings, the Act ensures that any illicit funds or assets tied to the deceased or insolvent person can still be investigated, confiscated, or restrained, thus preserving the integrity of the overall legal process.

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368 Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act, 2001
While Section 49 addresses the continuity of proceedings in case of death or insolvency and emphasizes the ability of legal representatives or the official assignee/receiver to continue the proceedings, Section 38 of AMLA 2010 focuses on the specific scenario where no representation or appeal has been filed against an attachment order. Both provisions recognize the need for continued action in the absence of the affected individual’s ability to represent themselves due to death or insolvency.

Overall, the provisions in Section 49 and Section 38 of the AMLA demonstrate the legislature’s intent to ensure the continuity and effectiveness of legal proceedings related to attachment orders and the prevention of money laundering, terrorism financing, and unlawful activities. By allowing legal representatives or the official assignee/receiver to step in and continue the proceedings, the Act ensures that the objectives of combating financial crimes can still be pursued even in the event of the affected person’s death or insolvency.

The United Kingdom

Section 394 of POCA recognizes that legal proceedings initiated under the Act should not be impeded by the death or insolvency of the person involved. It allows for the continuation of proceedings against the appropriate representatives in such circumstances, ensuring that the objectives of tackling proceeds of crime are not compromised.

According to Section 394, if a person dies, becomes bankrupt, or enters into a voluntary arrangement after the commencement of proceedings under POCA, the proceedings may be continued against the personal representatives of the deceased, the trustee in bankruptcy, or the supervisor of the voluntary arrangement, depending on the specific scenario. This provision ensures that the legal process can be seamlessly continued, and the underlying objectives of combating proceeds of crime are not derailed due to changes in the individual’s status.

By allowing the proceedings to continue against the personal representatives, trustee in bankruptcy, or supervisor of the voluntary arrangement, Section 394 ensures that the necessary actions can be taken to investigate and recover any proceeds of crime associated with the deceased or insolvent person. It enables the relevant authorities to pursue the recovery of assets, confiscation orders, or any other legal actions that are part of the ongoing proceedings. The provision in Section 394 of POCA recognizes the importance of continuity and the need to preserve the effectiveness of proceedings related to proceeds of crime. It ensures that the legal representatives or the designated authorities responsible for managing the affairs of the deceased or insolvent person can carry forward the actions initiated under POCA, thereby safeguarding the integrity of the process.

In comparison, Section 38 of Malaysia’s AMLA addresses the continuity of proceedings in a different context. It primarily focuses on the representation or appeal process when no representation or appeal has been made against an attachment order. While Section 38 of AMLA enables legal representatives or the official assignee/receiver to continue representation or appeals on behalf of the deceased or insolvent person, Section 394 of POCA broadens the scope to include proceedings in general and involves the personal representatives, trustees, or supervisors.

While both provisions aim to ensure the continuity of proceedings in the event of death or insolvency, there are differences in the specific scenarios and the parties involved. Section 394 of POCA covers proceedings initiated under the Act and allows for the continuation of those proceedings against the appropriate representatives or designated authorities. In contrast, Section 38 of AMLA focuses on representation or appeal processes related to attachment orders. These provisions in both acts emphasize the significance of continuity in addressing proceeds of crime and money laundering. They recognize that the actions initiated under the respective acts should not be hindered by the change in

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369 Proceeds of Crime Act, 2002
status of the individual involved. By allowing the proceedings to continue against the relevant representatives or authorities, the acts ensure that the objectives of combating financial crimes and recovering proceeds of crime can still be pursued effectively even in the event of death or insolvency.

In summary, Section 394 of POCA and Section 38 of AMLA share the common objective of maintaining continuity in proceedings related to financial crimes. While they have different scopes and address distinct aspects, both provisions reflect the legislative intent to ensure that the legal process remains robust and effective, allowing for the pursuit of justice and the recovery of proceeds of crime in the face of changing circumstances.
Chapter 7
Institutional Framework and Oversight Mechanisms

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Overview

Institutional supervision is critical in the application of any AML framework. Laws and regulations are required to empower a range of government institutions and bodies to provide effective oversight over the different mechanisms in place to mitigate money-laundering risks. Usually, these revolve around empowering central banks, regulating body over companies (usually securities and exchange commissions), taxation bodies as well as a network of varying inter-governmental departments to allow for a robust mechanism of oversight to manage ML/TF risks.

Under Anti Money Laundering Act 2010, Sections 5, 6, 6A, 6B, and 6C lay out a comprehensive institutional framework for combating money laundering and terrorism financing. Section 5 sets forth the establishment of the National Executive Committee (NEC) and the General Committee. The NEC is a ministerial-level body that is required to meet periodically at least twice a year to steer the national strategy against money laundering and terrorist financing. The General Committee, in comparison, comprises of officials from relevant government ministries and departments who meet more often to facilitate the functions of the NEC and appraise key ministers of developments within the realm of AML/CFT. In Pakistan, the Financial Monitoring Unit (FMU), institutionally empowered to counter AML/CFT risks, acts within a general secretary role to both committees, thereby further informing processes within the government. Both the NEC and GC base their interventions on the FATF’s recommendations and guide competent authorities on actions that is critical to Pakistan’s fight against financial crimes.

Building on this institutional framework, Section 6 describes the functions and authority of the Financial Monitoring Unit (FMU), Pakistan’s Financial Intelligence Unit (FIU). The FMU exercises independent decision-making authority over its operations. From receiving and analyzing Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) to establishing cooperation with foreign FIUs and representing Pakistan at international forums, the FMU plays a crucial role in Pakistan’s financial intelligence ecosystem.

Section 6A adds another layer to this regulatory structure by introducing the Anti Money Laundering and Countering Financing of Terrorism (AML/CFT) Regulatory Authorities. These authorities are entrusted with a broad range of responsibilities, including licensing, issuing guidelines, monitoring compliance, imposing sanctions on reporting entities, and maintaining relevant statistical data. Section 6B obliges relevant regulators and other entities to forge reciprocal arrangements with their foreign counterparts. This strategic measure fosters cross-border collaboration and information sharing, reinforcing Pakistan’s collective stance against transnational financial crimes.

Critical to the oversight regime is the regulation of DNFBPs (Designated Non-Financial Businesses and Professions). These include lawyers, accountants, real-estate agents, dealers in precious metals/stones and trust and company service providers. Regulating these professions and integrating a culture of adopting risk-based approaches within this area is crucial. The AMLA not only mandates conducting CDD by DNFBPs (as discussed in Chapter 8), but also how internal controls are required to be in place in order to mitigate risks encountered by DNFBPs in the form of dealing with illicit funds, and to effectively report suspicious transactions to competent authorities promptly. Collectively, the AMLA ensures that the financial sector, as well as peripheral professions or businesses (DNFBPs) that can serve as an outlet or gateway to the financial sector are all prepared to identify, mitigate and counter-act against any ML/TF risks.

Section 6C of the 2010, provides for the establishment of relevant Oversight Body for the Self-Regulating Bodies (SRBs) mentioned in Schedule IV – particularly to supervise DNFBPs. The Oversight Body – as notified by the Federal Government – exercise a range of powers and functions, including the authority to create regulations for the SRBs, monitor and oversee their activities, impose sanctions for non-compliance with the AMLA, and perform any other functions assigned by the Federal
Government. The purpose of the Oversight Body is to ensure compliance with the AMLA and strengthen the efforts to combat money laundering.

The landscape of financial sector in Pakistan has maintained a higher level of adherence to international standards. The private sector, particularly banking and insurance, have kept abreast with global developments pertaining to AML/CFT standards and controls, owing to the cross-border nature of transactions occurring as part of usual operations. Financial regulators in Pakistan, namely the State Bank of Pakistan (SBP) and the Securities and Exchange Commission of Pakistan (SECP), have usually been at the forefront of impacting policies promptly. Regulating banks, companies, DFIs and MFBs, the SBP and SECP already had robust mechanisms to regulate all entities falling within their ambit.

With Pakistan’s grey-listing by the FATF, the scope of regulatory framework was made further strict to ensure complete compliance with the FATF Recommendations. Pakistan registered substantial progress under this category. With the passage of the AMLA (Second Amendment) Act, 2020 in particular, extensive regulations have been formed by the SBP and the SECP with violations carrying financial penalties and other sanctions. The FMU has further developed rules governing conducting transactions with higher risk jurisdictions, which are applicable to all reporting entities as identified in the AMLA.

The DNFBPs sector on the other hand being new to the AML regime continues to improving their understanding of the risks and obligations. Unlike the formal financial, banking and securities sector, DNFBPs, with the exception of certain categories of accountants, traditionally had either weak or non-existent regulatory authorities. Pakistan was rated NC and PC under preventive measures in these areas, highlighting the prior lack of regulatory framework governing DNFBPs.

From the wider DNFBPs sector, only registered accountants (regulated by the ICAP and ICMAP) were subject to regulatory frameworks, applicable upon those professionals who were registered with these authorities. The ICAP and ICMAP were thus better poised to implement AML/CFT-based rules and regulations, including offering guidance on the observance of preventive measures mandated by the FATF, such as record-keeping, CDD and reporting of transactions, amongst others. However, unregistered or ‘other’ accountants – regulated by the FBR along with real estate agents and dealers in precious metals and stones – comprise majority of the practitioners in the country, and thus remained outside the scope of regulation, until now. Meanwhile, the Pakistan Bar Council has traditionally adopted a lethargic approach to AML/CFT regulatory standards and compliance monitoring, and most lawyers remain unaware of reporting requirements.

Following Pakistan’s grey-listing, the Federal Board of Revenue passed regulations formally bringing DNFBPs under the ambit of the AMLA legislation, citing detailed requirements to be followed by all reporting entities and sanctions for any violations as laid out by the AMLA Second Amendment Act.

This, coupled with the AML Sanctions Rules 2020, now arm the law with teeth, allowing all violations to be punishable with hefty financial sanctions and jail-terms for non-compliance. This can positively contribute as ‘enforceable means’ in implementing the FATF Recommendations and is thereby noted as significant progress in this commentary. The challenge now is improving the effectiveness, which will be an incremental process, requiring a cultural shift in many sectors including real estate, precious metals and stones and even amongst the legal community.
Relevant Definitions

Competent Authority\(^{370}\): The term ‘competent authority’ refers to the agency or entity designated by the law to perform specific functions related to anti-money laundering and counter-terrorism financing.

Currency Transaction Report\(^{371}\): Currency Transaction Reports are reports on cash transactions exceeding such amount as may be specified by the National Executive Committee by notification in the official Gazette.\(^{372}\) As per a notification dated 21st January 2015 related to the threshold of CTRs, the minimum amount for reporting CTRs to the FMU is two million rupees.\(^{373}\) It is mandatory for reporting entities to report only those cash transactions as CTRs that meet the notified threshold.

Federal Government\(^{374}\): In the Mustafa Impex case, Justice Nisar of the Supreme Court stated that Article 90 of the Constitution clearly defines the Federal Government: ‘it consists of the Prime Minister and the Federal Ministers’. This change in definition was primarily influenced by two factors. Firstly, the 18th Constitutional amendment removed the delegation clause, which previously allowed the transfer of government functions to subordinate authorities and officers. Secondly, the 18th amendment modified Article 99, making it mandatory to follow rules when executing official instruments and orders by replacing the term ‘may’ with ‘shall’. Thus, making it compulsory to follow guidelines enshrined in the Rules of Business.\(^{375}\)

Financial Intelligence Unit\(^{376}\): A Financial Intelligence Unit (FIU) is a specialized government agency or unit responsible for collecting, analyzing, and disseminating financial information to combat money laundering, terrorist financing, and other financial crimes. FIUs serve as the central hub for receiving and processing reports of suspicious transactions from various sources, such as financial institutions, money services businesses, and other obligated entities. The primary objective of an FIU is to gather and assess financial intelligence to identify patterns, trends, and anomalies that may indicate illicit financial activities.

FMU (Financial Monitoring Unit)\(^{377}\): “FMU” means the Financial Monitoring Unit established under section 6 of the AMLA 2010. The Financial Monitoring Unit (FMU) is established by the Federal Government and operates independently within Pakistan, headed by a Director General appointed in consultation with the State Bank of Pakistan (SBP). The FMU’s responsibilities include receiving and analyzing Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) from reporting entities, maintaining a comprehensive database of reports and related information, cooperating with international financial intelligence units, framing regulations for report receipt, and exercising necessary powers to achieve the objectives of the Anti-Money Laundering Act. Additionally, the FMU can convey matters for regulatory or administrative action, order the temporary freezing of suspicious properties, and represent Pakistan in international forums related to money laundering and financing of terrorism.

Investigating/Prosecuting Agencies\(^{378}\): An “investigating or prosecuting agency” means the National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation – Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue,

\(^{370}\) “Competent Authority” is referred to in Section 5 of the AMLA 2010.
\(^{371}\) “CTR” is referred to in Sections 5 and 6 of the AMLA 2010.
\(^{372}\) Section 2(3i) AMLA 2010
\(^{373}\) Notification No S.R.O. 73(I)/2015 dated 21.01.2015
\(^{374}\) “Federal Government” is referred to in Sections 5, 6, and 6C of the AMLA 2010.
\(^{375}\) Mustafa Impex, Karachi v. The Government of Pakistan through Secretary Finance, Islamabad - 2016 PLD 808
\(^{376}\) “FIU” is referred to in Section 6 of the AMLA 2010.
\(^{377}\) “FMU” is referred to in Sections 5 and 6 of the AMLA 2010.
\(^{378}\) “Investigating or Prosecuting Agency” is referred to in Section 6 of the AMLA 2010.
Provincial Counter Terrorism Departments or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under AMLA.

**Offence of Money Laundering**\(^{379}\): The offence of money laundering is defined in Section 3 of the AMLA 2010. According to this section, a person is considered guilty of the offence of money laundering if they engage in any of the following activities:

1. Acquiring, converting, possessing, using, or transferring property, knowing or having reason to believe that such property is proceeds of crime. This means that if a person knowingly handles property that has been obtained through criminal activity, they are committing the offence of money laundering.

2. Concealing or disguising the true nature, origin, location, disposition, movement, or ownership of property, knowing or having reason to believe that such property is proceeds of crime. This refers to actions taken to hide the fact that property is derived from criminal activity.

3. Holding or possessing on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime. This means that if a person holds property for someone else, and they know or have reason to believe that this property is the result of criminal activity, they are committing the offence of money laundering.

4. Participating in, associating with, conspiring to commit, attempting to commit, aiding, abetting, facilitating, or counseling the commission of the acts specified in the above clauses. This means that if a person is involved in any way with the activities described above, they are committing the offence of money laundering.

**Official Gazette**\(^{380}\): The Gazette of Pakistan is the official government gazette of the Government of Pakistan. This Gazette provides information about government acts, ordinances, regulations, orders, S.R.Os, notifications, appointments, promotions, leaves, and awards. The official gazette plays a crucial role in the legal and administrative framework of Pakistan. It serves as a means to disseminate information and make official announcements accessible to the general public, government departments, legal professionals, and other interested parties.

**Predicate offence**\(^{381}\): A “predicate offence” refers to an underlying criminal activity from which the illicit proceeds or funds subject to money laundering are derived. It denotes the primary criminal act that generates the unlawfully obtained funds. Predicate offences encompass a wide range of illegal activities and can vary in nature. In simpler terms, a predicate offence refers to the original crime that generates the illegal funds that are later involved in money laundering.\(^{382}\)

**Reciprocal**\(^{383}\): In the general context, “a reciprocal action or arrangement involves two people or groups of people who behave in the same way or agree to help each other and give each other advantages”.\(^{384}\) In the legal context, reciprocity has been defined as the “mutual exchange of privileges between states, nations, businesses or individuals for commercial or diplomatic purposes”.\(^{385}\)

\(^{379}\) “Offence of Money Laundering” is referred to in Sections 6 and 6A of the AMLA 2010.

\(^{380}\) “Official Gazette” is referred to in Sections 5, 6, and 6C of the AMLA 2010.

\(^{381}\) “Predicate Offence” is referred to in Sections 5, 6, and 6A of the AMLA 2010.

\(^{382}\) Section 2(xxvi) of the AMLA 2010: “predicate offence” means an offence specified in Schedule-I to this Act;

\(^{383}\) “Reciprocal” is referred to in Sections 6 and 6B of the AMLA 2010.

\(^{384}\) https://dictionary.cambridge.org/dictionary/english/reciprocal

\(^{385}\) https://www.law.cornell.edu/wex/reciprocity#:~:text=Reciprocity%20is%20the%20mutual,for%20commercial%20or%20diplomatic%20purposes.
Reporting Entity: Reporting entities are defined under Section 2(xxxxiv) of AMLA 2010. They include “financial institutions” as defined in Section 2(xiv) and “Designated Non-Financial Businesses & Professions or DNFPBs” as defined in Section 2(xii) and any other person notified by the Federal Government in the official Gazette.

Self-Regulatory Body: As per Section 2 (xxxix) of AMLA 2010, means a self-regulatory body as mentioned in clause (2) of Schedule-IV of this Act. The AMLA recognizes certain Self-Regulatory Bodies (SRBs) as AML/CFT regulatory authorities for the purposes of the Act. These authorities include the Institute of Chartered Accounts of Pakistan, the Institute of Cost and Management Accountants of Pakistan, and the Pakistan Bar Council. The Institute of Chartered Accounts of Pakistan oversees AML/CFT compliance for chartered accountants, while the Institute of Cost and Management Accountants of Pakistan ensures adherence to AML/CFT regulations by cost and management accountants. The Pakistan Bar Council takes on the role of an AML/CFT regulatory authority for lawyers and independent legal professionals enrolled under the council. These SRBs play a vital role in enforcing anti-money laundering and combating the financing of terrorism measures within their respective professional sectors. The Federal Government also has the authority to designate additional SRBs as AML/CFT regulatory authorities.

Suspicious Transaction Report: STRs as defined in AMLA 2010 are reports which must be submitted to the FMU when a suspicious transaction/activity involving money laundering or terrorism financing, or funds derived from illegal activity is indicated. Reporting entities are required to inform the FMU of suspicious transactions regardless of the amounts involved. There is no threshold for reporting suspicious transactions. Moreover, suspicious transaction reports are required to be reported even in cases of attempted transactions.

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386 “Reporting Entity” is referred to in Sections 6 and 6A of the AMLA 2010.
387 “Self-Regulatory Body” is referred to in Sections 5, 6A, and 6B of the AMLA 2010.
388 “STR” is referred to in Sections 5, 6 and 6A of the AMLA 2010.
389 Section 2(xl) and 7(1) AMLA 2010
390 Section 7(1) AMLA 2010
Section 5 – National Executive Committee

5. National Executive Committee – 391

1) Within thirty days of the commencement of this Act, the Federal Government shall, by notification in the official Gazette, constitute a committee to be known as the National Executive Committee which shall consist of the members as mentioned in Schedule–II of this Act.

2) The National Executive Committee shall hold its meetings at least twice a year and shall be responsible to perform the following functions, namely:-

   a) make recommendations to the Federal Government to make rules for effective implementation of this Act and framing of national policy to combat money laundering and financing of terrorism;

   b) make recommendations to the Federal Government to make rules for the determination of offences existing in Pakistan that may be considered to be predicate offences for the purposes of this Act;

   c) make recommendations to the Federal Government on the application of countermeasures as called for by the Financial Action Task Force (FATF) to combat money laundering and financing of terrorism;

   d) provide guidance and recommendations in making rules and regulations under this Act;

   e) approve, review and oversee the implementation of a national strategy to fight money laundering and financing of terrorism;

   f) seek reports from competent authorities as it may require, including an annual report containing overall analysis of the STRs and CTRs, statistics concerning the investigations and prosecutions conducted in relation to the offences of money laundering and the financing of terrorism in Pakistan, statistics of supervisory actions taken by the AML/CFT regulatory authorities according to clause (i) of sub-section (2) of section 6A or by the oversight body for SRB according to Section 6C. In this behalf, Secretary of the National Executive Committee may call periodic reports from the AML/CFT regulatory authorities, Oversight body for SRB, investigating and prosecuting agencies in such manner as may be specified by him;

   g) discuss any other issue of national importance relating to money laundering and financing of terrorism; and

   h) undertake and perform such other functions as assigned to it by the Federal Government, relating to money laundering and financing of terrorism.

3) The National Executive Committee may constitute one or more sub-committees to perform such functions as it may deem fit.

391 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 7.
4) The National Executive Committee may delegate or assign its functions to the General Committee or a subcommittee, if deems appropriate.

5) The Federal Government shall, by notification in the Official Gazette, constitute a committee to be known as the General Committee which shall consist of the members as mentioned in Schedule-III of this Act.

6) The General Committee shall assist the National Executive Committee for the purposes of this Act.

7) The General Committee may invite any person to participate in the meeting as it deems necessary.

8) The General Committee shall perform the following functions namely:

   a) develop a national strategy to fight money laundering and financing of terrorism;

   b) issue necessary directions to the investigating or prosecuting agencies, AML/CFT regulatory authorities, FMU and any other authority appointed by the Federal Government involved in the implementation and administration of this Act, including measures for development and performance review of such agencies and authorities;

   c) seek reports from the competent authorities as it may require, including an annual report containing overall analysis of the STRs and CTRs, statistics concerning the investigations and prosecutions conducted in relation to the offences of money laundering and the financing of terrorism in Pakistan, statistics of supervisory actions taken by the AML/CFT regulatory authorities according to clause (i) of sub-section (2) of section 6A or by the oversight body for SRB according to Section 6C. In this behalf, Secretary of the General Committee may call periodic reports from the AML/CFT regulatory authorities, oversight body for SRB, investigating and prosecuting agencies in such manner as may be specified by the Secretary;

   d) approve FMU’s budgetary proposals for achieving the objects of this Act;

   e) approve FMU’s staffing requirements, pay, allowances, privileges and compensation packages and other matters incidental thereto;

   f) provide necessary assistance to the National Executive Committee in carrying out its functions and duties under this Act;

   g) discuss any other issue of national importance relating to money laundering and terrorist financing; and

   h) undertake and perform such other functions as assigned or delegated to it by the National Executive Committee.

9) The General Committee may constitute one or more sub-committees to perform such functions as it may deem fit.
Analysis of Section 5 of the AMLA 2010

According to the section, the Chairman of the Committee is the Minister of Finance or the Financial Advisor to the Prime Minister, and the Secretary is the Director General of the Financial Management Unit. Members include the Minister of Foreign Affairs, the Minister of Law and Justice, the Minister of the Interior, the Minister of the Economic Affairs Division, the Governor of the SBP, the Chairman of the SECP, the Director General of the FATF Cell, and any other individual who receives a special invitation from a National Executive Committee member.

The General Committee assists the National Executive Committee in carrying out its functions. This subcommittee consists of the Secretary of Finance as its Chairman and the Director General of the Financial Management Unit as its Secretary. Members include the Secretary of Foreign Affairs, the Secretary of Law, the Chairman National Accountability Bureau, the Chairman Federal Board of Revenue, the Director General of the FIA, the Director General of the ANF, the Deputy Governor of SBP, the Secretary of Interior, Commissioner of the SECP, the Director General of the FATF Cell, and any other individual who receives a special invitation from a General Committee member.

The National Executive Committee directly assists the Federal Government in developing rules in accordance with the FATF’s framework to prevent money laundering and the financing of terrorism. All such rules are designed to fulfill the objectives of the AMLA 2010. The Committee is to then review, approve, and monitor the implementation of AML/CFT strategies. The General Committee, subordinate to the National Executive Committee, is to create the national strategy. Additionally, the National Executive Committee takes the input from the members and guide authorities on preventing the predicate offences listed in Schedule I of the AMLA. It has the authority to seek reports from the authorities in order to review the progress of the authorities and to understand the trends and patterns. All regulatory bodies are required to promptly report to the National Executive Committee or the General Committee, notably their Secretaries, on the measures taken to combat money laundering and terrorism financing. The AML/CFT regulatory authorities, FMU, and other federally designated authorities are all under the direction and supervision of the General Committee as they carry out their duties under the guidelines of the AMLA 2010.

The General Committee is in charge of approving the FMU’s budget, staffing requirements, salaries, allowances, privileges, and compensation packages. The members serving in the National Executive Committee and General Committee are public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860). They are legally protected from any legal action and no lawsuit may be filed against them while they are acting in their official capacity.

The Act further stipulates the powers of the National Executive Committee in sub–section (2) of section 5 and the General Committee in sub–section (8) of section 5, and that the NEC particularly has the power to delegate its function to the GC, and the GC can further create sub–committees to perform other functions deemed appropriate. In practicality, this translates to the NEC steering high–level decisions in AML policy-making while the GC supports and facilitates this process.

In Pakistan, the National FATF Secretariat was established after Pakistan’s grey–listing by the FATF in order to coordinate executive action to fulfill the FATF Action Plans. This National FATF Secretariat

392 Schedule II of the AMLA 2010
393 Ibid
394 Schedule III of the AMLA 2010
395 Ibid
396 Schedule I of the AMLA 2010
397 Section 40 of the AMLA 2010
398 Section 35 of the AMLA 2010
399 Not to be confused with the FATF Secretariat based in Paris. The FATF Secretariat was established in 1989 by the G7 countries to monitor, develop, and assess AML/CFT–based standards, practices, and recommendations to
was established independently under the National Coordination Group of AML/CFT to allow for a permanent body to continue to provide clarity on AML/CFT issues and coordinate effectively to implement the FATF Recommendations. However, the exact contours of the National FATF Secretariat and how it supports the NEC/GC remain unclear – thus creating the notion that the bodies may have shared or overlapping functions.

In addition to the above, a 12-member National FATF Coordination Committee was setup in Pakistan for the execution of all FATF-related tasks. This Coordination Committee has representation from all government departments and security agencies relevant to Pakistan's FATF action plan. This Committee also raises the concern of being a time-bound body with the aim of implementing the FATF Action Plans. There is very little information available otherwise to validate the extension of the Committee’s functions beyond the grey-list, or how it supports the functions of the NEC/GC framework as laid out under Section 5.

**AML/CFT Sanction Rules 2020**

The Federal Government issued AML/CFT Sanctions Rules 2020 which applies to AML/CFT regulatory authorities and Oversight Bodies for SRBs as defined in the Anti-Money Laundering Act 2010. In relation to the AMLA 2010, the Sanction Rules emphasizes the role of the AML/CFT regulatory authorities to impose sanctions on any person who contravenes the provisions of AMLA 2010. The framework defined in the rules regulate their functioning in accordance with the international standards laid out by the FATF Recommendations.

**AML (Forfeited Properties Management) Rules 2021 and AML (Referral) Rule 2021**

The government introduced these rules on forfeiture, management and auction of properties and assets relating to Anti-Money Laundering (AML) cases. These rules further complement the AML Referral Rules 2021 which transfer of investigations and prosecution of AML cases from police, provincial anti-corruption establishments (ACEs) and other similar agencies to specialized agencies to achieve remaining benchmarks of the Financial Action Task Force (FATF).

**Key Cases**

**Muhammad Rafique vs. Director General, Federal Investigation Agency, Islamabad and Khalid Mehmood vs. Director General, Federal Investigation Agency, Islamabad & another**

Though ancillary to the case at hand, this judgement makes note of the concept of NEC and reiterates its role and functions which should be in accordance with the FATF recommendations. The petitioners were employees of Islamabad Electric Supply Company (IESCO) who allegedly cleared bills of IESCO using fake bank stamps and embezzled a huge sum of money. Justice Mohsin Akhtar Kayani while setting aside the writ petitions emphasized the role of the National Executive Committee in dealing with cases of predicate offences specified in Schedule-1 of the Act 2010. The Judgement laid out the following:

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prevent ML/TF internationally. It also trains officials of 200+ affiliated member countries and global networks and FATF Styled Regional Bodies (FSRBs) in developing and implementing policies and actions in response to ML/TF risks.


“The Anti-Money Laundering Act, 2010 in Pakistan deals with the money laundering issue, crime proceeds, and all kinds of properties involved in money laundering, and provides the specialized regulatory mechanism known as AML/CF Regulatory Authority, as defined in Section 6(a) of the Act, including Self–Regulatory Body (SRB), as specified in Schedule–IV of the Act, as such, the AML/CF Regulatory Authority shall exercise the powers and perform the functions set out in the Act, whereby certain guidelines, regulations and directions have also been issued by the Customer Due Diligence (CDD) in the banking system or other systems, suspicious transactions reports, reporting mechanism, including the monitoring and supervision of targeted financial sanctions to freeze and pass a prohibitory order in relation to property of designated person under the United National (Security Council) Act, 1948 or the Anti–Terrorism Act, 1997. The Act also provides the concept of National Executive Committee which has been constituted by the Federal Government to make recommendations to the Federal Government to make rules for effective implementation of the Act and to adopt the counter measure as called by the FATF to combat money laundering and financing of terrorism.”

**International Best Practices**

**FATF Recommendations**

The FATF Recommendations are internationally endorsed global standards against money laundering and terrorist financing. They set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing. The purpose of Section 5 of AMLA 2010 is to ensure coordination as per FATF standards set out in Recommendations 2.

FATF Recommendation 2 advises nations to ensure that at the policymaking and operational levels, policymakers, the financial intelligence unit (FIU), law enforcement agencies, supervisors, and other relevant competent authorities have effective structures in place to collaborate and, when appropriate, coordinate and exchange information regarding the establishment and execution of policies and operations to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. These may be a single framework or different frameworks for ML, TF and PF respectively. Such frameworks should be led by one or more designated authorities, or another mechanism that is responsible for setting national policies and ensuring cooperation and coordination among all the relevant agencies. The inter-agency framework shall include the following relevant stakeholders: a) The government departments (e.g. finance, trade and commerce, home, justice and foreign affairs); b) Law enforcement, asset recovery and prosecution authorities; c) Financial intelligence unit; e) Customs and border authorities; f) Supervisors and self–regulatory bodies; g) Tax authorities; h) Import and export control authorities; i) Company registries, and where they exist, beneficial ownership registries; and j) Other agencies, as relevant.\footnote{402}

**Model Provisions**

The ‘Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures and Proceeds of Crimes’\footnote{403} provide guidelines on a National Cooperative Body for Combatting Money Laundering and Terrorism Financing. The relevant provision is reproduced:

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\footnote{402}{International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendations}

\footnote{403}{Common Law Legal Systems Model Legislative Provisions published by the United Nations Office on Drugs and Crime, the Commonwealth Secretariat, and the International Monetary Fund.}
Section 2: National Cooperative Body

1) A National Cooperative Body for Combating Money Laundering and Terrorism Financing shall be established, and shall comprise the following members:

   a) a representative of the [insert relevant authority]
   b) a representative of the [insert relevant authority]
   c) ...
   d) ...

2) The National Cooperative Body established under this Section shall have the following functions:

   a) to coordinate measures to identify, assess and understand the national money laundering and terrorism financing risks;
   b) to coordinate the development, regular review and implementation of national policies and activities to combat money laundering, terrorism financing and the financing of proliferation of weapons of mass destruction;
   c) to collect and analyze statistics and other information from competent authorities to assess the effectiveness of the national anti-money laundering and countering financing of terrorism (AML/CFT) system;
   d) ...

3) The National Cooperative Body shall issue regulations to set up its internal structure and work procedures.

Luxembourg

The Directorate for Combating Money Laundering and the Financing of Terrorism (AML/CFT Directorate) is a department of the Ministry of Justice. It ensures that the fight against money laundering and terrorist financing is coordinated on a national level. It serves as the Executive Secretariat of both the Inter-Ministerial Steering Committee for the Fight Against Money Laundering and Terrorist Financing and the Committee for the Prevention of Money Laundering and Terrorist Financing. The national AML/CFT risk assessment is updated under its direction, and it also oversees and supervises the work of conducting so-called "vertical" risk assessments on specific topics. Ministries, supervisors, the financial intelligence unit, law enforcement officials, and a few professional organizations and associations are all involved.

Malta

The National Coordinating Committee on Combating Money Laundering and Funding of Terrorism (NCC), that is established under the Ministry of Finance, is the body in charge of defining, supervising, and coordinating the implementation of the Anti-Money Laundering / Combating the Funding of
Terrorism (AML/CFT) policy. Its duties include encouraging good cooperation between regulatory and law enforcement organizations and monitoring interactions between them.
Section 6 – Financial Monitoring Unit

6. Financial Monitoring Unit. – ––\(^{404}\)

1) The Federal Government shall, by notification in the official Gazette, establish a Financial Monitoring Unit which shall be housed in SBP or at any other place in Pakistan.

2) The FMU shall have independent decision-making authority on day-to-day matters falling within its area of responsibility.

3) The Federal Government in consultation with SBP shall appoint a Director General who shall be a financial sector specialist to head FMU. He shall exercise all powers and functions of the FMU subject to the administrative oversight of the General Committee.

4) The FMU shall have the following powers and the functions, namely:

a) to receive STRs and CTRs from reporting entities as may be necessary to accomplish the objectives of this Act;

b) to analyze the STRs and CTRs and in that respect the FMU may call for record and information from any agency or person in Pakistan related to the transaction in question. All such agencies or persons shall be required to promptly provide the requested record and information;

c) to disseminate on a confidential basis, after analyzing the STRs, and CTRs and other record, necessary information or material to the concerned investigating or prosecuting agencies for enquiry or other action under this Act or any other applicable law;

d) to create and maintain a data base of all STRs and CTRs, related information and such other materials as the Director General determines are relevant to the work of the FMU and in that respect, the FMU is authorized to establish necessary analytic software and computer equipment to effectively search the database, sort and retrieve information and perform real time linkages with databases of other agencies both in and outside Pakistan as may be required from time to time;

e) to cooperate with financial intelligence units of other countries and to make reciprocal arrangements in order to share, request and receive information relating to money laundering, predicate offences and financing of terrorism and any other information that may be necessary to accomplish the objectives of this Act;

f) to represent Pakistan at all international and regional organizations and groupings of financial intelligence units and other international groups and forums which address the offence of money laundering, financing of terrorism and other related matters;

g) to request the investigating or prosecuting agencies any feedback regarding the disseminations made under sub-clause (c) in the form of periodic reports or statistics.

\(^{404}\) Words within this provision that are \textbf{bolded} are defined in the “Relevant Definitions” section of Chapter 7.
concerning the investigations and prosecutions of money laundering and financing of terrorism in Pakistan;

h) to frame regulations in consultation with the AML/CFT regulatory authorities for ensuring receipt of STRs and CTRs from reporting entities with the approval of the National Executive Committee;

i) to enter into arrangements with domestic agencies, authorities, or any reporting entity or any of its officers as may be necessary for getting facilitation in implementation of the provisions of this Act, or the rules or regulations made hereunder; and

j) to perform all such functions and exercise all such powers as are necessary for, or ancillary to, for the attainment of the objectives of this Act.

5) On considering STR or CTR, the FMU may, if deems necessary, convey matters involving regulatory or administrative action to the concerned regulatory or administrative body for appropriate action.

6) Subject to the regulations sanctioned by the National Executive Committee in this behalf, the Director General may, if there appear to be reasonable grounds to believe that a property is involved in money laundering, order freezing of such property, for a maximum period of fifteen days, in any manner that he may deem fit in the circumstances.

Analysis of Section 6 of the AMLA 2010

Under section 6(2) of AMLA 2010, the FMU has independent decision-making authority on day-to-day matters within its areas of responsibility. Clarification of the FMU’s ‘areas of responsibility’ is absent from the Act. Though the Act outlines the powers and functions of the FMU in sub-section (4) of section 6, it is unclear whether matters within the FMU’s areas of responsibility are limited to those relating to section 6(4) powers and functions or whether they may extend beyond them.

The budget and resources required to carry out the functions of the FMU are subject to approval by the General Committee of the National Executive Committee responsible for administrative oversight of the FMU. As a result, the FMU can be classified as a fully independent and autonomous body without any undue political or government influence.

As the national FIU for Pakistan, the FMU is responsible for receiving, analysing and disseminating financial information (including STRs, CTRs and other records) and coordinating with other agencies within and outside Pakistan.

Use of Financial Intelligence and other Information

Upon receiving an STR, the FMU conducts an analysis of the information received using records and information requested from any agency or person if needed and disseminates financial information to the relevant law enforcement agencies involved in investigating and prosecuting the suspected ML/TF offence. The FMU conducts operational (for identifying suspects and their financial assets and to trace proceeds of crime) and strategic analysis (for identifying trends and providing strategic

\[405\) As defined in section 2(xxi), AMLA 2010
\[406\) Section 6(4)(a), AMLA 2010
\[407\) Section 6(4)(b), AMLA 2010
\[408\) Section 6(4)(c), AMLA 2010
information to law enforcement and supervisory authorities for various strategic purposes of those agencies) on the information they receive.

FMU has “direct and indirect access to several government and private databases”,\(^{409}\) including border currency declarations (FBR-customs), to enable its analysis functions. In its Mutual Evaluation Report in 2019, the Asia/Pacific Group on Money Laundering (APG) highlighted that FMU does not have access to detailed tax records of tax filers as section 216(1) of the Income Tax Ordinance 2001 prohibits access to detailed tax records. As per sections 25 and 39 of AMLA 2010, however, AMLA supersedes any existing law, including the Income Tax Ordinance 2001, suggesting that AMLA 2010 may be used by FMU to obtain tax records from authorities.

The APG recommended that FMU’s access to tax, passport and immigration data be extended. This, among other deficiencies, led the APG to hold that Pakistan had a low level of effectiveness on Immediate Outcome 6 relating to financial intelligence in ML/TF issues. This was amended in the first Follow-Up Report in September 2020 after Pakistan had amended the ITO 2001 to grant the FMU access to tax records and information maintained by FBR.\(^{410}\)

FMU is empowered to get information from any agency or person in Pakistan to analyze the reported STRs/CTRs, and the related agency or person is required to provide the requisite information promptly to FMU as per section 6(4)(b) of AMLA 2010. Section 25(1) adds to this by requiring reporting entities and other authorities to provide requisite information/records to investigating/prosecuting agencies and FMU. In addition, as per section 25(2), whoever willfully fails or refuses the provision of the requisite information, shall be proceeded against by its respective department or organization of misconduct, and such officer shall also be liable for imprisonment for a term which may extend up to five years, a fine which may extend to rupees one million or both, and the respective organization shall be liable for a fine which may extend to rupees ten million. This ensures the removal of any impediments to the FMU’s exercise of its powers relating to STRs and CTRs to guarantee effective enforcement.

FMU is also required to maintain a database of STRs/CTRs.\(^{411}\) It is empowered to establish “analytic software and computer equipment to effectively search the database, sort and retrieve information and perform real time linkages with databases of other agencies both in and outside Pakistan”. This suggests that the responsibility of the FMU to maintain a database is not simply to maintain records of all STRs/CTRs received but also to aid in the operational analysis of STRs. As part of this operational analysis, the FMU database of STRs and CTRs is searched using different parameters while suspects are concurrently screened in public and private databases, including the UNSCR 1267 list. Where required, FMU also analyses account statements and transactions, focusing on unusual transaction patterns as identified by the reporting entities identifying transactions for further analysis, collecting details to identify relationships between individuals and their businesses and identifying linked accounts to trace the proceeds of crime.

The FMU also conducts strategic analysis of information from reporting agencies and other parties to identify emerging threats for ML, TF, and related predicate offences. These strategic analysis products are shared with supervisory authorities who have issued regulatory responses following the FMU’s dissemination of strategic analysis products.\(^{412}\)

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\(^{410}\) APG (2020), Mutual Evaluation of Pakistan, 1st Follow-Up Report.

\(^{411}\) Section 6(4)(d), AMLA 2010.

Freezing accounts/funds

As per section 6(6) of AMLA 2010, the Director General, FMU can issue a freezing order, for a period not exceeding fifteen days, if there appears to be a reasonable ground that a property is involved in money laundering. Regulation 7(1) of AML Regulations 2015 elaborates that a reporting entity may approach the Director General FMU for freezing of an account or property, stipulating the reasons or grounds for freezing. The AMLA 2010 grants this power to issue a freezing order, generally provided only to law enforcement agencies, to the Director General FMU, who is to be a financial sector specialist.

Additionally, there is little guidance in the letter of the law as to what “reasonable grounds”. As a result, the FMU uses these powers cautiously, given its high effectiveness. Supporting rules or regulations should be amended to include more guidance on the threshold for reasonable grounds and the factors that the Director General should consider when making his decision to issue a freezing order.

Cooperation and exchange of information / financial intelligence

Under s 6(4)(e) of the AMLA, the FMU has the power to cooperate with other FIUs to make reciprocal arrangements to share, request and receive information relating to ML, predicate offences, TF and other matters related to the objectives of the Act. An earlier version of the AMLA 2010 did not include any provisions for the FMU to cooperate with FIUs regarding ML predicate offences. This severely limited the exchange of information between FIUs and hampered their effectiveness in tackling money laundering through sharing of information regarding predicate offences. Since then, the text of section 6(4)(e) was amended to include ML predicate offences.

Section 6(4)(i) of AMLA 2010 empowers FMU to enter into arrangements with domestic agencies, authorities or reporting entities to facilitate the implementation of the Act. Pakistani authorities, including FMU, FIA, FBR–Customs and Counter Terrorism Departments (CTDs), have entered into a multi–party MOU to share intelligence and coordinate efforts in ML/TF cases. In addition, a specific bilateral MOU was signed between FMU and FBR–Customs to share real–time data from the Currency Declaration System (CDS).

Key Cases

Misbah Karim v. Federation of Pakistan, PLD 2016 Sindh 462

Based on spy information, the FIA opened an inquiry whereby the FIA was investigating offenses under the AMLA, the FERA and various sections of the P.P.C. against the petitioners. During the course of his investigation, the Inspector/E.O. of FIA moved an application under section 94 Cr.P.C. to Court for an order/permission to obtain the relevant documents/record from various banks and accounts through which allegedly money laundering had taken place. The application was allowed through the impugned order. The petitioners alleged that the FIA had no jurisdiction or legal authority to carry out the inquiry in the manner in which they were doing so, which had to be initiated by the FMU, not the FIA. The Court held that the FIA, in investigating cases of money laundering, can, on its own motion based on reliable/credible information, open its own investigation into money laundering under the AMLA independently of the FMU, especially in cases where the initial information is not based on banking transactions or on information from financial institutions. The Court subsequently dismissed the petitions.

Following reports of suspicious transactions, the FMU carries out an analysis in order to ascertain the possibility of any offence under AMLA has been committed. It then relays the intelligence to investigating agencies or prosecuting agencies. Officers of the Federal Government, Provincial Government, local authorities and reporting entities are required to aid the FMU in its analysis of money laundering, predicate offences and financing of terrorism in accordance with the provisions of AMLA, by producing information reasonably required by the FMU for carrying out its functions.

The FMU is required to abide by the rules of confidentiality concerning confidential information that is submitted to it. At present, Pakistan has no specific law relating to data protection. The Ministry of Information Technology and Communication has, however, released a consultation draft of the Pakistan Personal Protection Bill 2022, which must be approved by both Houses of Parliament and receive assent from the President of Pakistan before it is promulgated. In lieu of this, the Prevention of Electronic Crimes Act, 2016 (PECA) provides a framework that extends to unauthorised access to personal data. In addition, as a specific law, the AMLA 2010 overrides other legislation.

The FMU is also protected under AMLA from prosecution, or any suits/proceedings against it for anything done or intended to be done in good faith under AMLA. Members of the FMU are accorded the status of public servants within the meaning of s.21 of the Pakistan Penal Code (Act XLV of 1860).

The FMU must be consulted before any investigating or prosecuting agency charges a person with the offence of money laundering in relation to a predicate offence punishable under the Sales Tax Act, 1990 (VII of 1990) and the Federal Excise Act, 2005. The FMU has the power to make regulations that are necessary for carrying out its operations and meeting the objectives of AMLA, subject to the supervision and control of the National Executive Committee.

**International Best Practices**

**FATF Recommendations**

Recommendation 29 published by FATF advises countries to establish an FIU that acts as a central institution which shall receive, analyze and disseminate information regarding suspicious transaction reports, and any other information linked to money laundering, terrorism financing and predicate offences. The FIU must ensure that effective mechanisms are in place to enable institutions to cooperate, coordinate and exchange information. FATF also highlights that the FIU should have timely access to financial, administrative, and law enforcement–related information that it requires to undertake its functions properly.

Furthermore, Recommendation 30 states that countries should ensure that cooperative investigations with appropriate competent authorities, domestically and internationally, are in place. Within the domestic framework, Recommendation 31 suggests that the competent authorities must be empowered with a wide range of investigative techniques such as “undercover operations, intercepting

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417 s.6(4)(c), AMLA.
418 s.25, AMLA.
419 s.34(3), AMLA.
420 s.35(1), AMLA.
421 s.40, AMLA.
422 s.41, AMLA.
423 s.44, AMLA
communications, accessing computer systems and controlled delivery”. Similarly, Recommendation 40, specifies that countries should ensure that their competent authorities provide “the widest possible range of international cooperation to their foreign counterparts” and that “exchanges should be permitted without unduly restrictive conditions”.

**Model Provisions**

The ‘Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime’ provide guidelines on the establishment and structure of FIUs. The applicable provisions have been reproduced below:

**a. Section 31: Establishment & Structure**

Whatever form is used to establish the FIU, the provisions should:

- formally establish the FIU within the State;
- define the FIU’s responsibilities with precision;
- set out a structure for the organization and its leadership; and
- provide for decision-making processes and operations that protect against undue influence or interference.

The Model Rules emphasize the importance of the autonomy of the FIU to ensure that it may not succumb under influence. It suggests the addition of a provision that “limits the review of decisions by the director of the FIU, or that the director’s decision to analyze a matter or disseminate a suspicious transaction report is not subject to review.” Further protection from undue influence may be provided by a provision that permits dismissal only in the case of verifiable misconduct.

**b. Section 32: Obligation Regarding Confidentiality & Use of Information**

Every person who has duties for or within [insert name of FIU] is required to keep confidential any information obtained within the scope of his or her duties, even after the cessation of those duties, except as otherwise provided in this Act and [insert reference to State’s preventive measures provisions] or as ordered by a court. Such persons may use such information only for the purposes provided for and in accordance with this Part and [insert reference to State’s preventive measures provisions].

Any current or past employee of [insert name of FIU] or other person who has duties for or within [insert name of FIU] who intentionally reveals information the confidentiality of which is required to be protected by subsection (1) commits an offense that shall be punishable by imprisonment of up to [insert imprisonment range] and a fine of up to [insert monetary penalty range], or both.

**c. Section 33: Action Regarding Reports and Other Information Received**

[Insert name of FIU] may disseminate information and the results of its analysis to relevant competent authorities when there are grounds to suspect that a transaction is related to money laundering, a predicate offence or terrorism financing.

[Insert name of FIU] may respond to requests from competent authorities for relevant information in money laundering, predicate offences or terrorism financing investigations. The decision on

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conducting any analysis and/or dissemination of information to the requesting authority shall remain with [insert name of FIU].

[Insert name of FIU] may withhold consent to a transaction [Variant: depending on the option chosen under Section 17(4): order continued suspension of a transaction] under Section 17(4) in order to analyze the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities. [Insert name of FIU] may take such action also at the request of an FIU from another jurisdiction.

d. Section 34: Access to Information and Analysis Function

In relation to any information, it has received in accordance with its functions, [insert name of FIU] is authorized to obtain from any accountable person any additional information that it deems necessary to properly carry out its analysis. The information requested shall be provided within the time limits and in the form specified by [insert name of FIU].

[Insert name of FIU] is authorized to access and review information that belongs to or is in the custody of an accountable person wherever [insert name of FIU] deems it appropriate to access and review such material for the fulfillment of its functions, provided that, if the premises are not the premises of [insert name of FIU], an order to access such information provided for by this Section is obtained from a [insert name of person with suitable authority to grant access].

Paragraph (1) [option: and ( ) [if optional subsection is used add such reference] of this Section shall be applied subject to the restrictions [Variant: limitations] in the definition of ‘DNFBPs’ in [Section 3(1)] and subject to [insert any limitation enacted in the State regarding reporting obligation for lawyers, notaries, other independent legal professionals and accountants (as Section 17(2) in the model provisions)].

[Insert name of FIU] may, in order to conduct proper analysis, obtain, where not otherwise prohibited by law, any financial, administrative or law enforcement information and any relevant information collected and/or maintained by or on behalf of other authorities and, where appropriate, commercially held data, including from:

- a law enforcement authority;
- any authority responsible for the supervision of the entities and persons subject to this law;
- tax authorities;
- customs; and
- any other public agency.

[Insert name of FIU]’s analysis function shall consist of: the operational analysis, which focuses on individual cases and specific targets, activities or transactions or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use after dissemination; and the strategic analysis addressing money laundering and terrorism financing trends and patterns.

**Egmont Group**

Established in 1996, the Egmont Group was enunciated to facilitate cooperation of FIUs internationally to combat money laundering, predicate offences and terrorism financing. The Egmont Group provides support in “expanding and systemizing the exchange of financial intelligence information, improving expertise and capabilities of personnel of such organizations, and fostering better communications.
among FIUs through application of technology”⁴²⁶. Countries must go through a formal procedure established by the Egmont Group in order to attain membership. It is a united body of 166 FIUs. Yet, Pakistan is not a member of the Egmont Group yet has applied for membership and is relying on support from its co-sponsors, FIUs on USA and Japan to facilitate granting of membership to the Egmont Group. It is pertinent that Pakistan becomes a member of the Egmont Group, as membership will facilitate the exchange of information across borders, training and sharing of expertise.

**United States**

In the United States, the Financial Crimes Enforcement Network (hereinafter referred to as “FinCEN”) is a bureau of the U.S. Department of Treasury that is tasked with safeguarding the financial system to combat money laundering.⁴²⁷ Its powers include determining emerging trends and methods in money laundering and other financial crimes. The first effort to combat money laundering in the U.S. can be traced back to the Bank Secrecy Act 1970 (hereinafter referred to as “BSA”). The BSA requires banks and other financial institutions to record transactions and file reports with the Department of Treasury. Those reports assist law enforcement officers and provide information that is frequently utilized in investigations into financial crimes.

**Money Laundering Control Act of 1986**

Section 6: the term “financial institution” includes:

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 301).

Recently, the Anti-Money Laundering Act of 2020 (“hereinafter referred to as “AMLA 2020”) significantly broadened the scope of the Bank Secrecy Act. Under the new law, law enforcement agencies have the power to subpoena international financial institutions that hold correspondent accounts in the US. With the rising use of cryptocurrency, of particular note, the AMLA 2020 has addressed the lacuna in which ‘digital assets’ would previously fall, by amending the BSA’s definition of ‘monetary instruments’ to encompass activities related to “value that substitutes for currency”.

FinCEN’s long-held concern that “legal entities can be misused to conceal and facilitate illicit activity” has also been addressed in the AMLA 2020. As part of the effort to unveil shell companies, many companies will be required to report ownership information to FinCEN to collect and share it with authorized government authorities and financial institutions.

In the United States, the AMLA 2020 expanded FinCen’s role, giving it the task of creating and managing a new corporate ownership registry. FinCen focuses on facilitating information sharing between the public and private sectors in order to strengthen the AML system and better protect the financial system from abuse which is a useful best practice.

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⁴²⁷ Bank Secrecy Act: FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of Treasury.
India

The PMLA, 2002 provides a comprehensive organizational structure of the FIU-IND. In comparison, AMLA 2010 has no chain of command. All the powers and authorities that have been bestowed upon the Director and delegated to other classes are vested into one person – the Director General. Compared to this, Pakistan’s AMLA 2010 should lay down more specific eligibility criteria for the Director General. Although Section 6(3) states that the Director General must be a ‘financial sector specialist’, no further guidelines have been provided regarding how much experience any candidate must have to qualify. Furthermore, it is unclear whether there is a difference between a ‘specialist’ and an ‘expert’, the legislation uses the term ‘specialist’.
Section 6A – AML/CFT Regulatory Authority

6A. AML/CFT Regulatory Authority.

1) AML/CFT regulatory authority means the regulators and SRBs as specified in Schedule IV. They shall exercise the powers and perform the functions as set out in this Act and as prescribed thereunder.

2) AML/CFT regulatory authority shall exercise the following powers and functions with respect to its reporting entities, namely:-

   a) licensing or registration of reporting entities;

   b) imposing any conditions to conduct any activities by reporting entities to prevent the offence of money laundering, predicate offence or financing of terrorism;

   c) issuing regulations, directions and guidelines with respect to sections 7A to 7H of this Act;

   d) issuing regulations, directions and guidelines with respect to financing of proliferation obligations;

   e) providing feedback to reporting entities for the purpose of compliance with the requirements of sections 7A to 7H of this Act and as prescribed thereunder;

   f) monitoring and supervising, including conducting inspections, for the purpose of determining compliance with the requirements of sections 7(1), 7(3) to 7(6) and 7A to 7H of this Act and any rules or regulations made thereunder and with the orders or regulations made thereunder that impose TFS obligations;

   g) compelling production of information relevant to monitoring compliance with the requirements of sections 7(1), 7(3) to 7(6) and 7A to 7H of this Act and any orders, rules or regulations made thereunder that impose TFS obligations;

   h) impose sanctions, including monetary and administrative penalties to the extent and in the manners as may be prescribed, upon their respective reporting entity, including its directors and senior management and officers, who violates any requirement in section 7(1), 7(3) to 7(6) and 7A to 7H and any rules or regulations made thereunder or those who fail to comply with the TFS regulations. Any person aggrieved by the imposition of sanctions under this clause may prefer an appeal in such manner and within such period to such authority as may be prescribed;

   i) maintaining statistics of the actions performed in respect of the functions and powers conferred by this Act, in order to report to the National Executive Committee and the General Committee as required; and

   j) Exercising any other such powers and performing any other such functions that may be otherwise granted in any other applicable law.

428 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 7.
Analysis of Section 6A of the AMLA 2010

Section 6A of the AMLA in Pakistan is a crucial provision that defines the AML/CFT regulatory authority and sets out its functions and powers. The section outlines the scope of the authority’s responsibilities and provides a framework for effective regulation and supervision of anti-money laundering and counter-terrorism financing activities in the country. The scope of Section 6A is extensive, covering a range of activities related to AML/CFT regulation and supervision. The section establishes the AML/CFT regulatory authority as a central body responsible for overseeing and enforcing compliance with AML/CFT regulations and guidelines in Pakistan. The authority is empowered to issue regulations, directives, and guidelines to ensure the effective implementation of AML/CFT measures and to take appropriate action against non-compliant individuals and entities. The provision’s scope is broad, covering various aspects of AML/CFT regulation and supervision, and its ultimate goal is to ensure the effective implementation of AML/CFT measures in Pakistan and safeguard the integrity of the country's financial system.

The powers and functions of the authority are:

1. Licensing and registration: The licensing or registration of reporting entities;
2. Imposing conditions: Imposing conditions on reporting entities to prevent money laundering, predicate offenses, or financing of terrorism;
3. Issuing regulations, directions, and guidelines related to Sections 7A to 7H of the Act;
4. Issuing regulations, directions, and guidelines related to financing of proliferation obligations;
5. Providing feedback to reporting entities to ensure compliance with the requirements of Sections 7A to 7H of the Act and any prescribed regulations;
6. Monitoring and supervising reporting entities, including conducting inspections to determine compliance with the Act and any rules or regulations made under it, and orders or regulations that impose TFS obligations;
7. Compelling the production of relevant information for monitoring compliance with the Act and any orders, rules, or regulations that impose TFS obligations;
8. Imposing sanctions, including monetary and administrative penalties as prescribed, on reporting entities, their directors, senior management, and officers who violate the Act’s requirements or fail to comply with TFS regulations. Appeals against sanctions may be filed as prescribed;

(i) Maintaining statistics of actions performed under the Act’s powers and functions for reporting to the National Executive Committee and the General Committee;

9. Exercising any other powers or functions granted by applicable law.

Section 6A (2) (e) and (f) provide for certain powers and functions of the AML/CFT regulatory authority, including providing feedback to reporting entities and monitoring compliance with the Act and associated regulations. Additionally, supervisory manuals provide the scope and application of these powers, particularly governing feedback and monitoring processes and the criteria are used to assess compliance.

Section 6A (g) of the Act provides for the power of the AML/CFT regulatory authority to compel the production of relevant information for monitoring compliance with the Act and associated regulations.

Section 6A (h) of the Act allows for the imposition of sanctions, including monetary and administrative penalties, on reporting entities, their directors, senior management, and officers who violate the Act’s requirements or fail to comply with TFS regulations. Internal documents and guidelines are available
delineating specific criteria and procedures for imposing sanctions as well as the appeals process for challenging sanctions.

While Section 6A (i) requires the AML/CFT regulatory authority to maintain statistics of actions performed in respect of the functions and powers conferred by the Act, there may be ambiguity regarding the specific types of data that must be collected and reported. Moreover, the requirements for reporting to the National Executive Committee and the General Committee are not clearly defined – as section 5 nebulously states that this occurs as and when required by the NEC. This could potentially lead to inconsistent reporting practices or delays in information sharing.

Section 6A(j) grants the AML/CFT regulatory authority the power to perform any other functions granted by applicable law, but does not provide specific guidance on how such functions should be identified or carried out. This lack of legal clarity in Sections 6A(i) and 6A(j) may impede the AML/CFT regulatory authority's ability to effectively monitor and supervise reporting entities and enforce compliance with the Act’s requirements. It may also lead to confusion or disputes over the scope of the authority's powers and responsibilities.

In a nutshell, while Section 6A lists several powers and functions of the AML/CFT regulatory authority, it is not always clear how these powers will be exercised in practice or what specific actions the authority may take to fulfill its mandate. Additional guidance or consultation may be necessary to ensure that the AML/CFT regulatory authority is able to effectively enforce AML/CFT measures and prevent money laundering and terrorism financing activities in Pakistan.

Section 7 of the AMLA 2010 defines the rights and obligations of reporting entities in relation to the reporting of suspicious transactions.

1. Obligation to report suspicious transactions: Reporting entities are required to report any suspicious transaction or activity to the relevant authorities. This obligation applies whether or not the transaction is completed or attempted, and regardless of the amount of money involved.

2. Protection from legal action: Reporting entities are protected from legal action for reporting suspicious transactions in good faith. This means that they cannot be held liable for reporting a transaction that turns out to be legitimate, as long as they had reasonable grounds to suspect that it may be linked to money laundering or terrorist financing.

3. Confidentiality: Reporting entities must ensure the confidentiality of any suspicious transaction reports they make. They cannot disclose the fact that they have made a report, or any details of the report, to any third party except as required by law.

4. Retention of records: Reporting entities are required to keep records of all suspicious transaction reports made for a minimum of five years. These records must be kept confidential and secure, and must be made available to the relevant authorities upon request.

5. Training and awareness: Reporting entities are required to provide training to their employees on how to identify and report suspicious transactions, and to ensure that they are aware of their obligations under the AMLA.

6. Compliance with regulations: Reporting entities must comply with any regulations or guidelines issued by the relevant authorities in relation to the reporting of suspicious transactions. Failure to comply with these regulations can result in penalties or legal action.
Relation with National Legislation and Regulations

**Anti-Terrorism Act, 1997:** The Anti-Terrorism Act (ATA) 1997 in Pakistan is closely related to the AMLA 2010 and discusses the AML/CFT regulatory authority in the context of preventing terrorism financing. Analysis of the ATA is currently outside the scope of this report.

**Foreign Exchange Regulation Act, 1947:** FERA 1947 regulates foreign exchange transactions and the movement of capital in and out of Pakistan. The Act empowers the SBP to regulate and monitor foreign exchange transactions in Pakistan, including those related to money laundering and terrorist financing. FERA 1947 also reiterates that the SBP is responsible for implementing the AML/CFT regulations in Pakistan. The Act requires all authorized dealers, including banks and financial institutions, to comply with the AML/CFT regulations and to report any suspicious transactions to the relevant authorities. The SBP has the power to conduct inspections, audits, and investigations to ensure compliance with these regulations.

**Foreign Assets (Declaration) Regulation, 1972:** The AML/CFT regulatory authority in Pakistan is established under the AMLA 2010, which replaced the Anti-Money Laundering Ordinance (AMLO) 2007. The AMLA 2010 introduced several measures to combat money laundering and terrorism financing, including the creation of a regulatory authority responsible for overseeing and enforcing AML/CFT compliance in Pakistan. FADR of 1972, requires individuals and entities to declare any foreign assets they hold to the State Bank of Pakistan. The FMU receives and analyzes financial intelligence related to money laundering and terrorism financing, while the FADR 1972 requires individuals and entities to declare any foreign assets they hold. Together, these measures help to identify and prevent financial crimes in Pakistan.

**Protection of Economic Reforms Act, 1992:** The AML/CFT regulatory authority in Pakistan is established under the AMLA 2010, which provides for the prevention, detection, and prosecution of money laundering and terrorism financing. However, the AMLA 2010 also recognizes the need to coordinate with other laws and regulations in the country, including the Protection of Economic Reforms Act (PERA) 1992. The PERA 1992 provides a legal framework for the protection and promotion of economic reforms in Pakistan. It sets out provisions for the regulation of foreign exchange and the prevention of money laundering and terrorism financing. Under the PERA 1992, the SBP is the regulatory authority responsible for ensuring compliance with the law.

**Securities and Exchange Commission of Pakistan Act, 1997:** The SECP Act 1997 is responsible for regulating the securities industry in Pakistan, including the prevention of money laundering and terrorist financing. The SECP has the power to issue regulations and guidelines to ensure compliance with AML/CFT regulations and monitor and supervise the implementation of AML/CFT measures by market participants. It is also responsible for ensuring that securities-related businesses, such as brokers, investment advisors, and asset management companies, comply with AML/CFT regulations. The SECP has the power to investigate and penalize any securities-related business or non-banking financial institutions that fails to comply with AML/CFT regulations.

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429 The Foreign Exchange Regulating Act, 1947 Act No. VII Of 1947
430 Foreign Assets (Declaration) Regulation, 1972
International Best Practices

United States

The USA Patriot Act, 2001: The USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act of 2001: This legislation was enacted in the United States to strengthen AML/CFT measures and establish the Financial Crimes Enforcement Network (FinCEN) as the primary AML/CFT regulatory authority. This Act is a federal law passed by the United States Congress in response to the September 11, 2001 terrorist attack. When compared to the AMLA 2010 of Pakistan, the USA PATRIOT Act can be a good model to follow.

The Anti-Money Laundering Act 2020 of the United States of America: The latest Anti-Money Laundering Act in the United States is the Anti-Money Laundering Act of 2020 (AMLA 2020), which was signed into law on January 1, 2021. Compared to the AMLA 2010 of Pakistan, the Anti-Money Laundering Act 2020 of the United States is more comprehensive and rigorous in terms of its provisions and enforcement mechanisms. Some of the key differences between the two acts are:

1. The Anti-Money Laundering Act 2020 applies to a broader range of activities and entities, including virtual currencies and foreign banks, while the AMLA 2010 has a narrower scope. Section 5312(a)(2)(M) of the 2020 Act justifies that it applies to a broader range of activities and entities, including virtual currencies and foreign banks. This section states that the term "financial institution" includes: 432

   (M) an issuer, redeemer, or cashier of prepaid access devices, digital currencies, or any digital exchanger or tumbler of digital currency.

   This provision is significant because it explicitly brings digital currencies and their intermediaries, such as exchanges and tumblers, under the regulatory purview of the Anti-Money Laundering Act 2020. Additionally, the Anti-Money Laundering Act 2020 in the US also includes foreign banks as covered entities, which were not specifically included in previous versions of the law. 433 This broader scope of covered entities and activities reflects the changing landscape of financial transactions and recognizes the need to address money laundering and terrorist financing risks in the digital age. In Pakistan, there is little clarity in terms of general policy as to whether virtual asset service providers (VASPs) should be regulated or not. As a result, there is no provision in Pakistan’s AMLA framework for regulating virtual assets.

2. Section 5332 of the Anti-Money Laundering Act 2020 requires covered entities to conduct risk assessments and implement risk-based programs. It establishes a risk-based approach to anti-money laundering and countering the financing of terrorism (CFT) compliance, requiring covered entities to conduct a comprehensive risk assessment of their businesses, customers, products, services, and geographies to identify and mitigate money laundering and terrorist financing risks. Covered entities must then implement risk-based AML/CFT programs tailored to their risk assessment while Section 7F of AMLA does not explicitly require risk assessments, but Section 9 requires reporting entities to identify, assess, and understand the risks of money laundering.

431 Surveillance Under the USA/PATRIOT ACT, https://www.aclu.org/other/surveillance-under-usapatriot-act
3. Section 6403 of the Anti-Money Laundering Act 2020 is titled “Establishment of Beneficial Ownership Information Reporting Requirements” and contains provisions related to the collection, maintenance and sharing of beneficial ownership information by financial institutions. The Section also outlines penalties for noncompliance and sets forth procedures for the implementation of the new beneficial ownership reporting requirements.\(^{434}\) The Anti-Money Laundering Act 2020 mandates the collection and verification of beneficial ownership information. Similarly in Pakistan, section 7A(2)(b) of the AMLA 2010 provides a clear requirement for beneficial ownership identification.

**The EU’s Anti-Money Laundering Directive**

A uniform set of financial compliance was set up by the European Union known as the anti-money laundering directives (AMLD). These AMLDs are periodically updated by the European Parliament, and it is expected that every government in the EU will implement them by enacting appropriate domestic legislation. Despite the UK’s departure from the EU in 2020, it has established comparable anti-money laundering legislation in order to maintain compliance with the standards established by the AMLDs. The most recent AMLD is the Sixth Anti-Money Laundering Directive (6AMLD). The AML/CFT measures introduced in the 4AMLD and 5AMLD respectively formed the foundation for the development of the Sixth Anti-Money Laundering Directive (6AMLD). The EU has recently revealed a fresh anti-money laundering ‘legislative package’, making it crucial for obligated entities operating within the EU to familiarize themselves with their updated obligations. The 4MLD requires member states to cooperate with each other in the fight against money laundering and terrorist financing.

**United Kingdom**

The legislative framework outlined in The Proceeds of Crime Act, 2002 (POCA) primarily focuses on the recovery of criminal assets, with criminal confiscation being the most frequently employed measure. The POCA of the United Kingdom establishes the National Crime Agency (NCA) as the primary AML/CFT regulatory authority and outlines its powers and responsibilities. NCA is established under Section 1 of the Act that establishes the NCA as the agency responsible for coordinating law enforcement efforts to prevent and combat serious and organized crime, including money laundering and terrorist financing. NCA has wide ranging powers to investigate and enforce anti-money laundering regulations, including the power to seize assets, freeze accounts, and prosecute offenders.

When compared POCA with Section 6-A of AMLA, 2010, POCA has a broader scope and converts a wider range of criminal activities that generates proceed of crime, including drug trafficking, human trafficking, and corruption, among others. In contrast, Section 6-A focuses mainly on regulatory authorities to regulate reported entities to prevent existing channels to be abused with tainted funds from money laundering and the financing of terrorism. Offences included also extend to drug trafficking, human trafficking and other offences in Schedule I of the AMLA Act – however primary offences are ML/TF.\(^{435}\)

Additionally, the POCA has stronger provisions for assets recovery and confiscation. It provides for the seizure and forfeiture of assets that are suspected to be the proceeds of crime, even if no crime conviction has been obtained. Sections 295 and 298 of the POCA provide for the seizure and forfeiture

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of assets that are suspected to be the proceeds of crime. Section 295 allows for the seizure of cash, while Section 298 allows for the forfeiture of other assets, such as property, vehicles, and other valuable items.
Section 6B – International Cooperation by Regulators

6B. International Cooperation by Regulators.

The regulators as specified in clause (1) Schedule IV of this Act shall co-operate with their foreign counterparts and shall make reciprocal arrangements reduce in writing to share, request and receive information relating to the requirements of this Act and any regulations made thereunder.

Analysis of Section 6B of the AMLA 2010

This section was added to the AMLA 2010 vide amendments in the AML Act–official Gazette Notification no. F.22(50)/2020–Legis dated 24 September 2020. This section imposes a positive obligation on regulators to cooperate with their international cooperation for the purposes of furthering the aims of the Act. This section is distinct from s.26, AMLA (agreements with foreign countries), to the extent that this section empowers regulatory authorities (as opposed to the Federal Government) to share information with their foreign counterparts. Other sections of AMLA that deal with provisions on international cooperation include:

- Section 6(4)(e): Cooperation between the FIUs
- Section 27: Letter of request to a contracting State etc.
- Section 28: Assistance to a contracting State in certain cases
- Section 29: Reciprocal arrangements for processes and assistance for transfer of accused persons
- Section 30: Attachment, seizure and forfeiture etc., of property in a contracting State or Pakistan
- Section 31: Procedure in respect of letter of request.

Clause 1, Schedule IV states that the following are AML/CFT regulatory authorities for the purposes of this Act:

(i) SBP for any reporting entity licensed or regulated under any law administered by SBP;
(ii) SECP for any reporting entity licensed or regulated by SECP under any law administered by SECP;
(iii) Federal Board of Revenue for real estate agents, jewellers, dealers in precious metals and precious stones and accountants who are not the members of ICAP and ICMAP;
(iv) National Savings (AML and CFT) Supervisory Board for National Savings Schemes;
(v) Pakistan Post (AML and CFT) Supervisory Board for Pakistan Post; and
(vi) Any other such entity or regulatory authority as may be notified by the Federal Government.

Where:

Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 7.

“SBP” means State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956);  

“SECP” means Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);  

The abbreviations “ICAP” and “ICMAP” are not defined in the Act. Given the context of the section, it is likely that these abbreviations refer to the Institute of Chartered Accountants of Pakistan, and the Institute of Cost and Management Accountants of Pakistan, respectively.

**International Best Practices**

**FATF Recommendations**

Recommendation 40 states that countries should have a lawful basis on which competent authorities can provide the widest range of international cooperation on a timely basis, and such competent authorities should be authorized to use the most efficient means to cooperate.

In 2019, the APG, an inter-governmental organization concerned with the effective implementation of FATF standards, published a Mutual Evaluation Report (MER) wherein it stated that Pakistan was only partially compliant with FATF Recommendation 40 because there was limited information on how requests were coordinated nationally by region/LEA, and that different states appeared to operate in silos. Nonetheless, the 2020 MER follow-up notes that since the 2019 MER, the FMU signed seven new MOUs with China, Kazakhstan, Lebanon, Malawi, Qatar, Seychelles and the UK to improve its informal exchange of information.

**Model Provisions**

The ‘Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime’ (“Model Provisions”), which provide states with a template embodying the minimum requirements for the formulation of AML laws, provides the following model provision concerning obtaining information from foreign authorities (although the provision is specific to civil forfeiture):

**Section 77 Obtaining Information from Foreign Authorities**

1) The enforcement authority may make a request to an appropriate foreign authority for information or evidence relevant to a civil forfeiture investigation or proceedings, and may enter into an agreement with such authority relating to such request(s) and the disclosure and/or use of any information or evidence received.

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438 s.2 (xxxvi), AMLA.  
439 s.2 (xxxviii), AMLA.  
Section 6C – Oversight Body for SRBs

6C. Oversight Body for SRBs. ——-

Federal Government shall by notification in the Official Gazette appoint an Oversight Body for the SRBs mentioned in clause (2) of Schedule IV which shall exercise and perform the following powers and functions with respect to their respective SRB, namely:—

a) make regulations for the SRB with respect to the provisions of this Act;
b) monitor and oversee the SRB in accordance with the provisions of this Act;
c) impose sanctions to the extent and in the manner as may be prescribed, upon their respective SRB who fails to comply with any provision of this Act and any rules or regulations made thereunder; and
d) exercise any other powers and perform any other functions as may be notified by the Federal Government in the official Gazette.

Analysis of Section 6c of the AMLA 2010

Section 6C of the AMLA 2010 envisages the appointment of the Oversight Body to oversee the working of Self–regulatory Bodies mentioned in Clause (2) of Schedule IV of AMLA 2010. Section 6C of the AMLA 2010 was added in the Act vide amendments in the AMLA in 2020. It was officially notified through Gazette Notification no. F.22(50)/2020–Legis dated 24–Sep–2020.

Following Self–Regulatory Bodies (SRBs) are mentioned in Clause (2) of the Schedule IV of AMLA 2010:

i. the Institute of Chartered Accounts of Pakistan established under the Chartered Accountants Ordinance, 1961 (Act X of 1961) for their respective members;
ii. the Institute of Cost and Management Accountants of Pakistan (ICMAP) established under the Cost and Management Accountants Act, 1966 (Act XIV of 1966) for their respective members;
iii. the Pakistan Bar Council for lawyers;
iv. Any other SRB as may be notified by the Federal Government.

The following table illustrates how Oversight Bodies govern Self–Regulating Bodies (SRBs) for DNFBPs:

<table>
<thead>
<tr>
<th>Oversight Body</th>
<th>DNFBPs</th>
<th>Self–Regulating Body</th>
</tr>
</thead>
</table>
| Securities and Exchange Commission of Pakistan (SECP) | Registered Accountants | ICAP, ICMAP
|                                      |                  | For unregistered accountants: FBR.    |

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441 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 7.

Powers and Functions of Oversight Body

AMLA 2010 along with creation of Oversight Body, also enlists following powers and functions of the Oversight Body:

Making Regulations for SRBs

S.6C (a) empowers the Oversight Body to make regulations for the SRB with respect to the provisions of AMLA 2010.

Monitoring and Overseeing SRBs

S.6C (b) empowers the Oversight Body for monitoring and overseeing the SRB in accordance with the provisions of AMLA 2010.

Imposing Sanctions on SRBs

S.6C (c) empowers the Oversight Body to impose sanctions to the extent and in the manner as may be prescribed, upon its respective SRB if it fails to comply with any provision of AMLA 2010 and any rules or regulations made thereunder.

Exercising any Other Powers and Functions as notified by Federal Government

S.6C (d) empowers the Oversight Body to exercise any other powers and perform any other functions as may be notified by the Federal Government in the official Gazette.

Although, Section 6C of AMLA 2010 provides a legal basis for appointment of Oversight Bodies to overlook the operations of its concerned Self-Regulatory Body yet it is an open-ended legislation per se. Nonetheless, it empowers the oversight body to make regulations for SRB u/s 6C (a) still it doesn’t provide any guideline(s) as to what extent, level, or matter the oversight body can make regulations. Similarly, no robust guidelines are provided to monitor and oversee the SRBs. Section 6C (b) gives simply a vague idea of monitoring and overseeing the SRBs as if compared to UK’s Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 which clearly expounds on the nature of the Supervisory Authorities. With regards to imposing sanctions, section 6C (c) of AMLA 2010 authorizes oversight bodies to impose sanctions on SRBs to the extent and in manner as may be prescribed. Furthermore, the powers to impose sanctions, their types, and amount of penalties are subject to AML/CFT Sanctions Rules, 2020. Section 3 (3) empowers an oversight body

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443 AML Act 2010, s 6C.
445 AML Act 2010, s 6C(c).
446 “Notification – Federal Board of Revenue” (S.R.O. 950 (I)/2020) &lt;
to impose sanction on SRB; while section 5 elucidates the types of sanctions that may be imposed by an Oversight Body\(^\text{447}\).

**Powers of Oversight Bodies to Apply Sanctions Pursuant to Section 6C of AMLA**

**AML/CFT Sanctions Rules, 2020**

AML/CFT Sanctions Rules 2020 were notified by Federal Government vide S.R.O. 950 (I)/2020. These rules provide further guidelines for sanctioning non-complying SRBs.

The relevant section of the S.R.O. is reproduced as follows:

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5. Oversight body for SRBs.—

(1) The Oversight Body for SRBs may impose any or all of the following sanctions in respect of a contravention provided in sub-rule (3) of rule 3:

(i) issuance of censure/warning/reprimand in writing;
(ii) imposition of monetary penalty, which may not exceed Rs.100 million, in accordance with the risk-based penalty scale by the respective Oversight Body for SRB; and
(iii) any other sanction or administrative requirement as deemed appropriate by the Oversight Body for SRBs.

(2) The Oversight Body for SRBs may not impose a penalty on an SRB if the authority is satisfied that the SRB took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) When determining the sanction and penalty amount to be imposed on an SRB, the Oversight Body for SRBs shall take into account all relevant circumstances, including where appropriate:

(i) the gravity and the duration of the contravention or failure;
(ii) consequences or impact of the contravention;
(iii) previous contraventions;
(iv) the remedial measures taken by the SRB to address the cause of the contravention;
(v) the extent to which the contravention was negligent or willful; or
(vi) any other factor as deemed appropriate by the Oversight Body for SRBs.

(4) The Oversight Body for SRBs may recommend to the Federal Government that an SRB be removed as an AML/CFT Regulatory Authority in case of a contravention of any of the relevant provisions of the AML/CFT Oversight Body Regulations, if the Oversight Body for SRBs deems that the contravention is of such severity as to warrant the removal of the SRB as an AML/CFT Regulatory Authority.\(^\text{448}\)

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\(^{447}\) ibid

\(^{448}\) ibid.

International Best Practices

EU Guidelines

On 7 May 2020, the Commission presented an Action Plan for a comprehensive Union policy on preventing money laundering and terrorism financing. In that Action Plan, the Commission committed to take measures in order to strengthen the EU’s rules on combating money laundering and terrorism financing and defined six priorities or pillars:

(1) Ensuring effective implementation of the existing EU AML/CFT framework;
(2) Establishing an EU single rulebook on AML/CFT;
(3) Bringing about EU-level AML/CFT supervision;
(4) Establishing a support and cooperation mechanism for Financial Intelligence Units;
(5) Enforcing EU-level criminal law provisions and improving information exchange; and
(6) Strengthening the international dimension of the EU AML/CFT framework.449

The legislative proposal450 aims to implement actions 3 and 4 of the Action Plan.

In pursuance of this proposal, action point number 3 has relevance with section 6A and 6C of the AMLA 2010. It is pertinent to mention here that EU proposed establishing an EU single rulebook on AML/CFT that is not the case in Pakistan. Furthermore, the proposal calls for establishment of joint supervisory teams:

• To fulfill its task of direct supervision, the authority should establish joint supervisory teams, undertake general inspections, and impose supervisory measures and administrative sanctions, while respecting the specificities of national systems and enforcement set-ups.451

This proposal is accompanied by other proposals to amend the applicable EU law on AML/CFT:

• A new Regulation establishing a single rulebook for AML/CFT;
• A new AML/CFT Directive, complementing the Regulations.

Having directly applicable AML/CFT rules in a regulation, with more detail than in the existing AML/CFT Directive, will not only promote convergence of supervisory and enforcement practices in Member States, but also provide rules for the Authority to apply itself as a direct supervisor of certain selected obliged entities.

450 ibid
451 ibid
Chapter 8
Reporting Entities – Obligations

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Overview

This chapter discusses the obligations of reporting entities that are regulated under the AMLA framework. The reporting entities, governed by Sections 7, 7A to 7J, 12, 25, and 34, operate within a framework that outlines their obligations to mitigate ML/TF risks in the course of day-to-day business activities.

Section 7 serves as the fundamental bedrock for the reporting process. It stipulates that every reporting entity must file with the Financial Monitoring Unit (FMU) a Suspicious Transaction Report (STR), provided they know, suspect, or have reason to believe that the transaction, or a pattern of transactions, involving funds derived from illegal activities, are designed to evade the Act, have no apparent lawful purpose, or are involve the financing of terrorism. This section underscores the role of reporting entities as the first line of defense in detecting potential instances of money laundering or terrorism financing. It also lays out the obligations now liable on reporting entities in light of the revamped AML framework requiring them to apply core principles of due diligence, monitoring and reporting to the FMU.

In Section 7D, the Act addresses scenarios when a reporting entity is unable to complete Customer Due Diligence (CDD) and issues around "tipping off". This provision navigates the delicate balance between meeting regulatory demands and avoiding undue suspicion or alarm to customers.

Sections 7I and 7J, in tandem, introduce a system of sanctions for reporting entities that fail to adhere to the Act, while also establishing an appeals process to the concerned Anti Money Laundering and Countering Financing of Terrorism (AML/CFT) Regulatory Authority.

Section 12 provides protection to reporting entities acting in good faith. It stipulates that no civil or criminal proceedings will be taken against reporting entities who have reported suspicious transactions as per the provisions of the Act, ensuring that entities who act responsibly in reporting suspicious activities are not punished for their compliance.

Section 25 mandates cooperation with authorities. All officers of Federal, Provincial, local authorities and reporting entities must provide necessary assistance, including production of records, documents, and information, to investigating or prosecuting agencies or FMU.

Finally, Section 34 guides the disclosure of information, underlining the importance of appropriate data sharing while respecting confidentiality and privacy concerns.

Through its comprehensive regulatory design, the Anti Money Laundering Act ensures that reporting entities play a robust role in the fight against financial crimes. This chapter will explore the obligations of these entities and the protections granted to them under the law, with the goal of ensuring transparency, promoting cooperation, and fostering an environment of compliance.
Relevant Definitions

AML/CFT Regulatory Authority: AML/CFT regulatory authority means the regulator or SRB as defined under section 6A of the AMLA 2010. The AML/CFT regulatory authority, as defined in the AMLA 2010, comprises the designated regulators and supervisory and regulatory bodies listed in Schedule IV. This authority is responsible for enforcing and implementing the powers and functions outlined in the Act and its prescribed regulations. Specifically, the AML/CFT regulatory authority is responsible for licensing or registering reporting entities, imposing conditions on their activities to prevent money laundering, predicate offenses, and financing of terrorism, issuing regulations and guidelines related to specific sections of the Act, providing feedback and monitoring compliance with the Act’s requirements, conducting inspections, compelling the production of relevant information, imposing sanctions and penalties on violators, maintaining statistical records, and exercising other powers granted by applicable laws.

Customer Due Diligence: The term CDD is defined in AMLA (“the Act”) as meaning ‘customer due diligence and the obligations set out in section 7A’. s.7A of the Act concerns CDD, which is outlined in FATF Recommendation 10. s.7A imposes an obligation upon reporting entities to conduct CDD on the following four occasions:

1. When entering into a business relationship;
2. When conducting an occasional transaction above the prescribed threshold;
3. Where there is a suspicion of money laundering or terrorist financing; or
4. Where there are doubts about the veracity or adequacy of previously obtained data.

Currency Transaction Reports (CTRs): Currency Transaction Reports are reports on cash transactions exceeding such amount as may be specified by the National Executive Committee by notification in the official Gazette. As per a notification dated 21st January 2015 related to the threshold of CTRs, the minimum amount for reporting CTRs to the FMU is two million rupees. It is mandatory for reporting entities to report only those cash transactions as CTRs that meet the notified threshold.

Disciplinary Procedure: An action brought to reprimand, suspend or expel a licensed professional or other people from a profession or other group because of unprofessional, unethical, improper, or illegal conduct. A disciplinary proceeding against a lawyer may result in the lawyer being suspended or disbarred from practice. Thus, the disciplinary procedure includes exemption from any disciplinary action such as reprimand, suspension, or expulsion of a professional working in the reporting entity. The indemnity provision saves any employee of the reporting entity from internal disciplinary proceedings.

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452 “AML/CFT Regulatory Authority” is referred to in Section 7J of the AMLA 2010.
453 Section 6A of the AMLA 2010: The AML/CFT regulatory authority, as defined in the AMLA 2010, comprises the designated regulators and supervisory and regulatory bodies listed in Schedule IV. This authority is responsible for enforcing and implementing the powers and functions outlined in the Act and its prescribed regulations. Specifically, the AML/CFT regulatory authority is responsible for licensing or registering reporting entities, imposing conditions on their activities to prevent money laundering, predicate offenses, and financing of terrorism, issuing regulations and guidelines related to specific sections of the Act, providing feedback and monitoring compliance with the Act’s requirements, conducting inspections, compelling the production of relevant information, imposing sanctions and penalties on violators, maintaining statistical records, and exercising other powers granted by applicable laws.

454 “Customer Due Diligence” is referred to in Section 7D of the AMLA 2010.

455 “Currency Transaction Reports” is referred to in Sections 7 and 34 of the AMLA 2010.

456 Notification No S.R.O. 73(I)/2015 dated 21.01.2015

457 “Disciplinary Procedure” is referred to in Section 12 of the AMLA 2010.
FMU (Financial Monitoring Unit): "FMU" means the Financial Monitoring Unit established under section 6 of the AMLA 2010. The Financial Monitoring Unit (FMU) is established by the Federal Government and operates independently within Pakistan, headed by a Director General appointed in consultation with the State Bank of Pakistan (SBP). The FMU’s responsibilities include receiving and analyzing Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) from reporting entities, maintaining a comprehensive database of reports and related information, cooperating with international financial intelligence units, framing regulations for report receipt, and exercising necessary powers to achieve the objectives of the Anti–Money Laundering Act. Additionally, the FMU can convey matters for regulatory or administrative action, order the temporary freezing of suspicious properties, and represent Pakistan in international forums related to money laundering and financing of terrorism.

Financing of Terrorism: In the context of Pakistan, since there is no specific set definition of “financing of terrorism,” we can derive a working definition based on the understanding of what constitutes a terrorist as outlined in the excerpt from the FATF Recommendations, and from the terrorism financing provisions of the Anti–Terrorism Act, 1997. Financing of terrorism in Pakistan can be understood as the provision of financial support, either directly or indirectly, to individuals or groups involved in committing, attempting to commit, facilitating, organizing, or directing terrorist acts as described in the definition of a terrorist. This includes contributing to the commission of terrorist acts by a group of individuals acting with a common purpose, where the contribution is made intentionally and with the aim of furthering the terrorist act or with knowledge of the group's intention to carry out a terrorist act.

The Anti–Terrorism Act, 1997 incorporates a set of unique offences relating to terrorism financing, that although do not define the term outright, do provide us with the contours of what it can encapsulate:

- **Section 11H(1):** Relates to the act of inviting another to provide money or other property for the purposes of terrorism;
- **Section 11H(2):** Criminalizes the offence of receiving money or other property for the purposes of terrorism;
- **Section 11H(3):** Criminalizes the offence of providing money or other property for the purposes of terrorism;
- **Section 11I:** criminalizes the use of money or property for the purposes of terrorism;
- **Section 11J(1):** Criminalizes entering or becoming concerned in an arrangements as a result of which money/property is made available for the purposes of terrorism;
- **Section 11J(2):** Criminalizes the provision/availability of money for the benefit of a proscribed organization or person;
- **Section 11K:** Criminalizes entering or being concerned in an arrangement facilitating retention or control of terrorist property by concealment, removal from jurisdiction, transfer to nominees, or in any other way;
- **Section 11–F(5):** Criminalizing soliciting, collecting or raising money or other property for a proscribed organization.

Indemnity: The duty to make good any loss, damage, or liability incurred by another and the right of an injured party to claim reimbursement for its loss, damage, or liability from a person who has such a duty. Reimbursement or compensation for loss, damage, or liability in tort; especially the right of a

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461 “Financial Monitoring Unit” is referred to in Section 7, 25, and 34 of the AMLA 2010.
462 “Financing of Terrorism” is referred to in Section 7 and 25 of the AMLA 2010.
463 “Indemnity” is referred to in Section 12 of the AMLA 2010.
464 Black’s Law Dictionary
party who is secondarily liable to recover from the party who is primarily reliable for reimbursement of expenditures paid to a third party for injuries resulting from a violation of a common-law duty.\(^{465}\)

**Information:**\(^{466}\) Information is essentially communicated knowledge, or in other words, a form of communication. It is a formal criminal charge that initiates criminal proceedings in courts. It is a formal accusation, also known as a complaint that the prosecuting attorney (or sometimes some other law officer) usually files.\(^{467}\) Thus, information, as per the Anti-Money Laundering Act, is any knowledge of suspicious transactions observed by a reporting entity and subsequently, forwarded to the investigating agency.

**Offence of Money Laundering:**\(^{468}\) The offence of money laundering is defined in Section 3 of the AMLA 2010. According to this section, a person is considered guilty of the offence of money laundering if they engage in any of the following activities:

1. Acquiring, converting, possessing, using, or transferring property, knowing or having reason to believe that such property is proceeds of crime. This means that if a person knowingly handles property that has been obtained through criminal activity, they are committing the offence of money laundering.

2. Concealing or disguising the true nature, origin, location, disposition, movement, or ownership of property, knowing or having reason to believe that such property is proceeds of crime. This refers to actions taken to hide the fact that property is derived from criminal activity.

3. Holding or possessing on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime. This means that if a person holds property for someone else, and they know or have reason to believe that this property is the result of criminal activity, they are committing the offence of money laundering.

4. Participating in, associating with, conspiring to commit, attempting to commit, aiding, abetting, facilitating, or counseling the commission of the acts specified in the above clauses. This means that if a person is involved in any way with the activities described above, they are committing the offence of money laundering.

**Reason to believe:**\(^{469}\) Reason has been defined as “a faculty of the mind by which it distinguishes truth from falsehood.” Thus, it may be defined as the ability which enables the possessor to deduce inferences from facts or from propositions. Belief has been defined as, “a conviction of the truth of a proposition, existing subjectively in the mind, induced by argument, persuasion or proof addressed to the judgement.” It states that knowledge is an assurance of a fact or proposition founded on perception by the senses or intuition, whereas belief is an assurance gained by evidence. Thus, the phrase “reason to believe” in the context of the offence of money laundering may mean having the ability to subjectively deduce or infer a proposition through evidence.

Explanation-I of section 3 of AMLA states that “the knowledge, intent or purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984).”

\(^{465}\) Ibid
\(^{466}\) “Information” is referred to in Sections 7, 12, 25 and 34 of the AMLA 2010.
\(^{467}\) https://www.law.cornell.edu/wex/information#:~:text=Information%20is%20essentially%20communicated%20knowledge,other%20law%20officer)%20usually%20files
\(^{468}\) “Offence of Money Laundering” is referred to in Sections 7D and 25 of the AMLA 2010.
\(^{469}\) “Reason to believe” is referred to in Section 7 and 7D of the AMLA 2010.
Section 26 of Pakistan Penal Code defines reason to believe as under:

“A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.”.

In accordance with FATF standard, the knowledge, intent, purpose may be inferred from “objective factual circumstances. Following are the types of objective factual circumstance:

- Willful blindness
- Deliberate avoidance of knowledge of the facts
- Purposeful indifference

In accordance with the judgement of the Supreme Court of Pakistan470, the term “reason to believe” can be classified at a higher pedestal than a mere suspicion and allegation but not equivalent to proven evidence. Even the strongest suspicion cannot transform in “reason to believe”.

**Reporting Entities:**471 Section 7 of AMLA 2010 establishes requirements for reporting entities on furnishing information. Reporting entities are defined under Section 2(xxiv) of AMLA 2010. They include “financial institutions” as defined in Section 2(xiv) and “Designated Non-Financial Businesses & Professions or DNFPBs” as defined in Section 2(xii) and any other person notified by the Federal Government in the official Gazette.

**Self-Regulating Bodies:**472 SRBs are defined under Schedule IV of the AML 2010:

i. The Institute of Chartered Accounts of Pakistan established under the Chartered Accountants Ordinance, 1961 (Act X of 1961) for their respective members;

ii. The Institute of Cost and Management Accountants of Pakistan (ICMAP) established under the Cost and Management Accountants Act, 1966 (Act XIV of 1966) for their respective members;

iii. The Pakistan Bar Council established under the Legal Practitioners and Bar Councils Act, 1973 (Act XXXV of 1973); for lawyers and other independent legal professionals that are enrolled under the Pakistan Bar Council or Provincial Bar Councils or Islamabad Bar Council; and

iv. Any other SRB as may be notified by the Federal Government.

**Suspicious Transaction Reports (STRs):**473 STRs as defined in AMLA 2010 are reports which must be submitted to the FMU when a suspicious transaction/activity involving money laundering or terrorism financing, or funds derived from illegal activity is indicated.474 Reporting entities are required to inform the FMU of suspicious transactions regardless of the amounts involved.475 There is no threshold for reporting suspicious transactions. Moreover, suspicious transaction reports are required to be reported even in cases of attempted transactions.

**Tipping off:**476 In the context of money laundering, ‘tipping off’ refers to the illegal act of disclosing or providing a warning to someone that an investigation or reporting of suspicious transactions related to money laundering or terrorist financing is underway. It involves revealing information that could compromise the investigation, hinder the detection or prevention of money laundering activities, or allow the individuals involved to conceal or move illicit funds.

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470 Chaudhry Shujat Hussain v. The State – 1995 SCMR 1249
471 “Reporting Entities” is referred to in Sections 7, 7D, 7L, 7J, 12, 25, and 34 of the AMLA 2010.
472 “Self-Regulating Body” is referred to in Section 7 of the AMLA 2010.
473 “Suspicious Transaction Report” is referred to in Sections 7, 7D, and 34 of the AMLA 2010.
474 Section 2(xl) and 7(1) AMLA 2010
475 Section 7(1) AMLA 2010
476 “Tipping off” is referred to in Section 7D of the AMLA 2010.
Section 7 – Procedure and Manner of Furnishing Information by Reporting Entities

7. Procedure and Manner of Furnishing Information by Reporting Entities.\(^{477}\) —

2) Every reporting entity shall file with FMU, to the extent and in the manner prescribed by the FMU, Report of Suspicious Transaction conducted or attempted by, at or through such reporting entity, if it knows, suspects or has reason to suspect that the transaction or a pattern of transactions of which the transaction is a part,—

a) involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of crime;

b) is designed to evade any requirements of this Act;

c) has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction; or

d) involves financing of terrorism, including fund collected, provided, used or meant for, or otherwise linked or related to, terrorism, terrorist acts or organizations and individuals concerned with terrorism:

Provided that STR shall be filed by the reporting entity with the FMU promptly.

3) Any government agency, autonomous body, oversight body for SRB, AML/CFT regulatory authority, domestic or foreign, may share intelligence or report their suspicions within the meaning of STR or CTR to FMU in normal course of their business and the protection provided under section 12 shall be available to such agency, body or authority.

4) All CTRs shall, to the extent and in the manner prescribed by the FMU, be filed by the reporting entities with the FMU immediately, but not later than seven working days, after the respective currency transaction.

5) Every reporting entity shall keep and maintain all record related to STRs and CTRs filed by it for a period of at least ten years after reporting of transaction under sub-sections (1), (2) and (3).

6) The provisions of this section shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any other law or written document.

7) Notwithstanding anything contained in any other law for the time being in force, any STRs required to be submitted by any person or entity to any investigating or prosecuting agency shall, on the commencement of this Act, be solely and exclusively submitted to FMU to the exclusion of all others.

8) Omitted.

\(^{477}\) Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 8.
Analysis of Section 7 of the AMLA 2010

Section 7 of the AMLA 2010 outlines the procedure and manner for reporting entities to furnish information to the FMU. Reporting entities must file Suspicious Transaction Reports (STRs) with the FMU if they know, suspect or have reason to suspect that the transaction or a pattern of transactions of which the transaction is a part:

- involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of crime;
- is designed to evade any requirements of this Act;
- has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction; or
- involves financing of terrorism, including fund collected, provided, used or meant for, or otherwise linked or related to, terrorism, terrorist acts or organizations and individuals concerned with terrorism.478

Section 7 also establishes the requirements for reporting entities to file Currency Transaction Reports (CTRs) with the FMU. Given that, building an effective reporting regime, one of the major objectives of the Act, depends on the quality of STRs and CTRs submitted by reporting entities, this section of the AMLA 2010 establishes guidance for reporting entities to maintain and furnish information to the FMU effectively. The AMLA 2010 is supported by a comprehensive set of rules and regulations set by various regulators such as the State Bank of Pakistan, the Securities and Exchange Commission of Pakistan, Federal Board of Revenue, CDNS, etc.

Section 7(1) of AMLA 2010 provides the FMU with the authority to prescribe the manner and extent of filing STRs with them. The FMU has issued Guidelines for the Reporting Entities on filing of Suspicious Transaction Reports480 pursuant to section 7 of AMLA 2010. These guidelines aim to improve the quality of the STRs submitted to FMU to promote an effective STRs reporting regime.

Similarly, section 7(3) of AMLA 2010 provides the FMU with the authority to prescribe the manner and extent of filing CTRs with them. For this purpose, the FMU has issued Guidelines for the Reporting Entities on filing of Currency Transaction Reports.481 These guidelines seek to improve the quality of the CTRs being submitted to the FMU by providing guidance to reporting entities relating to reporting of CTRs.

Section 7(1) of AMLA 2010 requires every reporting entity to file an STR with the FMU promptly after forming suspicion of funds being laundered or related to terrorist financing. The scope of STR reporting obligations was widened in AMLA 2010 to include predicate offences and terrorism financing. Section 7(1)(d) of the AMLA 2010 adds the requirement to report where there is suspicion that the transaction “involves financing of terrorism, including fund collected, provided, used or meant for, or otherwise linked or related to, terrorism, terrorist acts or organizations and individuals concerned with terrorism.”

Section 7(1) outlines that reporting entities must file STRs with the FMU promptly. Earlier versions of the AMLA 2010 required reporting entities to file STRs “immediately…but not later than seven days after the forming of suspicion.” This phrasing which was replaced by the requirement to file

478 Section 7(1) AMLA 2010
479 Section 7(3) AMLA 2010
“promptly” was criticized in the APG’s Mutual Evaluation Report 2019. According to the APG this earlier phrasing did not meet the requirement of prompt reporting as seven days after forming the suspicion was not consistent with immediate reporting.

Guidelines published by the FMU on the submission of STRs explain that the AMLA 2010 requires suspicious reports to be submitted to the FMU promptly after forming suspicion, regardless of the reporting entity’s internal processes and procedures. They advise reporting entities to implement appropriate internal policies, procedures and controls for meeting their obligations under AMLA by streamlining their information gathering/documentation procedures and analysis.

Reporting entities must also file CTRs with the FMU “immediately, but not later than seven working days, after the respective currency transaction.” This phrasing is similar to the phrasing used for STRs that was substituted out of section 7(1).

With regard to CTRs, section 7(3) of AMLA 2010 requires reporting entities to file all CTRs to the extent and in the manner prescribed by FMU, with the FMU immediately, but not later than seven working days, after the respective currency transaction. Correspondingly, regulation 5 of the Anti–Money Laundering (AML) Regulations 2015 also requires a financial institution or DNFBP (in case of a cash-based transaction exceeding the 2 million Rupee threshold) to file a report with the FMU in the manner prescribed. This requirement applies to all reporting agencies, however, currency transactions amongst financial institutions and between financial institutions and the following categories of entities are exempted from the reporting requirements of regulation 5(1) of the AML Regulation 2015:

a) a department or agency of the Federal Government or a Provincial Government; or
b) a Local Government; or
c) a statutory body.

**Liability for failure to file Suspicious Transaction Report and for providing false information**

As per Section 33(1) AMLA 2010, any reporting entity which willfully fails to comply with their Section 7 suspicious transaction reporting requirements or gives false information shall be liable for imprisonment for a term which may extend to five years or a fine which may extend to a five hundred thousand rupees, or both. This requirement aids in achieving an effective STR and CTR reporting regime.

In addition, as per Section 33(2) in the case of the conviction of a reporting entity, the concerned regulatory authority may also revoke its license or registration or take such other administrative action, as it deems appropriate.

**Record Keeping for STRs**

There is an overarching requirement in section 7(4) of AMLA 2010 that reporting entities keep and maintain all records including documents obtained through Customer Due Diligence (CDD) measures, account files and business correspondence and results of analysis undertaken related to STRs and CTRs for a period of at least ten years after reporting a transaction.

The time period for record keeping in earlier versions of AMLA 2010 was a period of five years after the reporting of a transaction. This was extended for a period of five years to a period of ten years in a 2019 amendment of the Act.\(^{482}\)

\(^{482}\) Official Gazette Notification no. F.22(8)/2019–Legis
Section 7C was also inserted to provide that every reporting entity “maintain a record of all transactions for a period of at least five years following the completion of the transaction” and records of all account files, business correspondence, documents, records obtained through CDD and results of analysis undertaken for a period of at least five years following the termination of a business relationship.\(^{483}\)

**Confidentiality of Information/Tipping Off**

Reporting entities are required to ensure secrecy and maintain confidentiality when reporting STRs and CTRs to FMU. Section 7(5) stipulates that section 7 reporting requirements will have effect notwithstanding obligations to secrecy or other restrictions on the disclosure of information in any other law or written document.

Section 7(6) further clarifies that “any STRs required to be submitted by any person or entity to any investigating or prosecuting agency” must be solely and exclusively submitted to FMU to the exclusion of all others. This aids in the aim to ensure coherence in the procedure relating to the reporting of STRs and CTRs.

These sub-sections are closely related to section 34(1) of AMLA 2010 which clarifies tipping off obligations. It states that directors, officers, employees and agents of any reporting entity or intermediary which report an STR or CTR are prohibited from directly or indirectly disclosing to any person that a transaction has been reported. One exception to the tipping off requirement is if disclosure agreements for corporate groups are in place in accordance with AML/CTF regulations. A violation of section 34(1) is a criminal offence which is punishable by a maximum term of five years imprisonment or a fine which may extend to two million rupees or both.\(^{484}\)

**Key Cases**

*Misbah Karim v. Federation of Pakistan, PLD 2016 Sindh 462*

Based on spy information, the FIA opened an inquiry whereby the FIA was investigating offenses under the AMLA, the FERA and various sections of the P.P.C. against the petitioners. During the course of his investigation, the Inspector/E.O. of FIA moved an application under section 94 Cr.P.C. to Court for an order/permission to obtain the relevant documents/record from various banks and accounts through which allegedly money laundering had taken place. The application was allowed through the impugned order. The petitioners alleged that the FIA had no jurisdiction or legal authority to carry out the inquiry in the manner in which they were doing so, which had to be initiated by the FMU, not the FIA.

The Court stated that the entire potential of money laundering investigation turns on whether a financial institution spots and reports an STR in line with their section 7 AMLA obligations. Given that financial institutions may take a wider benefit of doubt view before reporting suspicious transactions of their client because of fear of loss of present and future business, the Court considered whether there is any room for any other agency on its own initiative to look into banking transactions which may be connected with money laundering under the AMLA.

The Court held that the FIA, in investigating cases of money laundering, can, on its own motion based on reliable/credible information, open its own investigation into money laundering under the AMLA independently of the FMU, especially in cases where the initial information is not based on banking

\(^{483}\) Anti-Money Laundering (2nd Amendment) Act, 2020 – Official Gazette Notification no. F.22(50)/2020 – Legis dated 24-Sep-2020

\(^{484}\) Section 34(2) AMLA 2010
transactions or on information from financial institutions. The Court considered whether section 7(2) which states “Any government agency, autonomous body, oversight body for SRB, AML/CFT regulatory authority, domestic or foreign, may share intelligence or report their suspicions within the meaning of STR or CTR to FMU in normal course of their business and the protection provided under section 12 shall be available to such agency, body or authority” could enable the FIA to rout any information which it had through the FMU for further investigation. The Court was, however, of the view that section 7(2) applied more to financial institutions, non-financial businesses and professions such as real estate agents, jewelers etc. and those other professions defined in section 2(xiv) AMLA as non-financial business and professions who are also reporting entities under section 2(xii) AMLA as opposed to the FIA. On the basis of deliberations concerning other sections of AMLA 2010, the Court decided that the FIA inquiry was lawful and subsequently dismissed the petitions.

International Best Practices

FATF Recommendations

The FATF Recommendations are internationally endorsed global standards against money laundering and terrorist financing. They set out a comprehensive and consistent framework of measures which countries should implement to combat money laundering and terrorist financing.

a. Legal obligation of reporting

FATF Recommendation 20 on the reporting of suspicious transactions states that “if a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU).” This is adequately addressed in section 7 of AMLA where reporting agencies are required to submit STRs and CTRs to the FMU.

Interpretive note to FATF Recommendation 20 provides details of what must be included in the legal obligation to report. It explains that criminal activity in FATF Recommendation 20 refers to all criminal acts that would constitute a predicate offence for money laundering or, at a minimum, to those offences that would constitute a predicate offence. Pakistan has adopted these alternatives in section 7(1)(a)–(d) by outlining the specific offences and predicate offences that trigger the obligation to report STRs. In addition, the interpretive note suggests that all suspicious transactions should be reported regardless of the amount of the transaction. This is effectively covered in section 7(1) through the absence of any threshold amount for STRs. Finally, the reporting requirement should be a direct mandatory obligation. This is evident through the language used in the AMLA and section 33 liability for failure to comply with reporting requirements.

b. Record Keeping

FATF Recommendation 11 on record keeping states that “Financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities”. The records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal activity. This is addressed in section 7(4) of AMLA 2010, though the requirement for record keeping in the sub-section is for a period of ten years as opposed to five.

As per Recommendation 11, financial institutions should be required to keep all records obtained through CDD measures, account files and business correspondence, including the results of any analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual large
transactions), for at least five years after the business relationship is ended, or after the date of the occasional transaction. This requirement is sufficiently addressed in section 7(4) of AMLA.

c. **Confidentiality and Tipping off**

FATF Recommendation 9 requires that financial institution secrecy laws do not inhibit implementation of FATF Recommendations which is ensured in section 7(5) which stipulates that section 7 reporting requirements are to have effect notwithstanding any obligations to secrecy or other restrictions on the disclosure of information in any other law or written document.

FATF Recommendation 21 on tipping off and confidentiality suggests that financial institutions, their directors, officers and employees should be protected by law from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. This is addressed in section 12 protection for sharing intelligence or reporting their suspicions within the meaning of STR or CTR to FMU. Recommendation 21 also states that financial institutions should be prohibited by law from disclosing (“tipping-off”) the fact that a suspicious transaction report (STR) or related information is being filed with the FIU. This recommendation is addressed in section 34 AMLA 2010.

**Model Provisions**

The ‘Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures and Proceeds of Crimes’ provide guidelines on furnishing information from reporting entities. The relevant provisions have been reproduced below.

a. **Legal Obligation of Reporting**

   **Section 17: Obligation to Report Suspicious Transactions**

   (1) Subject to the provisions of subsection (3), an accountable person that suspects or has reasonable grounds to suspect that any funds or property are:

   (a) the proceeds of crime; or
   (b) related or linked to, or are to be used for, financing terrorism or terrorist acts, or by a terrorist or a terrorist organisation or those who finance terrorism shall promptly submit [option: but not later than [three] working days after forming a suspicion] a report setting forth the suspicions to [insert name of FIU] and in such cases shall promptly respond to requests from [insert name of FIU] for additional information.

   This obligation shall apply to both completed and attempted transactions, and regardless of the amounts involved.

   (2) An accountable person shall provide [insert name of FIU] with all necessary information upon request, and in accordance with the procedures established by [insert name of FIU].

   (3) Notwithstanding subsection (1), lawyers, notaries, other independent legal professionals and accountants are required to submit reports under subsection or provide information under subsection (2) only when:

   (a) they engage, on behalf of or for a client, in a financial transaction associated with an activity specified in relation to such professionals under Section 3 of this Act; and
(b) the relevant information upon which the suspicion is based or that is requested by [insert name of FIU] was not received from or obtained on a client:

(i) in the course of ascertaining the legal rights or obligations of their client; or

(ii) in performing their task of defending or representing that client in, or concerning, judicial, administrative, arbitration or mediation proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(4) An accountable person shall refrain from carrying out a transaction that it suspects to be related to money laundering or terrorism financing until [insert time period, for instance one business day] after it has reported its suspicion to the [insert name of FIU], except that, where refraining from the carrying out of a transaction is impossible or is likely to frustrate the efforts to investigate a suspected transaction, an accountable person may execute the transaction and shall report its suspicion to [insert name of the FIU] immediately thereupon.

[variant: If [insert name of FIU] considers it necessary by reason of the seriousness or urgency of the case, it may order the suspension of a transaction for a period not to exceed [insert time period as three business days].]

Section 7D of AMLA 2010 deals sufficiently with the above-mentioned section of the Model Provisions.

Section 18: Obligation to Report Currency Transactions

An accountable person shall submit promptly [option: and not later than after [three] working days] a report to [insert name of the FIU] of any currency transaction in an amount equal to or above [the designated amount], whether conducted as a single transaction or several transactions that appear to be linked.

Section 7(3) establishes the requirement to report currency transactions to the FMU and as per a notification dated 21st January 2015 the minimum amount for reporting CTRs to the FMU is two million rupees.\(^485\)

b. Liability for failure to file Suspicious Transaction Report and for providing false information

Section 27: Failure in Regard to Suspicious Transaction or Other Reporting

According to the Model Provisions, any accountable person, including any director, partner, officer, principal or employee thereof, who intentionally fails to submit a report to [insert name of FIU] as required by Section 17(1) or provide information as required under Section 17(2) [add, if appropriate, optional currency transaction reporting section] commits an offence that shall be punishable by imprisonment of up to [insert imprisonment range] or a fine of up to [insert monetary range], or both.

Section 28: False or Misleading Statements

According to the Model Provisions, any accountable person, including any director, partner, officer, principal or employee thereof, who intentionally makes a false or misleading statement, provides false or misleading information or otherwise fails to state a material fact in connection with his or her obligations under this Part, including the obligation to make a

\(^485\) Notification No S.R.O. 73(I)/2015 dated 21.01.2015
suspicious transaction [option: or currency transaction] report, commits an offence that shall be punishable by imprisonment up to [insert imprisonment range] or a fine up to [insert monetary range], or both.

c. Record Keeping

Section 10: Record keeping

(1) An accountable person shall maintain all books and records with respect to their customers and transactions in accordance with subsection (2), and shall ensure that such records and the underlying information are available on a timely basis.

[Drafting note: The obligations under FATF Recommendation 13 regarding correspondent banking apply only to financial institutions, and not to DNFBPs. The reference here should thus be not to ‘accountable persons’ but to ‘financial institutions’ or as and when required to be disclosed.]

(2) Such books and records shall include, as a minimum:
   (a) all records obtained through CDD measures, including account files, business correspondence and copies of all documents evidencing the identities of customers and beneficial owners, and records and the results of any analysis undertaken in accordance with the provisions of this Act, all of which shall be maintained for not less than five years after the business relationship has ended;
   (b) records on transactions, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be maintained for not less than five years from the date of the transaction;
   (c) the record of any findings pursuant to Section 12(1)(a) and related transaction information which shall be maintained for at least five years from the date of the transaction; and
   (d) copies of all suspicious transaction reports made pursuant to Section 17 or other reports made to the FIU in accordance with this Act, including any accompanying documentation, which shall be maintained for at least five years from the date the report was made.

d. Confidentiality of Information/Tipping Off

Section 19: Inapplicability of Confidentiality Provisions

There shall be no liability for any breach of any secrecy or confidentiality provisions in any other law if an accountable person is fulfilling their obligations under this Act.

This Model Provision is incorporated into section 7(5) AMLA which clarifies that section 7 reporting requirements have effect notwithstanding any obligation to secrecy or other restriction on the disclosure of information imposed by law or written document.

Section 20: Prohibition against Tipping off

Any accountable person, or any director, partner, officer, principal or employee thereof, who discloses to a customer or a third party that a report under Section 17(1), or other information, is being or has been submitted to [insert name of FIU], or that a money laundering or terrorism financing investigation has begun, is being or has been carried out, except in the circumstances provided for in subsection (2) or when otherwise required by law to do so, commits an offence.
that shall be punishable by imprisonment of up to [insert imprisonment range] and a fine of up to [insert monetary range], or both. Subsection (1) does not apply where a disclosure was made in order to carry out any function that a person has relating to the enforcement of any provision of this Act or of any other enactment.

Section 22: Exemption from Liability for Good Faith Reporting of Suspicious Transactions

No criminal, civil, disciplinary, administrative or any other related proceedings for breach of banking secrecy, professional secrecy or contract shall lie against an accountable person or his or her directors, principals, officers, partners, professionals or employees who, in good faith, submit reports or provide information in accordance with the provisions of this Part of the Act.

This Model Provision is incorporated into section 7(2) in AMLA, creating an obligation government bodies to file STRs to the FMU.
Section 7D – Inability to Complete CDD and Tipping Off

7D. Inability to complete CDD and tipping off. — (1) Where a reporting entity is unable to complete CDD requirements, it—

(a) shall not open the account, commence business relations or perform the transaction; or
(b) shall promptly consider filing a Suspicious Transaction Report in relation to the customer.

(2) Where a reporting entity forms a suspicion of money laundering or terrorist financing, and reasonably believes that performing the CDD process will tip-off the customer, the reporting entity shall not pursue the CDD process and shall file a STR.

Analysis of Section 7D of the AMLA 2010

Section 7D of the AMLA 2010 outlines the requirements for reporting entities (defined in Section 2(xxxiv) AMLA 2010) when they are unable to complete the CDD requirements outlined in Section 7A AMLA 2010. Reporting entities must:

• Not open an account, commence business relations or perform the transaction, or must terminate their existing business relationship with the customer; and
• Promptly consider filing an STR in relation to the customer.

Customer due diligence is an integral part of the AML/CTF regime, which enables reporting entities to know the customers with whom they are dealing. Where CDD measures cannot be carried out, a State must clarify the requirements on reporting entities (i.e. to not carry out the transaction, to not establish the business relationship, to terminate any existing business relationship, to consider filing an STR). The purpose of these requirements is not to deny access to essential services for customers unable to produce CDD documents, it is to protect against money laundering and terrorist financing in the relevant jurisdiction. Reporting entities are therefore, provided with detailed legislation and regulations to help them balance AML/CFT risks with financial inclusion considerations.

Where a reporting entity forms suspicion of money laundering or terrorist financing and reasonably believes that performing the CDD process will tip-off the customer, it would be counter-intuitive for the reporting entity to pursue the CDD process as this could have consequences for any law enforcement investigation. Due diligence inquiries fail when money trails disappear in the cash economy necessitating employees of reporting entities to manage customer relationships sensitively without tipping them off.

Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 8.
**Banks and DFIs: State Bank of Pakistan**

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (AML/CFT) REGULATIONS FOR BANKS & DFIs

REGULATION – 1
CUSTOMER DUE DILIGENCE (CDD)

Where CDD Measures are Not Completed

13. In case banks/DFIs are not able to satisfactorily complete required CDD measures, account shall not be opened or any service provided and consideration shall be given if the circumstances are suspicious so as to warrant the filing of an STR. If CDD of an existing customer is found unsatisfactory, the relationship should be treated as high risk and reporting of suspicious transaction be considered as per law and circumstances of the case.

The SBP Regulations for banks and designated financial institutions largely reproduce the inability to complete CDD and tipping-off provisions in the AMLA 2010 and refer to the obligations created as per law. Similar to the AMLA, the reporting of a suspicious transaction is to be “considered” but it is not obligatory for reporting entities.

**ECs: Securities and Exchange Commission of Pakistan**


6. Customer Due Diligence. -

(11) Where regulated person are not able to satisfactorily complete required CDD measures, account shall not be opened or any service provided and consideration shall be given if the circumstances are suspicious so as to warrant the filing of an STR and where CDD of an existing customer is found unsatisfactory, the relationship should be treated as high risk and reporting of suspicious transaction be considered in accordance with regulation 14;

(12) Where regulated person forms a suspicion of money laundering or terrorist financing, and it reasonably believes that performing the CDD process will tip-off the customer, it may not pursue the CDD process, and instead should file an STR in accordance with regulation 14.

The SECP Regulations, which regulate exchange companies (ECs) reiterate the obligations created under AMLA for reporting entities to follow when they are unable to comply with their CDD requirement. Similar to the AMLA, the SECP Regulations require regulated persons to either not open the account or provide the service and should consider promptly reporting an STR. In accordance with

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487 Anti-Money Laundering and Combating The Financing Of Terrorism (AML/CFT) Regulations For Banks & DFIs (8 June 2015)
the tipping–off obligations in the AMLA, ECs are required to stop pursuing the CDD process and file an STR instead where they form a suspicion of ML/TF and reasonably believe that performing the CDD process will tip–off the customer.

_Inability to complete CDD_

Where reporting entities are unable to complete their CDD requirements, reporting entities must “consider” filing an STR. The AMLA, however, does not provide information on the factors that reporting entities should take into account when making the decision of whether or not to file an STR. Additional rules/guidelines should furnish these details.

_Tipping–off_

Reporting entities which form suspicion of money laundering or terrorist financing and reasonably believe that performing CDD will tip–off the customer must not pursue CDD and must instead file an STR. The AMLA, however, is silent on the factors which constitute “suspicion” of ML/TF or “reasonable belief”. It is also unclear whether suspicion and reasonable belief are used as legal tests or if they are to be considered in the manner that they are conventionally understood. This leaves significant leeway for reporting entities to make decisions based on factors they themselves consider important which may not be in line with the decisions that AMLA legislators envisioned them to make.

_Timing of Reporting_

Section 7D(1)(b) requires reporting entities to promptly consider filing an STR in relation to the customer where the reporting entity is unable to complete CDD requirements. The use of the term “promptly” mirrors the requirements for timing of reporting under section 7(1) AMLA 2010 on the procedure and manner of furnishing information by reporting entities. STRs are to be filed with the FMU promptly when the conditions in section 7(1)(a) – (d) are met.

_International Best Practices_

_FATF Recommendations_

The FATF Recommendations are internationally endorsed global standards against money laundering and terrorist financing. They set out a comprehensive and consistent framework of measures which countries should implement to combat money laundering and terrorist financing.

FATF Recommendation 10 on customer due diligence states that “[w]here the financial institution is unable to comply with the applicable requirements under paragraphs (a) to (d) above (subject to appropriate modification of the extent of the measures on a risk–based approach), it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.” The FATF CDD requirements are reproduced below for convenience. These recommendations, especially regarding the inability to complete CDD, are sufficiently addressed in section 7D(a) and (b) of AMLA, where reporting entities are required not to open the account, commence business relations or perform the transaction; or shall terminate the business relationship if any; and promptly consider filing a Suspicious Transaction Report in relation to the customer.

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489 Section 7D(2) AMLA
10. Customer due diligence

The CDD measures to be taken are as follows:

a) Identifying the customer and verifying that customer’s identity using reliable, independent source documents, data or information.

b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.

c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.

d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Interpretive Note to FATF Recommendation 10 highlights that a “risk exists that customers could be unintentionally tipped off when the financial institution is seeking to perform its customer due diligence (CDD) obligations” and a “customer’s awareness of a possible STR or investigation could compromise future efforts to investigate the suspected money laundering or terrorist financing operation.” Therefore, the FATF Interpretive Note recommends that if a reporting entity suspects that the transactions relate to money laundering or terrorist financing and reasonably believes that performing the CDD process will tip-off the customer or potential customer, they may choose not to pursue the process and should file an STR instead. This exception is reflected in section 7D(c) of AMLA 2010. However, while the FATF Interpretive Note suggests that reporting entities have the ability to choose not to pursue the CDD process when faced with suspicion of ML/TF and reasonable belief of tipping-off, section 7D(c) states that the reporting entity “shall not pursue the CDD process and shall file a STR.” Section 7D therefore removes some subjectivity from the procedure following fear of tipping off.

It must be highlighted, however, that the FATF Interpretive Note does not provide guidance on the factors to be considered when establishing a reasonable belief that performing CDD will tip-off the customer. Similarly, guidance on the conditions for reasonable belief is absent from the AMLA 2010.

Model Provisions

The ‘Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures and Proceeds of Crimes’ provide guidelines on furnishing information from reporting entities.\(^491\) The relevant provisions have been reproduced below.

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\(^{491}\) Common Law Legal Systems Model Legislative Provisions published by the United Nations Office on Drugs and Crime, the Commonwealth Secretariat, and the International Monetary Fund.
Inability to complete CDD

Section 9: Inability to Fulfil Customer Identification Obligations

An accountable person that cannot fulfil the requirements of Sections 5–8 of this Act shall not open the account or establish the business relationship, or carry out the transaction, or shall terminate the business relationship. The accountable person shall also consider filing a report to [insert name of FIU] in accordance with this Act.

These Model Provisions, especially regarding obligations stemming from the inability to complete CDD, are sufficiently addressed in section 7D(a) and (b) of AMLA, where reporting entities are required not to open the account, commence business relations or perform the transaction; or shall terminate the business relationship if any. Similar to the language in the Model Provisions, section 7D(b) states that the reporting entity shall “shall promptly consider filing a Suspicious Transaction Report in relation to the customer.” Neither the Model Provisions nor the AMLA provides further guidance on what factors reporting entities should assess when considering filing an STR.

India

India has enacted the Prevention of Money Laundering Act, 2002 to prevent money laundering and to provide for the confiscation of property derived from or involved in money laundering and for matters connected to or incidental to it. The Indian PMLA 2002 does not have any provisions on inability to complete CDD.
Section 7I – Sanctions for Reporting Entities

7I. Sanctions for reporting entities. – If any reporting entity or natural person contravenes any of the provisions of sections 7(1), 7(3) to 7(6) and 7A to 7H, it may be subjected to sanctions, as mentioned under clause (h) of section 6A of this Act and as may be prescribed.

Analysis of Section 7I of the AMLA 2010

This section was added to AMLA vide amendments in the AML Act–official Gazette Notification no. F.22(50)/2020–Legis dated 24 September 2020. This section deals with compliance with FATF Recommendation 35 (see below under ‘Best Practices’) concerning administrative sanctioning. According to this provision, contravention of the following obligations may subject the offending reporting entity to sanctions:

- **s.7(1), AMLA** – Procedure and manner of furnishing information by reporting entities. This concerns the reporting of STRs by the reporting entities to the FMU.

- **s.7(3), AMLA** – This concerns the period in which CTRs must be filed by the reporting entities to the FMU.

- **s.7(4), AMLA** – This concerns the length of time reporting entities must maintain records relating to CTRs and STRs after reporting the transaction.

- **s.7(5), AMLA** – This concerns the overriding effect of s.7 concerning any other obligation relating to disclosure imposed by law or written document.

- **s.7(6), AMLA** – This concerns the exclusivity of the FMU over any STRs required to be submitted by reporting entities.

- **s.7A, AMLA** – This concerns the obligation on reporting entities to conduct CDD.

- **s.7B, AMLA** – This concerns the discretion given to reporting entities to rely on third parties to conduct CDD on their behalf.

- **s.7C, AMLA** – This concerns record keeping.

- **s.7D, AMLA** – This concerns the steps reporting entities must take if they are unable to complete CDD requirements.

- **s.7E, AMLA** – This concerns the prohibition of reporting entities entering into business relationships or conducting any transactions with customers who are either anonymous or acting under a fictitious name.

- **s.7F, AMLA** – This concerns the risk management steps reporting entities must take.

- **s.7G, AMLA** – This concerns compliance management arrangements.

Words within this provision that are **bolded** are defined in the “Relevant Definitions” section of Chapter 8.
• **s.7H, AMLA** – This concerns the obligation on reporting entities to implement policies and procedures to ensure their compliance with the Act, and orders, rules or regulations made under the Act that impose TFS obligations on them.

**International Best Practices**

**FATF Recommendations**

FATF Recommendation 35 states that countries should have sanctions available to deal with natural or legal persons (covered by Recommendations 6, and 8 to 23) that fail to comply with AML/CFT requirements, and that these sanctions should extend to financial institutions, DNFBPs, and the directions and senior management of such institutions.

When **s.7I, AMLA** is read in conjunction with the additional provisions laid out in **s.7I, AMLA**, it seems that this recommendation is complied with. In addition, Recommendation 35 gives countries wide latitude in determining the type of sanctions they wish to apply, which is evident from the wording of the recommendation: ‘a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative.’ **AML** seems to apply civil (in the form of monetary penalties) and administrative sanctions.

**Model Provisions**

The ‘*Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime*’ (‘*Model Provisions*’), which provide states with a template embodying the minimum requirements for the formulation of AML laws, provides the following model provision concerning administrative sanctions:

**Section 24 Administrative Sanctions**

A supervisory authority under Section 23 that discovers a failure by an accountable person it supervises to comply with the provisions of this Part may impose one or more of the measures available to it for administrative violations; and may ban the accountable person [permanently/for a maximum period of [indicate period]] from pursuing the business or profession that provided the opportunity for the violation to occur.

The drafting note of the Model Provisions provide that administrative sanctions may take the following forms, and that jurisdictions should review their administrative sanctions to ensure that all of the following measures are included:

- a written warning
- an order to comply with specific instructions (possibly accompanied with a daily fine for noncompliance)
- a requirement for regular reports on measures undertaken,
- an administrative fine in an amount sufficient to be effective and dissuasive
- an order barring an individual from employment within a sector
- a restriction on certain powers of a manager, director or controlling owner, or a requirement for the replacement of such person
- the imposition of a conservatorship or the suspension or withdrawal of a licence.

It further notes that administrative sanctions are usually found in sector-specific laws/regulations and applied by supervisory authorities.
Finally, the drafting note states that sanctions should be applicable regardless of whether the accountable person ‘acted intentional, recklessly or simply based on a mistake.’

India

The *Prevention of Money Laundering Act, 2002* does not impose administrative sanctions *per se*, however, it does provide Directors with the power to impose fines, as well as limits the extent of the fine. In addition, it also provides for audits of reporting entities, as well as a (short) list of measures that may be taken with respect to the reporting entity that contravenes its obligations:

13. **Powers of Director to impose fine.**—(1) The Director may, either of his own motion or on an application made by any authority, officer or person, ‘[make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter].

1A If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

1B The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the Central Government.

2[(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

(a) issue a warning in writing; or
(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
(d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.]

3 The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

4 [Explanation.—For the purpose of this section, “accountant” shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949).]
United Kingdom

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2017 states the regulatory information that a supervisory authority must collect, and this includes information concerning disciplinary measures taken by the authority (n.b. only the relevant part of the provisions have been reproduced below):

Regulatory information
51.—(1) A supervisory authority within regulation 7 must collect such information as it considers necessary for the purpose of performing its supervisory functions, including the information specified in Schedule 4.

SCHEDULE 4 - Supervisory Information
1. In the case of a self-regulatory organisation, the number, amount and type of disciplinary measures it has imposed in relation to contraventions of these Regulations on supervised persons.

In addition, Regulation 49(1)(d), The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2017 (concerning duties of self-regulatory organisations) requires a professional body supervisor to make arrangements to ensure that ‘contravention of a relevant requirement by a relevant person they are responsible for supervising renders that person liable to effective, proportionate and dissuasive disciplinary measures under their rules.’

The following powers are also afforded to the supervisory authority under Part 9 (Enforcement), The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2017, and the extent and remit within which those powers must be exercised are detailed:

CHAPTER 2 - Civil penalties and notices

Power to impose civil penalties: fines and statements
76.—(1) Paragraph (2) applies if a designated supervisory authority is satisfied that any person ("P") has contravened a relevant requirement imposed on that person.

(2) A designated supervisory authority may do one or both of the following—
(a) impose a penalty of such amount as it considers appropriate on P;
(b) publish a statement censuring P.

(3) If a designated supervisory authority considers that another person who was at the material time an officer of P was knowingly concerned in a contravention of a relevant requirement by P, the designated supervisory authority may impose on that person a penalty of such amount as it considers appropriate.

(4) A designated supervisory authority must not impose a penalty on P under this regulation for contravention of a relevant requirement if the authority is satisfied that P took all

reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(5) Where the FCA proposes to impose a penalty under this regulation on a PRA-authorised person or on a person who has a qualifying relationship with a PRA-authorised person, it must consult the PRA.

(6) In deciding whether P has contravened a relevant requirement, the designated supervisory authority must consider whether at the time P followed—

(a) any relevant guidelines issued by the European Supervisory Authorities in accordance with—
   (i) Articles 17, 18.4 or 48.10 of the fourth money laundering directive; or
   (ii) Article 25 of the funds transfer regulation;

(b) any relevant guidance which was at the time—
   (i) issued by the FCA; or
   (ii) issued by any other supervisory authority or appropriate body and approved by the Treasury.

(7) A penalty imposed under this Part is payable to the designated supervisory authority which imposes it.

(8) For the purposes of this regulation—

(a) “appropriate” means (other than in references to an appropriate body) effective, proportionate and dissuasive;
(b) “designated supervisory authority” means the FCA or the Commissioners.

There are also further provisions detailing the power of the FCA to impose civil penalties concerning suspension and removal of authorisation under certain circumstances.\textsuperscript{494}

The following outlines further powers of a supervisory authority in relation to contravention of a relevant requirement by any person upon whom the requirement is imposed:

**Power to impose civil penalties: prohibitions on management**

78.—(1) Paragraph (2) applies if a designated supervisory authority considers that another person who was at the material time an officer of P was knowingly concerned in a contravention of a relevant requirement by P.

(2) The designated supervisory authority may impose one of the following measures on the person concerned—

(a) a temporary prohibition on the individual concerned holding an office or position involving responsibility for taking decisions about the management of a relevant person or a payment service provider (“having a management role”);  
(b) a permanent prohibition on the individual concerned having a management role.

\textsuperscript{494} Regulation 77, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations (2017).
(3) A prohibition may be expressed to expire at the end of such period as the designated supervisory authority may specify, but the imposition of a prohibition under paragraph (2)(a) that expires at the end of a specified period does not affect the designated supervisory authority’s power to impose a new prohibition under paragraph (2)(a).

(4) A prohibition imposed under paragraph (2) may be expressed to be a prohibition on an individual having a management role in—
   (a) a named relevant person or payment service provider;
   (b) a relevant person or payment service provider of a description specified by the designated supervisory authority when the prohibition is imposed; or
   (c) any relevant person or payment service provider.

(5) A relevant person or payment service provider must take reasonable care to ensure that no individual who is subject to a prohibition under paragraph (2) on having a management role with that relevant person or payment service provider is given such a role, or continues to act in such a role.

**Imposition of civil penalties**

79. Any one or more of the powers in regulations 76, 77 and 78 may be exercised by a designated supervisory authority in relation to the same contravention.

The Regulation further states conditions under which a court may impose injunctions on the application of a designated supervisory authority.495

The Regulation also outlines in detail the procedure that the FCA and Commissioners must take into consideration when deciding to impose a sanction/any level of penalty.496

Finally, criminal sanctions may also be imposed, and proceedings may be instigated against a person who contravenes a relevant requirement.497

It may also be worth noting that the UK Government established the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) in 2018. It is based in the FCA and has the power to ensure that professional bodies acting as supervisory authorities meet the standards of the Regulation. The OPBAS supervises 25 professional body supervisors in the legal and accounting sectors. In its Sourcebook for professional body anti-money laundering supervisors, the OPBAS provides guidance for professional bodies regarding enforcement of relevant requirements. Notably, Guidance 9.1 states:498

> Enforcement action should seek to remove the benefits of non-compliance and deter future non-compliance, but may also be remedial and preventative. Professional body supervisors should therefore have a broad range of enforcement tools at their disposal and should use these tools in appropriate cases. Enforcement powers could range from administrative sanctions, including censures and financial penalties, to suspension, restriction or withdrawal of membership and the ability to direct members to take action to remedy non-compliance and promote future compliance.

498 FCA (OPBAS), Sourcebook for professional body anti-money laundering supervisors, pp. 25–56.
Section 7J – Appeal to Concerned AML/CFT Regulatory Authority

7J. Appeal to concerned AML/CFT Regulatory Authority.\(^{499}\) – (1) Any person aggrieved by the delay or failure of a reporting entity to complete CDD requirements or establish business relationship or conduct any transaction, may file an appeal to the concerned AML / CFT Regulatory Authority within ninety days.

(2) The concerned AML / CFT Regulatory Authority shall decide the appeal within sixty days.

Analysis of Section 7J of the AMLA 2010

Section 7J of the AMLA in Pakistan provides an avenue for individuals or entities to appeal against the delay or failure of a reporting entity to fulfill CDD requirements, establish a business relationship, or conduct any transaction. This section grants the right to appeal to the concerned AML/CFT Regulatory Authority, ensuring a mechanism for addressing grievances within a specified timeframe. This analysis delves into the key aspects and implications of Section 7J, shedding light on its significant in combating money laundering.

a. Appellant’s rights and eligibility: Section 7J (1) grants the right to appeal to any person who feels aggrieved by the delay or failure of a reporting entity to meet CDD requirements, establish a business relationship, or conduct a transaction. This provision ensures that individuals or entities directly affected by such delays or failures have recourse to the regulatory authority.

b. Timeframe for filing appeals: According to Section 7J (1), appellants must file their appeals within ninety days from the date of the reported delay or failure. This timeframe ensures the timely submission of appeals and facilitates the resolution of grievances without undue delay.

c. Role of the AML/CFT Regulatory Authority: The concerned AML/CFT Regulatory Authority, as stipulated in Section 7J (1), holds the responsibility of addressing appeals filed under this section. This authority is mandated to investigate the reported delays or failures and take appropriate action to resolve the issue.

d. Time resolution of appeals: Section 7J (2) states that the concerned AML/CFT Regulatory Authority is required to decide on the appeal within sixty days. This provision emphasizes the importance of timely resolution to ensure that the appellant’s grievances are addressed promptly and without unnecessary delays.

e. Implications for anti-money laundering and counter financing of terrorism efforts: Section 7J of the AMLA, 2010 plays a crucial role in strengthening the anti-money laundering and counter-financing of terrorism framework in Pakistan. By allowing affected individuals or entities to appeal against delays or failures related to CDD requirements, business relationship establishment, or transactional activities, this section promotes accountability and transparency within reporting entities. It helps in mitigating potential vulnerabilities and weaknesses that could be exploited by money launderers or terrorist financiers.

f. Safeguarding the integrity of financial systems: The provision of an effective appeals mechanism through Section 7J underscores Pakistan’s commitment to ensuring the integrity of its financial systems. By providing an opportunity for affected parties to seek redress and

\(^{499}\) Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 8.
enabling the AML/CFT Regulatory Authority to address reported issues, this section contributes to building a robust and resilient financial ecosystem.

Section 7J of the AMLA, 2010 serves as a crucial tool in combating money laundering and terrorist financing activities in Pakistan. By granting affected individuals or entities the right to appeal and by mandating timely resolution by the concerned AML/CFT Regulatory Authority, this provision establishes an essential mechanism for addressing grievances related to CDD requirements, business relationship establishment, or transactional activities. It promotes transparency, accountability, and the overall effectiveness of anti-money laundering and counter-financing of terrorism efforts, thus bolstering the integrity of Pakistan's financial systems.

**International Best Practices**

This provision seems to be unique to the Pakistan AMLA, and similar provisions dealing with appeals concerning acts/omissions by reporting entities (or entities similar to reporting entities in other jurisdictions) was not found in the AML laws of other states. In addition, nothing concerning the appeal process was present in the FATF Recommendations.

This provision in Section 7J of the Anti-Money Laundering Act 2010 (AMLA) stands out as a distinctive feature within the landscape of AML laws globally. Extensive research conducted on AML frameworks across various jurisdictions has revealed that similar provisions dealing with appeals related to acts or omissions by reporting entities, or entities similar to reporting entities, are noticeably absent. The absence of comparable provisions in other states’ AML laws underscores the uniqueness of Section 7J within the Pakistan AMLA.

Moreover, an examination of international AML/CFT standards, such as the renowned Financial Action Task Force (FATF) Recommendations, further solidifies the distinctiveness of Section 7J. Despite the comprehensive nature of the FATF Recommendations, which serve as the global benchmark for AML/CFT efforts, no explicit guidelines or recommendations pertaining to the appeal process were found within its framework. The absence of any reference to the appeal mechanism in the FATF Recommendations underscores the fact that this provision in the Pakistan AMLA extends beyond the internationally recognized standards.

Given the limited presence of similar provisions in other jurisdictions and the absence of guidance in the FATF Recommendations, the inclusion of Section 7J in the Pakistan AMLA reflects the country’s proactive approach towards addressing gaps within its AML framework. Pakistan’s decision to incorporate an appeals mechanism demonstrates its commitment to ensuring that affected individuals or entities have a formal avenue to voice their grievances and seek redress for delays or failures by reporting entities.

By pioneering the inclusion of an appeals provision, Pakistan has taken a notable step towards bolstering accountability, transparency, and fairness within its AML regime. The provision acts as an additional layer of protection for stakeholders, reaffirming their confidence in the system’s ability to address concerns related to CDD requirements, business relationship establishment, and transactional activities. The distinctive nature of Section 7J further highlights Pakistan’s commitment to maintaining robust AML practices that go beyond the minimum international standards.

**India**

Upon thorough examination of the Prevention of Money Laundering Act, 2002, it becomes evident that this legislation does not include a provision specifically addressing the rights of aggrieved persons to appeal acts or omissions by reporting entities. This distinguishes the Prevention of Money Laundering Act from the Pakistan AMLA and highlights a noteworthy gap in the Indian AML framework. However,
it does contain a provision for a reporting entity that is itself aggrieved to appeal a decision made by a Director,500 but not a provision for any person aggrieved by the act/omission by the reporting entity.

**United Kingdom**

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations (2017) does not appear to contain specific provisions addressing the rights of aggrieved persons to appeal acts or omissions by reporting entities. Unlike the provisions found in Pakistan’s AMLA, which provide an appeals mechanism, the UK regulations do not explicitly cater to the appeals rights of individuals or entities affected by reporting entities’ actions or omissions. However, the regulations do include provisions concerning appeals of decisions made by supervisory authorities, allowing reporting entities to challenge regulatory decisions or directions. 501

The absence of provisions for aggrieved persons within the Money Laundering, Terrorist Financing and Transfer of Funds Regulations highlights a gap in the UK AML framework. While reporting entities have avenues to address disputes or grievances through the appeals process concerning supervisory decisions, there is no equivalent mechanism for individuals or entities affected by acts or omissions of reporting entities. This discrepancy underscores the importance of considering the rights and protections of all parties involved in the AML framework and may prompt discussions on potential revisions to the regulations to ensure comprehensive protection and accountability.

500 s.26(2), Prevention of Money Laundering Act, 2002.
Section 12 – No Civil or Criminal Proceeding against Reporting Entities in Certain Cases

Sec. 12—“No civil or criminal proceedings against banking companies, financial institutions, etc., in certain cases.—Save as otherwise provided in section 7, the financial institutions, non-financial businesses and professions, and their officers shall not be liable to any civil, criminal or disciplinary proceedings against them for furnishing information required under this Act or the rules and regulations made hereunder.”

Analysis of Section 12 of the AMLA 2010

Section 12 of the Anti-Money Laundering Act establishes that any reporting entities and their officers may not be liable to any civil or criminal proceedings for furnishing information under this Act, or the rules and regulations made thereunder. The reporting of a Suspicious Transaction Report (STR) to the Financial Monitoring Unit (FMU) is the starting point of an investigation conducted under the Act. Therefore, in absence of this indemnification, the reporting entities will not report an STR. Hence, making nullifying the effect of the Act in itself.

Key Cases

Misbah Karim and Others vs. Federation of Pakistan.

Brief facts of this case are such that the FIA made an inquiry conducted under AMLA, Foreign Exchange Regulations Act, 1947 and various sections of the PPC:

The FIA moved an application under Section 94 under CRPC before the sessions judge, who allowed the application, holding that the FIA was allowed to gather requisite information from financial institutions to conduct the investigation.

This judgement decides whether the FIA can initiate on its own, an investigation under AMLA, and whether the courts have the power to order banks to provide any relevant data. This judgement does not specifically revolve around Section 12 of the act, however, references to Section 12 have been made, demonstrating its significance.

Paragraph 25 of the judgement holds that the starting point of an investigation under AMLA is the reporting of an STR by a reporting entity. This goes on to depict that if reporting entities are not protected by way of indemnity under Section 12, such reporting entities will never opt to report to the FMU. Hence, nullifying the purpose of the Act.

In paragraph 35 of the Judgement, Section 12 of the Act is read together with Section 7(2). It held that Section 12 of the Act is applied more to financial institutions, non-financial businesses and professions such as real estate agents, jewelers etc. and those other professions defined in Section 2(M) of the Act, as non-financial businesses and professions that are also reporting entities under Section 2(U) of the Act.

Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 8.

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International Best Practices

FATF Recommendations

FATF by way of Recommendation 21(a), recommends that no civil or criminal proceeding must be initiated against a reporting agency if such reporting is done in good faith. The object and purpose of this recommendation are to encourage banks and financial agencies to report any suspicious transaction without the fear of being held accountable.

The said recommendation is being reproduced below for facilitation:

FATF Recommendation 21 “Tipping-off and Confidentiality” states that Financial institutions, their directors, officers and employees should be:

(a) Protected by law criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred; and

(b) Prohibited by law from disclosing (“tipping-off”) the fact that a suspicious transaction report (STR) or related information is being filed with the FIU. these provisions are not intended to inhibit information sharing under Recommendation 18.

Model Provisions


Section 27 of the Model Provision requires that no criminal, civil, disciplinary or administrative proceeding must be initiated against financial institutions and designated non-financial businesses, or any of its employees for reporting an STR to the relevant investigating authorities. The object of this provision is to ensure that such reporting institutions do not refrain from reporting STRs in fear of legal action.

504 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendations

505 https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf%20recommendations%202012.pdf

The said recommendation is being reproduced below for facilitation:

**Section 27. Exemption from Liability for Good Faith Reporting of Suspicious Transactions**

No criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or contract shall lie against financial institutions and designated non-financial businesses and professions or their respective directors, principals, officers, partners, professionals or employees who in good faith submit reports or provide information in accordance with the provisions of this law.  

**India**

Section 14 of India’s *Prevention of Money Laundering Act of 2002* also provides indemnity to reporting entities i.e banking companies, financial institutions, intermediaries and their officers. Such indemnity entails exemption from any criminal or civil proceedings under any other Indian law. However, this provision also holds that if upon a request of a director, a reporting entity fails to furnish requisite information pertaining to STRs, the director has the authority to fine the said reporting entity.

The said provision is being reproduced below for facilitation:

**Section 14. No civil proceedings against banking companies, financial institutions etc., in certain cases**

Save as otherwise provided in Section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of Section 12.

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Section 25 – Assistance to Authorities

25. Assistance to authorities —

(1) Notwithstanding the provisions of any other law, the officers of the Federal Government, Provincial Government, local authorities and reporting entities shall provide assistance including but not limited to production of records, documents and information reasonably required by the investigating or prosecuting agency or FMU for the purposes of money laundering, predicate offences and financing of terrorism proceedings and investigations in accordance with the provisions this Act.

(2) Whoever willfully fails or refuses to provide the required assistance under sub-section (1) shall be guilty of misconduct and shall be proceeded against by its respective department or organization and a report of such proceedings shall be submitted within reasonable time to the concerned investigating or prosecuting agency or FMU, as the case may be and shall be punished in the case of a natural person, with an imprisonment for a term which may extend up to five years, a fine which may extend to rupees one million or both, or in the case of a legal person, with a fine which may extend to rupees ten million.

Analysis of Section 25 of the AMLA 2010

This Section was amended in September 2020. Previously, this Section dealt with the responsibility of officers to assist in inquiry however, the amendment requires a wider range of entities to provide assistance to investigating and prosecuting agencies as well as the FMU. The objective of Section 25 is to ensure cooperation with regards to AML/CFT investigations by the Federal and Provincial Governments and local authorities as well as all reporting entities. Section 25 provides that these entities must provide assistance to the investigating and prosecuting agency or the Financial Monitoring Unit (FMU) when required, and failure to do so will lead to a finding of misconduct on their part which is punishable under this Section. For natural persons this punishment extends to a maximum of five years in prison, a fine of one million rupees, or both and for a legal person this punishment is a fine of maximum ten million rupees.

Section 25 deals with the requirement of providing assistance to investigating and prosecuting agencies as well as the FMU and imposes this requirement on the Federal and Provincial Governments as well as local authorities and reporting entities. While the terms Federal and Provincial Governments as well as local authorities are clear, reporting entity has been defined within Section 2 (xxxiv) of the AMLA 2010 which states,

“reporting entity means financial institutions and DNFBPs and any other person notified by the Federal Government in the official Gazette;”

Thus, the requirement under Section 25 is wide and embodies a strict standard which must be fulfilled by all those subjected to this requirement. The elements of assistance required under this Section includes the production of records, documents and information reasonably required by the authorities requiring such assistance for the purposes of money laundering, predicate offences and financing of terrorism proceedings and investigations in line with the Act. This requirement is of great significance for the purposes of conducting AML/CFT investigations as investigators and prosecutors require evidence of the purposes of a successful investigation and ultimate conviction. If this assistance is not provided and information important to the investigation is not furnished, then prosecution is likely to fail due to lack of evidence against the perpetrator of the crimes.
The assistance required of Federal and Provincial Governments may include assistance with regards to provision of human resource, infrastructure and other resources as may be required to conduct the investigation. Additional duties of the Federal and Provincial Governments include:

- The federal government is responsible for implementing policies and procedures to prevent and combat money laundering and terrorist financing.
- It must establish a financial intelligence unit (FIU) to collect, analyze and disseminate financial intelligence related to money laundering and terrorist financing.
- It must establish a regulatory framework for the reporting entities, such as financial institutions, designated non-financial businesses and professions (DNFBPs), and other entities, to comply with the provisions of the Act.
- The federal government has the power to investigate, prosecute and penalize any person or entity found guilty of money laundering or terrorist financing activities.
- It must cooperate with other countries and international organizations in matters related to money laundering and terrorist financing.
- The provincial government must ensure compliance with the provisions of the Act within its jurisdiction.
- It must provide support to the federal government in implementing the policies and procedures to prevent and combat money laundering and terrorist financing.
- The provincial government must establish a provincial monitoring committee to oversee the implementation of the Act within its jurisdiction.
- It must establish a regulatory framework for the reporting entities, such as real estate agents, dealers in precious metals and stones, and other businesses within its jurisdiction, to comply with the provisions of the Act.
- The provincial government must assist in the investigation, prosecution, and penalization of any person or entity found guilty of money laundering or terrorist financing activities within its jurisdiction.

Further, it is essential to understand the obligations of reporting entities under this law to identify the nature of assistance they may be able to provide to investigating and prosecuting agencies. These obligations are found within Section 7 and include:

- Customer Due Diligence (CDD): Reporting entities are required to conduct CDD measures for their customers, including identifying and verifying their identity, identifying beneficial ownership, and obtaining information on the purpose and intended nature of the business relationship.
- Record Keeping: Reporting entities are required to maintain records of their customers and their transactions for a period of at least five years.
- Reporting of Suspicious Transactions: Reporting entities are required to report any suspicious transactions to the Financial Monitoring Unit (FMU) within seven days of becoming aware of them.
- Reporting of Cash Transactions: Reporting entities are required to report cash transactions of PKR 2 million or more to the FMU.
- Compliance Officer: Reporting entities are required to appoint a compliance officer who is responsible for ensuring that the reporting entity complies with the provisions of the Act.
- Training: Reporting entities are required to provide regular training to their employees to ensure that they are aware of their obligations under the Act.
- Cooperation with Regulatory Authorities: Reporting entities are required to cooperate with the regulatory authorities in the investigation of money laundering and terrorist financing cases.
Prohibition on Tipping-Off: Reporting entities are prohibited from tipping off their customers or any other person that a suspicious transaction report has been made to the FMU.

Risk Assessment: Reporting entities are required to conduct risk assessments to identify and assess the money laundering and terrorist financing risks associated with their customers, products, services, and transactions.

Implementation of Policies and Procedures: Reporting entities are required to implement policies and procedures to manage and mitigate the money laundering and terrorist financing risks identified through their risk assessments.

Considering a wide range of obligations apply on reporting entities, the record collected as a result of these obligations must then be made accessible to investigating and prosecuting agencies as well as the FMU to ensure that adequate financial information is furnished and can be used to build a robust case, where sufficient evidence is present. Particularly, the obligation on record keeping is found within Section 7C of the AMLA 2010 which states,

“Record keeping. — Every reporting entity shall maintain a record of all transactions for a period of at least five years following the completion of the transaction, and records of account files, business correspondence, documents, of all records obtained through CDD and the results of any analysis undertaken for a period of at least five years following the termination of the business relationship.”

Thus, the record maintained under this obligation must be made accessible to investigating and prosecuting agencies as well the FMU under Section 25. Failure to do so would lead to criminal liability as explained previously as well.

**Code of Criminal Procedure, 1898**

Section 94 of the Code of Criminal Procedure also deals with summonses to produce documents or other relevant evidence. It provides that the Court and police officers have the power to require the production of documents or things during an investigation, inquiry, trial or other proceeding under this Code.

Specifically, this section allows the Court to issue a summons or the officer in charge of a police station to issue a written order to a person who is believed to be in possession of a document or thing that is necessary or desirable for the purpose of the investigation, inquiry, trial or other proceeding. The person is required to attend and produce the document or thing at the time and place stated in the summons or order.

However, the provision has an exception that no officer can issue an order for the production of any document or other thing which is in the custody of a bank or banker as defined in the Banker’s Books Evidence Act, 1891. This is because such documents might disclose sensitive information about the bank account of any person, and it is necessary to protect their privacy. In certain cases, with the prior written permission of a Sessions Judge or the High Court, such documents or things can be produced for the purpose of investigating specific offenses. However, as financial institutions are reporting entities under the AMLA 2010, this requirement will not apply when requiring furnishing of financial information from financial institutions and records maintained by them must be made available to investigating and prosecuting agencies.

The provision also states that if a person is required to produce a document or other evidence, they can comply by causing such document or thing to be produced instead of attending personally. Lastly, the provision clarifies that it does not affect the Evidence Act, 1872, Sections 123 and 124, which relate to privileged communications, or apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph Authorities.
Key Cases

Section 25 initially dealt with the requirement imposed on officers to ensure assistance to investigators. Pursuant to the old section, the following case was decided;

Misbah Karim v. Federation of Pakistan 2016⁵⁰⁸

In this case, the Federal Investigation Agency had initiated an investigation relating to money laundering and required copies of a bank record for which the Sessions Court granted permission. However, the petitioners argued that under Section 94 of the Cr.P.C. this was not allowed and permission to access record could not be granted at the inquiry stage, and that no inquiry could be initiated without information from the Financial Monitoring Unit. However, the Court held that the FIA was allowed to initiate a money laundering inquiry on its own and in such circumstances, assistance was to be provided to it.

It can be expected that the approach undertaken under this case will remain same under the current Section 25 as well.

International Best Practices

FATF Recommendations

The FATF Recommendations lay down various guidelines for states to ensure assistance to investigative authorities when conducting money laundering investigations. Some of these include:

- Recommendation 36: Countries should ensure that competent authorities can obtain access to the information they need to conduct financial investigations. This includes the power to compel the production of necessary documents and information, and the ability to share this information domestically and internationally.
- Recommendation 37: Countries should ensure that their competent authorities have the legal authority, capacity, and resources to identify, trace, and freeze or seize proceeds and instrumentalities of crime, and to facilitate and support the investigation and prosecution of money laundering and terrorist financing cases.
- Recommendation 38: Countries should ensure that their competent authorities provide the widest possible range of international cooperation in the investigation, prosecution, and forfeiture of proceeds and instrumentalities of crime, including through mutual legal assistance, extradition, and other mechanisms.

This means that assistance must be provided by governments be it at the federal level or a provincial level to support investigative agencies in fulfilling their mandates and completing all essential requirements. This support includes furnishing of information, record, documentation etc. which may be relevant to the investigative process and thus, if the government has credible information which is relevant to the investigation, then the investigative agency will be able to request such information to be shared with them under the law.

Moreover, the Recommendations explain the obligations on reporting entities including financial institutions and DNFBPs. Key obligations for these institutions include:

⁵⁰⁸ 2016 PLD 462 Karachi High Court
• Recommendation 10: Financial institutions, including banks, insurance companies, and money service businesses, should conduct customer due diligence (CDD) to identify and verify the identity of their customers and beneficial owners of their customers. They should also monitor their transactions and report any suspicious activities to the relevant authorities.

• Recommendation 22: Designated non-financial businesses and professions (DNFBPs), such as lawyers, accountants, and real estate agents, should also conduct CDD measures and report suspicious activities to the relevant authorities.

• Recommendation 23: Reporting entities, including both financial and non-financial businesses, should have appropriate internal controls and systems in place to ensure compliance with AML/CFT (anti-money laundering/combating the financing of terrorism) laws and regulations. They should also provide regular training to their employees to help them identify and report suspicious activities.

• Recommendation 25: Reporting entities should cooperate with the relevant authorities, including providing information and assistance when requested, and not disclosing the fact that they have made a suspicious activity report (SAR) to the customer or any other third party.

Recommendation 25 is closest to Section 25 of the AMLA 2010 as it requires reporting entities to ensure that they operate not only in line with their obligations to collect information, conduct CDD etc. but also ensure effective assistance to be provided to authorities when they conduct money laundering investigations.
Section 34 – Disclosure of Information

34. Disclosure of information.—

(1) The directors, officers, employees and agents of any reporting entity or intermediary which report an STR or CTR pursuant to this law or any other authority, are prohibited from disclosing, directly or indirectly, to any person that the transaction has been reported unless there are disclosure agreements for corporate groups in accordance to regulations made hereunder; and

(2) A violation of the sub-section (1) is a criminal offence and shall be punishable by a maximum term of five years imprisonment or a fine which may extend to two million rupees or both.

(3) Any confidential information furnished by a reporting entity or any other person under or pursuant to the provisions of this Act, shall be kept confidential by the FMU, investigation agency or officer as the case may be.

Analysis of Section 8 of the AMLA 2010

Section 34 of the AMLA 2010 pertains to the disclosure of information and confidentiality of STRs and CTRs. Directors, officers, employees and agents of reporting entities or intermediaries which report STRs or CTRs are prohibited from disclosing that a transaction has been reported to maintain confidentiality. Section 34(2) also contains sanctions for breach of confidentiality related to STR reporting. Any violation of the 34(1) prohibition is a criminal offence which can result in imprisonment of five years or a fine of up to two million rupees or both. Finally, all confidential information shared by a reporting entity must be kept confidential by the FMU, investigation agency or officer.

All the above provisions work towards ensuring a successful and effective reporting regime in Pakistan. Confidentiality of STRs also known as non-disclosure of information is required so that the subject of a STR and third parties are not tipped-off, as this adversely impacts intelligence gathering and can enable persons to dispose of assets before an investigation is conducted. The sensitivity of the information contained in STRs and CTRs requires that they be dealt with in a confidential manner to ensure the effectiveness of the reporting regime.

a. Disclosing a transaction has been reported

Reporting entities must ensure that individuals are not tipped off regarding the reporting of an STR or CTR to the FMU. As a result, section 34(1) AMLA contains prohibitions on disclosing whether a transaction has been reported. It states that directors, officers, employees and agents of any reporting entity or intermediary which report an STR or CTR are prohibited from directly or indirectly disclosing to any person that a transaction has been reported. One exception to the tipping off requirement is if disclosure agreements for corporate groups are in place in accordance with AML/CTF regulations. Therefore, the AMLA balances the requirements of building an effective reporting regime which prevents tipping off and respecting corporate disclosure agreements.
b. Sanctions for breach of confidentiality

AMLA also provides sanctions for breach of confidentiality related to STR reporting. As per Section 34(2), a violation of Section 34(1) is a criminal offence which is punishable by a maximum term of five years imprisonment or a fine which may extend to two million rupees or both.509

509 Section 34(2) AMLA 2010

The FMU, investigating agencies or officers are required to ensure all information provided to them by reporting entities or any other person under the AMLA is kept confidential.510 This is to ensure that no information relevant to an investigation is shared thereby maintaining the efficacy of the AML/CFT regime.

International Best Practices

FATF Recommendations

The FATF Recommendations are internationally endorsed global standards against money laundering and terrorist financing. They set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing.

FATF Recommendation 21 on tipping-off and confidentiality related to the reporting of suspicious transactions states that “[f]inancial institutions, their directors, officers and employees should be: (b) prohibited by law from disclosing (“tipping-off”) the fact that a suspicious transaction report (STR) or related information is being filed with the FIU. These provisions are not intended to inhibit information sharing under Recommendation 18.” Recommendation 18 relates to internal controls and foreign branches and subsidiaries. It stipulates that financial groups should be required to implement group-wide programmes against ML/TF, including policies for the sharing of information within the group for AML/CFT purposes. Therefore, while financial institutions, their directors, officers and employees must not disclose that a transaction has been reported, this must not inhibit information sharing within financial groups for AML/CFT purposes.

This recommendation is adequately addressed in section 34(1) of AMLA, where the directors, officers, employees and agents of any reporting entity or intermediary which report an STR or CTR as per AMLA or any other authority are prohibited from disclosing, directly or indirectly, to any person that a transaction has been reported unless there are disclosure agreements for corporate groups in accordance with regulations made under AMLA. The AMLA exception for disclosure agreements for corporate groups largely reflects FATF Recommendation 21 and 18 as the disclosure agreements mentioned in AMLA aim to facilitate information sharing between financial groups with the aim of strengthening the AML/CFT regime. In addition, Section 34(1) carries the protection that the disclosure agreements for corporate groups must be in accordance with the regulations made under the Act, ensuring that they do not subvert the aim of Section 34 confidentiality.

The FATF Recommendations do not contain any specific guidance relating to sanctions for breach of confidentiality or confidentiality of information as included in Section 34(2) and 34(3) of AMLA.

510 Section 34(3) AMLA 2010
Model Provisions

The ‘Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures and Proceeds of Crimes’ provide guidelines on furnishing information from reporting entities. The relevant provisions have been reproduced below.

**Disclosing a transaction has been reported**

**Section 20: Prohibition against Tipping-off**
Any accountable person, or any director, partner, officer, principal or employee thereof, who discloses to a customer or a third party that a report under Section 17(1), or other information, is being or has been submitted to [insert name of FIU], or that a money laundering or terrorism financing investigation has begun, is being or has been carried out, except in the circumstances provided for in subsection (2) or when otherwise required by law to do so, commits an offence that shall be punishable by imprisonment of up to [insert imprisonment range] and a fine of up to [insert monetary range], or both.

Subsection (1) does not apply where a disclosure was made in order to carry out any function that a person has relating to the enforcement of any provision of this Act or of any other enactment.

Section 34(1) of AMLA reflects Section 20 of the Model Provisions. Similar to the Model Provisions, AMLA stipulates that “directors, officers, employees and agents of any reporting entity or intermediary which report an STR or CTR pursuant to this law or any other authority” are committing a criminal offence if they disclose, directly or indirectly, to any person that a transaction has been reported. Section 20 of the Model Provisions, however, is wider than Section 34 AMLA in the information that is disclosed. AMLA only refers to the fact that the transaction has been reported, while the Model Provisions include information that a report is being or has been submitted, or an ML/TF investigation has begun, is being or has been carried out.

The AMLA and the Model Provisions contain a similar exception to the disclosure of information prohibition. Any accountable person, therefore, is not liable for committing an offence under Section 20(1) of the Model Provisions where the disclosure was made in order to carry out a function relating to the enforcement of any provision of the Act or other enactments. Similarly, the prohibition on disclosure in Section 34(1) AMLA does not apply where there are disclosure agreements for corporate groups, which is a function relating to the enforcement of overall provisions of increasing information sharing between financial groups.

**Sanctions for breach of confidentiality**

**Section 29: Confidentiality Violation**
Any accountable person, including any director, partner, officer, principal or employee thereof, who intentionally discloses to a customer or a third party information in violation of Section 20(1) commits an offence under this Part that shall be punishable by imprisonment up to [insert imprisonment range] or a fine up to [insert monetary range], or both.

Both section 34(2) of AMLA and Section 29 of the Model Provisions mirror each other. Both provisions identify a violation of confidentiality as an offence that is punishable by imprisonment, a fine, or both.
Confidentiality of Information

Section 32: Obligation Regarding Confidentiality and Use of Information
(1) Every person who has duties for or within [insert name of FIU] is required to keep confidential any information obtained within the scope of his or her duties, even after the cessation of those duties, except as otherwise provided in this Act and [insert reference to State’s preventive measures provisions] or as ordered by a court. Such persons may use such information only for the purposes provided for and in accordance with this Part and [insert reference to State's preventive measures provisions].

(2) Any current or past employee of [insert name of FIU] or other person who has duties for or within [insert name of FIU] who intentionally reveals information the confidentiality of which is required to be protected by subsection (1) commits an offence that shall be punishable by imprisonment of up to [insert imprisonment range] and a fine of up to [insert monetary penalty range], or both.

Section 34(3) of AMLA contains similar requirements to the Model Provision above, where the FMU, investigating agency, or officer must keep any confidential information provided by a reporting entity or any other person confidential. Section 34(3) AMLA is broader - making intentionally revealing confidential information an offence punishable by imprisonment or fine or both. This is stipulated in Section 32(2) of the Model Provisions but is not reflected in the AMLA.

Australia

The Australian regime for AML/CFT includes the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CFT Act) and the Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CFT Rules), which aim to prevent money laundering and the financing of terrorism by imposing obligations on the financial sector, gambling sector, remittance services, bullion dealers and other professionals or businesses (known as “reporting entities”) that provide particular services (known as “designated services”). The Australian Transaction Reports and Analysis Centre (hereinafter referred to as “AUSTRAC”) is the Australian Government Agency (similar to the FMU in Pakistan) responsible for detecting, deterring and disrupting criminal abuse of the financial system to protect the community from serious and organised crime.

Disclosing a transaction has been reported

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Section 121: Offence of tipping off

(1) A reporting entity must not disclose to a person other than an AUSTRAC entrusted person:
   (a) that the reporting entity has given, or is required to give, a report under subsection 41(2); or
   (b) any information from which it could reasonably be inferred that the reporting entity has given, or is required to give, that report.

(2) If:
   (a) a reporting entity gives a report to the AUSTRAC CEO under section 41, 43 or 45; and
   (b) in connection with that report, the reporting entity (the recipient) or another person (also the recipient) is required by a notice under subsection 49(1) to give information or produce a document; the recipient must not disclose to a person (except an AUSTRAC entrusted person,

the person who gave the notice or any other person who has given a notice to the recipient under subsection 49(1) in connection with that report:
(c) that the recipient is or has been required by a notice under subsection 49(1) to give information or produce a document; or
(d) that the information has been given or the document has been produced; or
(e) any information from which it could reasonably be inferred that:
   (i) the recipient had been required under subsection 49(1) to give information or produce a document; or
   (ii) the information had been given under subsection 49(1); or
   (iii) the document had been produced under subsection 49(1).

Exception—members of a corporate group

(7) Subsection (1) does not apply to the disclosure of information by a reporting entity (the first entity) if:
   (a) the first entity belongs to a corporate group; and
   (b) the information relates to the affairs of a person (the relevant person) who is, or was, a customer of the first entity or who made inquiries referred to in subparagraph 41(1)(c)(i) of the first entity; and
   (c) the disclosure is made to a body corporate (the related body corporate) that belongs to the corporate group; and
   (d) the related body corporate is a reporting entity or is regulated by one or more laws of a foreign country that give effect to some or all of the FATF Recommendations; and
   (e) if the related body corporate is regulated by one or more laws of a foreign country that give effect to some or all of the FATF Recommendations—the related body corporate has given the first entity a written undertaking for:
      1. (i) protecting the confidentiality of information that may be disclosed to the related body corporate under this subsection; and
      2. (ii) controlling the use that will be made of the information; and
      3. (iii) ensuring that the information will be used only for the purpose for which it is disclosed to the related body corporate; and
   (f) the disclosure is made for the purpose of informing the related body corporate about the risks involved in dealing with the relevant person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the Criminal Code).

(7AA) A reporting entity to whom information has been disclosed under subsection (7) must not disclose the information unless:
   1. (a) the disclosure is made to another reporting entity that belongs to the corporate group; and
   2. (b) the disclosure is made for the purpose of informing the other reporting entity about the risks involved in dealing with the relevant person.

Exception—members of a designated business group

(7AB) Subsection (1) does not apply to the disclosure of information by a reporting entity (the first entity) if:
   (a) the first entity belongs to a designated business group; and
   (b) the information relates to the affairs of a person (the relevant person) who is, or was, a customer of the first entity or who made inquiries referred to in subparagraph 41(1)(c)(i) of the first entity; and
(c) the disclosure is made to another person (the related person) that belongs to the designated business group; and
(d) the related person is a reporting entity or is regulated by one or more laws of a foreign country that give effect to some or all of the FATF Recommendations; and
(e) if the related person is regulated by one or more laws of a foreign country that give effect to some or all of the FATF Recommendations—the related person has given the first entity a written undertaking for:
   (i) protecting the confidentiality of information that may be disclosed to the related person under this subsection; and
   (ii) controlling the use that will be made of the information; and
   (iii) ensuring that the information will be used only for the purpose for which it is disclosed to the related person; and
(f) the disclosure is made for the purpose of informing the related person about the risks involved in dealing with the relevant person.

Although the Australian AML/CFT Act contains detailed requirements relating to the offence of tipping off and confidentiality, it is generally similar to the Section 34 requirements in AMLA. As per the AML/CFT Act, a reporting entity must not disclose to a person other than an officer of the FIU that a report needs to be or is being submitted. This is in practice, identical to the requirement in Section 34(1) where directors, officers, employees and agents of any reporting entity or intermediary which report an STR or CTR are prohibited from disclosing, directly or indirectly, to any person that the transaction has been reported. The AML/CFT Act, however, goes further to obligate that the reporting entity must not disclose any information from which it could be reasonably inferred that the reporting entity has made or is making a report. This is wider than the AMLA requirement as it obligates reporting entities to ensure that incidental information which may tip-off an STR is not shared. In practice, however, it is unclear how much of a difference this additional provision would make if it were adopted within the AMLA.

Both AMLA and the AML/CFT Act contain exceptions to the prohibition on disclosing that a report has been made. In AMLA, this exception is if there are disclosure agreements for corporate groups in accordance with AML/CFT regulations. In the AML/CFT Act, on exception relates to membership of a designated business group. It holds that the prohibition on disclosure would not apply where a reporting entity belongs to a designated business group, the disclosure is made for the purposes of informing the related person of the risks involved in dealing with the person who is the subject of a report, and the conditions in Section (7A)(1)(b) – (e) are met. While these two exceptions vary slightly, they have a similar aim, that is to ensure that the prohibition on disclosure does not interfere with business groups' internal disclosure requirements and to allow reporting entities to inform other entities of the risks of getting involved with a relevant person.

**Sanctions for breach of confidentiality**

**Section 123: Offence of tipping off**

**Offence**

(11) A person commits an offence if:
   (a) the person is subject to a requirement under subsection (1), (2), (5A), (5C), (7AA), (7AC), (7B) or (8A); and
   (b) the person engages in conduct; and
   (c) the person’s conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 2 years or 120 penalty units, or both.

Both the Australian AML/CFT Act and the AMLA contain similar sanctions for breach of confidentiality. However, the penalties stipulated in Section 34 AMLA and Section 123 AML/CFT Act differ. Breach of Section 34(1) AMLA is punishable by a maximum of five years imprisonment or a fine extending to two
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millions of rupees or both. While the penalty in the AML/CFT Act is imprisonment for 2 years or 120 penalty units, or both.

Confidentiality of Information

Section 120: Simplified outline of this Part

• Except as permitted by this Act, an AUSTRAC entrusted person must not access, make a record of, authorise access to, disclose or otherwise use AUSTRAC information.

Pursuant to s 34(3) of the AMLA, all confidential information provided by the reporting entities or by any other person under or pursuant to the provisions of this Act must be kept confidential by the FMU, investigation agency or officer as the case may be. Similarly, the AML/CFT Act requires that an AUSTRAC entrusted person must not access, make a record of, authorise access to, disclosure or otherwise use AUSTRAC information. In this way both sections of the respective acts ensure the confidentiality of information.

India

India has enacted the Prevention of Money Laundering Act, 2002 to prevent money laundering and to provide for the confiscation of property derived from or involved in money laundering and for matters connected to or incidental to it. The following paragraphs compare the Prevention of Money Laundering Act 2002 (PMLA) in India to the Anti-Money Laundering Act 2010 in Pakistan.

Confidentiality of Information

Section 12. Reporting entity to maintain records. —

(1) Every reporting entity shall—

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
(c) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

Section 12A: Access to information. —

(1) The Director may call for from any reporting entity any of the records referred to in [section 11A, sub-section (1) of section 12, sub-section (1) of section 12AA] and any additional information as he considers necessary for the purposes of this Act.

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.

Similar to Section 34(3) of AMLA, Section 12A of PMLA requires that all information requested by the Director from a reporting entity is kept confidential. In addition, all records of the reporting entity must
also be kept confidential as per Section 12 of PMLA and section 34(3) of AMLA. The requirement for confidentiality of information is sufficiently addressed in both Section 34, AMLA and Section 12 and 12A PMLA.
Chapter 9
International Cooperation

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Overview

The transnational nature of ML/TF offenses poses significant challenges for individual countries in effectively addressing these crimes. The globalized financial system, coupled with the ease of cross-border transactions, allows criminal networks to exploit jurisdictional boundaries and conceal illicit activities. Recognizing the urgency and importance of combating ML and TF on a global scale, multiple international conventions and legal instruments have emphasized the need for international cooperation and information exchange among countries. The term "international cooperation" in criminal matters broadly encompasses mutual legal assistance (MLA) and extradition, which are instrumental in overcoming the challenges associated with transnational crime. These mechanisms facilitate the exchange of information, evidence, and legal assistance between countries, enabling joint efforts to combat ML and TF.

Mutual legal assistance (MLA) involves countries agreeing to gather and exchange evidence to support legal action in criminal cases. Through MLA, countries can request assistance from one another in investigations, prosecutions, and asset recovery related to ML and TF offenses. Additionally, countries that are parties to key United Nations Conventions, such as the Vienna Convention (1988) on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Palermo Convention (2000) against Transnational Organized Crime, the United Nations Convention against Corruption (2003), and the Terrorist Financing Convention (1999), are encouraged to establish avenues of international cooperation to tackle transnational crime effectively.

In the case of Pakistan, the country faces specific challenges in combating ML and TF. Risk assessments have identified an elevated risk of TF and ML, as funds are generated both domestically and abroad to support terrorist organizations and their operations within and outside the country. The authorities in Pakistan grapple with tracing the financial links associated with TF, given the presence of a large undocumented/informal economy, the extensive use of cash, significant illegal hawala/hundi activity, the country's geographically diverse landscape with porous borders, and the presence of Afghan refugees. To address these evolving risks, national authorities are actively engaged with all relevant agencies, including law enforcement, to update and disseminate information, facilitating the targeting, investigation, and prosecution of TF activities in line with the identified risks.

This chapter analyzes the intersection of Pakistan's domestic legal framework, particularly the AMLA 2010, with the country's approach to international cooperation in combating ML and TF. In conjunction with the AMLA, we will examine the Extradition Act of 1972 and the Mutual Legal Assistance Act of 2020 and MLA Guidelines issued by the Ministry of Interior, which establish the legal basis for cooperation and information sharing with foreign jurisdictions. By delving into these interrelated laws, we can gain deeper insights into Pakistan's approach to international cooperation, explore the effectiveness of existing mechanisms for cooperation and information sharing, and identify potential areas for improvement to enhance the country's ability to combat ML and TF on a global scale.
Relevant Definitions

**Attachment:** “attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under section 8. Black’s Law Dictionary defines attachment as “the act or process of taking, apprehending, or seizing property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used for acquiring jurisdiction over the property seized.”

**Contracting State:** Refers to any foreign jurisdiction in respect of which the Federal Government has made arrangements with the other country through a treaty.

**Evidence:** Any statement which is recorded or any document which is found or anything which is received can be deemed to be evidence that is collected at the time of investigation which is done by the police officer. Evidence includes statements which either the court permits or requires before by witness and all documents which are produced to be inspected by the Court.

**Identifying:** the expression of identifying consists of establishment of a proof that the property in question was either derived from or used in a crime’s commission.

**Investigating/Prosecuting Agencies:** An “investigating or prosecuting agency” means the National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation – Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under AMLA.

**Offence:** is an act or an omission that the law has made punishable for as long as it is in force. All offences must be investigated, as well as enquired into, tried and dealt with the provisions in accordance with the crime.

**Property:** Property encompasses a wide range of assets, both tangible and intangible, that are subject to legal ownership rights. Tangible property includes physical objects like land, buildings, and personal belongings, while intangible property encompasses intellectual property, financial instruments, contractual rights, and securities. Property also includes legal documents such as deeds, titles, and other instruments that serve as evidence of ownership or interest in a specific property or asset. Furthermore, it extends to monetary instruments, including cash and equivalents, regardless of their physical location or material nature. In simpler terms, property refers to everything you own, whether it’s something you can touch like houses and cars or something intangible like ideas and patents. It also includes documents that prove ownership and money.

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513 Section 8 of the AMLA 2010: This section provides guidelines for an investigating officer to temporarily attach properties suspected to be involved in money laundering. With court approval, an officer can secure a property for up to 180 days based on investigation or prosecution agency reports, and this period can be further extended by the court for another 180 days. Within 48 hours of the attachment, a copy of the order and the report should be sent to the head of the investigating agency. This attachment order expires either after the specified period or when findings are made under section 9(2), whichever comes first. Notably, this rule does not prevent any interested party from enjoying the immovable property. Furthermore, the officer who attaches the property is required to provide the court with a monthly progress report on the investigation.


519 Section 2(xxx) of the AMLA 2010: “property” means property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets including cash and monetary instruments, wherever located.
Public order: Public order is a condition characterized by the absence of widespread criminal and political violence, such as kidnapping, murder, riots, arson, and intimidation against targeted groups or individuals.\textsuperscript{520}

Reciprocal: In the general context, “a reciprocal action or arrangement involves two people or groups of people who behave in the same way or agree to help each other and give each other advantages.”\textsuperscript{521} In the legal context, reciprocity has been defined as the “mutual exchange of privileges between states, nations, businesses or individuals for commercial or diplomatic purposes.”\textsuperscript{522}

Reporting Entity: Reporting entities are defined under Section 2(xxiv) of AMLA 2010. They include “financial institutions” as defined in Section 2(xiv) and “Designated Non-Financial Businesses & Professions or DNFPBs” as defined in Section 2(xii) and any other person notified by the Federal Government in the official Gazette.

Search warrant: A search warrant, as defined under Section 96 of the CrPC of 1908, is an official authorization issued by a court. The warrant is granted when the court has a reasonable belief that a person who has been served a summons, order under Section 94, or a requisition under Section 95(1) either willfully fails to produce the required document or item, or when the court is unaware of any person in possession of such document or item. Additionally, a search warrant may be issued by the court if it determines that a general search or inspection is necessary to serve the purposes of an inquiry, trial, or any other legal proceedings under the CrPC. Once a search warrant is issued, it grants the person to whom it is directed the authority to conduct a search or inspection in accordance with the terms and provisions outlined in the warrant. This allows them to search the designated premises, location, or person to find and seize the relevant document or item mentioned in the warrant. The issuance of a search warrant is a legal mechanism that ensures the proper authority and guidelines are followed when conducting searches and inspections in the context of criminal investigations and proceedings.

Sovereignty: It has been defined as “the supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.”\textsuperscript{523}

Summons: Summons is a mandate of the court meant to apprise and call upon the defendant to appear and answer the claim on the date fixed. The court may also direct to file written statement on the said date. The summons should show what claim the defendant is called upon to answer and on what date he is to be heard.\textsuperscript{524}

Transfer: Sale, lease, purchase, mortgage, pledge, gift, loan, or any other form of transfer of right, title, possession or lien.


\textsuperscript{521}https://dictionary.cambridge.org/dictionary/english/reciprocal

\textsuperscript{522}https://www.law.cornell.edu/wex/reciprocity#:~:text=Reciprocity%20is%20the%20mutual,for%20commercial%20and%20diplomatic%20purposes.


\textsuperscript{524}Order V, Rule 1 of the Code of Civil Procedure, 1908
Tracing: this refers to determining the nature, source, disposition, as well as the movement, title or ownership of the property.  

Warrant of Arrest: A warrant of arrest, as defined under Section 75 of the CrPC of 1908, is a written order issued and signed by a magistrate. This order is directed to a peace officer or a specifically named individual, commanding them to apprehend the person whose name is mentioned in the warrant. The purpose of the warrant is to authorize the arrest of an individual who is accused of committing an offense. In accordance with the provisions of Section 75, any warrant of arrest issued by a court must be in writing, bearing the signature of the presiding officer or, in the case of a Bench of Magistrates, any member of such Bench. Additionally, the warrant should be affixed with the seal of the court to establish its authenticity and legal validity.

Section 26 to 31 – International Cooperation

26. Agreements with Foreign Countries

1. The Federal Government may enter into an agreement on reciprocal basis with the Government of any country outside Pakistan for –
   a) the investigation and prosecution of any offense under this Act or under the corresponding law in force in that country;
   b) exchange of information for the prevention of any offense under this Act or under the corresponding law in force in that country;
   c) seeking or providing of assistance or evidence in respect of any offense under this Act or under the corresponding law in force in that country;
   d) transfer of property relating to any offense under this Act or under the corresponding law in force in that country;

2. The agreement in terms of sub-section (1) shall be subject to such conditions, exceptions or qualifications as may be specified in the said agreement:

Provided that the agreement shall not be enforceable if it may, in any manner, be prejudicial to the sovereignty, security, national interest or public order.

3. In this section, and the succeeding sections, unless the context otherwise requires, –
   a) the expression “contracting State” means any country or place outside Pakistan in respect of which arrangements have been made by the Federal Government with the Government of such country through a treaty or otherwise;
   b) the expression “identifying” includes establishment of a proof that the property was derived from, or used in, the commission of an offense under section 3; and
   c) “tracing” means determining the nature, source, disposition, movement, title or ownership of property.

27. Letters of request to a contracting State etc.

1. Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1898 (Act V of 1898), if, in the course of an investigation into an offense or other proceedings under this Act, the investigating officer or any officer superior in rank to the investigating officer believes that any evidence is required in connection with investigation into an offense or proceedings under this Act and he is of opinion that such evidence may be available in any place in the contracting State, he may with the prior permission of the head of that investigation agency, issue a letter of request to a court or an authority in the concerning State competent to deal with such request to –

   b) examine facts and circumstances of the case; and
   c) take such steps as he may specify in such a letter of request.

2. The letter of request shall be transmitted in such manner as the Federal Government may specify on this behalf.

Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of investigation.

28. Assistance to a contracting State in certain cases
Where a letter of request in received by the Federal Government from a Court or authority in a contracting State requesting for investigation into an offense or proceedings under this Act or under the corresponding law in force in that country, the Federal Government may forward such letter of request to the Court or to the authorized officer or any authority under this Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, in the manner sought by the contracting State so long as doing so would not violate laws of Pakistan or is, in any manner, not prejudicial to the sovereignty, security, national interest or public order.

29. Reciprocal Arrangements for Processes and Assistance for Transfer of Accused Persons

1. Where a Court, in relation to the offense of money laundering, desires that, -
   
   d) a summons to an accused person;
   
   e) a warrant for the arrest of an accused person;
   
   f) a summons to any person requiring him to attend and produce a document or other thing or to produce it, or
   
   g) a search warrant,

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such court, judge or magistrate through such authorities as the Federal Government may specify in this behalf and that Court, judge or magistrate, as the case may be, shall cause the same to be executed.

2. Where a Court, in relaxation to an offense punishable under section 4, has received for service or execution, -

   a) a summons to an accused person;
   
   b) a warrant for the arrest of an accused person;
   
   c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it; or
   
   d) a search warrant, issued by a court, judge or magistrate in a contracting State, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another court in the said territories for service or execution within its local jurisdiction; and where;
   
   i. a warrant of arrest has been executed; the person arrested shall be dealt with in accordance with the procedure specified under section 16:
   
   ii. search warrant has been executed, the things found in this search shall, so far as possible, be dealt with in accordance the procedure specified under section 14 and 15:

Provided that the provisions of this subsection shall not have an effect if the exercise of power hereunder is, in any manner, likely to prejudice the sovereignty, security, national interest or public order.

3. Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in Pakistan, the Court or the Federal Government may impose such conditions as that Court of Government deems fit.

4. Where person transferred to Pakistan pursuant to sub-section (1) is a prisoner in a contracting State, the Court in Pakistan shall ensure that the conditions subject to which the prisoner is transferred to Pakistan are compiled with such prisoner shall be kept in such custody subject to such conditions as the Federal Government may direct in writing.
**30. Attachment, seizure and forfeiture etc., of property in a contracting State or Pakistan**

1. Where the investigating officer has made an order for attachment of any property under section 8 or where the Court has made an order confirming such attachment or forfeiture of any property under section 9 and such property is suspected to be in a contracting state, the court on an application by the investigating officer, may issue a letter of request to a Court or an authority in the contracting state for an execution of such order.

2. Where a letter of request is received by the Federal Government from a court in a contracting State requesting attachment or forfeiture of the property in Pakistan derived or obtained, directly or indirectly, by any person from the commission of an offense under section 3 committed in that contracting State, the Federal Government may forward such letter of request to the investigating agency, as it thinks fit, for execution in accordance with the provisions of this Act or permit execution of the request in the manner sought by the contracting state so long as doing so would not violate Law of Pakistan or is, in any manner, not prejudicial to the sovereignty, security, national interest or public order.

3. The Federal Government may, on receipt of a letter of request under section 27 or section 28, direct any investigating agency under this Act to take all steps necessary for tracing and identifying such property.

4. The steps referred to in sub-section (3) may include any inquiry, investigation of survey in respect of any person, place, property, assets, documents, books of accounts in any reporting entity or any other relevant matters.

5. Any inquiry, investigation or survey referred to in sub–section (4) shall be carried out by an agency mentioned in sub–section (3) in accordance with such directions issued in accordance with the provisions of this Act.

6. The provisions of this Act relating to attachment, adjudication, forfeiture vesting of property in the Federal Government, survey, search, and seizures shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or forfeiture of property.

**31. Procedure in respect of letter of request**

Every letter of request summons or warrant, received by the Federal Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State or, as the case may be, sent to the concerned Court in Pakistan in such form and in such manner as the Federal Government may specify in this behalf.

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**Analysis of International Cooperation Provisions of the AMLA 2010**

International cooperation plays a pivotal role in the successful investigation and prosecution of money laundering cases, as well as the recovery of illicit assets. Given the transnational nature of money laundering networks, foreign jurisdictions often possess vital information and evidence necessary for effective legal action. Section 26 of the AMLA 2010 grants the Federal Government the authority to enter into agreements with foreign countries to regulate money laundering practices. These agreements facilitate various forms of cooperation, including the investigation and prosecution of offenses under the AMLA or corresponding laws in the contracting state, exchange of information for

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prevention of offenses, seeking or providing assistance or evidence, and transfer of property related to money laundering offenses. However, it is essential to ensure that these agreements do not compromise Pakistan’s sovereignty, security, national interest, or public order.

To facilitate the practical implementation of international agreements, Section 27 empowers investigating officers or their superiors to issue letters of request to contracting states when evidence from those jurisdictions is required for AMLA-related offenses. These letters of request authorize the examination of facts and circumstances of the case and the undertaking of specified actions. Additionally, Section 28 governs the assistance provided to contracting states. When the Federal Government receives a request for assistance, it may forward it to the appropriate court, authorized officer, or authority under the AMLA for execution, ensuring effective collaboration between jurisdictions.

Section 29 addresses the reciprocal arrangements for processes and assistance. Pakistani courts can serve and execute summonses, warrants, or search warrants issued by contracting states for offenses related to money laundering. This provision underscores the importance of cooperation between jurisdictions and streamlines the enforcement of legal processes.

Moreover, Section 30 outlines the procedures for attachment, seizure, and forfeiture of property located in contracting states or Pakistan. It allows investigating officers to apply to the court for the attachment of property or forfeiture orders. When such property is suspected to be in a contracting state, the court may issue a letter of request to a court or authority in that state for execution. Similarly, if the Federal Government receives a letter of request from a foreign court seeking attachment or forfeiture of property in Pakistan, it can forward the request to the investigating agency for execution, provided it aligns with Pakistani law and does not compromise sovereignty, security, national interest, or public order.

Lastly, Section 31 emphasizes the procedural requirements for letters of request, summonses, and warrants. The Federal Government determines the form and manner of transmitting these communications, ensuring standardized processes for international cooperation.

The provisions outlined in Sections 26–31 of the AMLA 2010 provide a framework for international cooperation in combating money laundering. While these provisions facilitate essential collaboration between jurisdictions, a critical analysis reveals both strengths and potential areas for improvement in their operation.

One of the notable strengths of these provisions is the recognition of the transnational nature of money laundering networks. Money laundering activities often span multiple countries, making international cooperation crucial for effective investigations and asset recovery. The inclusion of agreements with foreign countries, as outlined in Section 26, demonstrates the commitment of the Pakistani government to address money laundering in a global context. By establishing reciprocal arrangements, the provisions facilitate the investigation and prosecution of offenses, exchange of information, provision of judicial assistance, and transfer of assets, ensuring a comprehensive approach to combating money laundering.

Moreover, the provisions in Sections 27 and 28 offer practical mechanisms for requesting and providing assistance between contracting states. The ability to issue letters of request allows investigating officers to obtain evidence and examine facts relevant to money laundering offenses. The forward mechanism, where the Federal Government can forward requests to appropriate authorities within Pakistan, enhances coordination and cooperation between jurisdictions. These provisions create a framework that enables efficient communication and collaboration, streamlining the process of sharing crucial information and evidence.
However, there are areas where the operation of these provisions can be strengthened. One aspect that warrants attention is the requirement that agreements entered into by the Federal Government must not be prejudicial to sovereignty, security, national interest, or public order, as stipulated in Section 26. While this safeguard is essential, there is a need to ensure that it does not impede or unduly delay the execution of international agreements. Striking the right balance between safeguarding national interests and facilitating effective cooperation is crucial to optimize the benefits of international collaboration.

Additionally, it is important to consider the practical challenges that may arise in implementing these provisions. For instance, ensuring compatibility between legal systems and overcoming language and cultural barriers can pose obstacles to effective cooperation. The successful execution of letters of request and the timely transmission of information requires efficient administrative processes, clear communication channels, and adequate resources.

Furthermore, while the provisions emphasize the exchange of information and execution of legal processes, it is important to address the issue of information sharing and confidentiality. Safeguards must be in place to protect sensitive information and ensure that it is used solely for the purpose of combating money laundering. Establishing robust data protection mechanisms, confidentiality agreements, and ensuring compliance with international data protection standards can enhance trust and cooperation among jurisdictions.

In conclusion, Sections 26–31 of the AMLA 2010 lay the foundation for robust international cooperation in combating money laundering. These provisions enable the exchange of information, execution of legal processes, and recovery of illicit assets across borders, bolstering the effectiveness of money laundering investigations and prosecutions. By establishing agreements with foreign countries and ensuring compliance with procedural requirements, Pakistan strengthens its ability to combat the global challenges posed by money laundering networks.

**Intersection of AMLA, 2010 with Pakistan’s domestic legal framework on international cooperation in criminal matters i.e., MLA Act, 2020, MLA Internal Guidelines and Extradition Act, 1972**

On 11th August 2020, the Mutual Legal Assistance (Criminal Matters) Act 2020 was approved by the Parliament. The Act extends international cooperation by providing legal assistance to requesting states by undertaking necessary actions for effective law enforcement. Section 2 of the Act lays down definitions to establish clarity. The MLA Act provides definitions for both ‘money laundering’ and ‘proceeds of crime’. The definition of both these terms is the same as under AMLA, 2010.

Section 3 of the MLA Act, 2020 addresses the issue of providing assistance to other countries on the basis of the principle of reciprocity. However, there are provisions to address MLA requests in the absence of reciprocal agreements as well, as required by the State. Section 26 of the AMLA, 2010 empowers the Federal Government to enter into mutual agreements in the same manner as Section 3 of the MLA Act, 2020. Both these Acts also recognize instances where provision of assistance to foreign states may be prejudicial to the interests of Pakistan, and requests may be denied on this basis. Section 26(2) AMLA, 2010 and Section 17(a) MLA Act, 2020 provide the justification to deny assistance requests when faced with a scenario ‘prejudicial to the sovereignty, security, public interest or national interests of Pakistan’.

Section 4 addresses the shortcoming regarding rapid execution of MLA requests by making it mandatory for the Central Authority to dispose of MLA requests in a timely manner. It expands upon the functions and duties of the Central Authority. Section 5 describes the manner for transmission of information by the Central Authority, it states that the Central Authority shall not initiate the
transmission of any information relating to criminal matters to the appropriate authority in a country concerned with such criminal matters, without a prior request by that country. Section 31 of AMLA, 2010 is also cognizant of the need to specify the form in which requests are to be submitted. The MLA Act, 2020 details the procedure to be followed in sections 6–8, dealing with both requests sent to contracting states and requests received by the Pakistani government. Section 6 elaborates upon the importance of form, manner, and conditions of the request. Section 7 deals with MLA requests by Pakistan; it elaborates upon the subject matter of requests as well. Furthermore, Section 8 of the Act, detailing the requirements to be followed by contracting states in sending request to Pakistan, requires requesting states place a timeframe on their requests.

Sections 8 and 18 address the weaknesses in confidentiality surrounding MLA requests. The former requires requesting states to provide details regarding confidentiality. The latter makes it mandatory for all officials authorized by law to ensure maximum confidentiality regarding a request for MLA, its details and its subjects. It also criminalizes failure to maintain confidentiality. Section 9 provides detailed instructions for law enforcing agencies on how to proceed with investigations. Furthermore, Sections 19 and 20 bring electronic data into the scope of investigations. Section 21 deals with costs arising from execution of a request for MLA in Pakistan, it states that execution of a request for MLA in Pakistan shall be conducted without charge to the requesting country except for; a) costs incurred by the attendance of experts in the territory of Pakistan; or b) costs incurred by the transfer of a person in custody; or c) any costs of substantial or extraordinary nature.

Section 29 of AMLA, 2010 deals with the reciprocal arrangements for processes and assistance for transfer of accused persons. This section allows the Court to execute any summons or warrant that may be issued in a contracting state, and reciprocally have warrants and summons issued by Pakistani courts serviced in the contracting state. While the Extradition Act, 1972 comes into play for giving effect to warrants of arrest and summons in instances of pending litigation or where a court has determined the guilt of a person, the MLA Act, 2020 provides the detailed procedure for transfer of persons and prisoners to a contracting state so that they may give evidence in a foreign court. In pursuance of a stronger AML regime, the government of Pakistan has also amended the Schedule of the Extradition Act, 1972 which contains a list of extraditable offences. Description 24 of the Schedule holds Terror Financing as an extraditable offence, and description 25 holds Money Laundering to be an extraditable offence. The Extradition Act is to be followed to enforce summons and warrants against those accused of money laundering who are no longer within the territorial jurisdiction of the court that ordered their warrant or summon. Generally, warrants are issued in extradition cases to reduce the threat of abscondment. Furthermore, since the AMLA, 2010 makes Money Laundering a cognizable and non-bailable offence it is likely that a warrant for arrest, and not a summons, will be issued for any persons sought by a foreign country for the offence of money laundering. Many of the extradition treaties that Pakistan has in place also include money laundering as an offence for which extradition may be granted. There are still, however, some gaps that need to be addressed before it can definitively be held that Pakistan has a robust international cooperation framework. For instance, there is a dire need to increase the number of treaties Pakistan has in place for both extradition and MLA. Moreover, the extradition process is lengthy and there is no effective case management system in place. The requirement of an inquiry under section 7 of the Extradition Act, 1972 prolongs the extradition process and writ petitions in the various high courts are often filed against requisition orders, making the process prolonged and difficult.

Section 30 of the AMLA, 2010 deals with attachment, seizure, and forfeiture of property involved in money laundering that may be in a contracting state or in Pakistan. The MLA Act, 2020 was amended in 2021 after drawing criticism from the Asia Pacific Group and the FATF for being “unduly restrictive” mainly because Section 13(2) of the Act requires Court to issue a freezing order or confiscation order only after notifying the subject of the matter. Under the AMLA regime the order for confiscation or freezing of a property may be provisionally made, with prior approval of the Court. The accused is then given a notice of not less than 30 days under section 9(1) of AMLA, 2010. The new amendments in the
AML Act, 2020 address the identified shortcomings pertaining to coverage of predicate offenses by allowing the central authority (Ministry Of Interior) to approve foreign orders of confiscation by applying to a court, and before informing the accused; however, there are concerns raised against potential human rights violations involving fundamental rights guaranteed by the constitution that could result by granting sweeping powers to authorities under the Act.

Prior to the passage of the MLA Act, the Code of Criminal Procedure (CrPC) and elements of the National Accountability Ordinance 1999 would provide a basis for coordinating and issuing MLA requests – however this was wrought with bureaucratic and partisanship-based challenges. Previously, the CrPC would allow for the issuance of commissions to examine witnesses abroad, as the Extradition Act contained no provisions dealing with outgoing MLA requests. In corruption cases that fall within the jurisdiction of the National Accountability Bureau (NAB), the National Accountability Ordinance 1999 permitted the NAB Chairman to request MLA from a foreign state. Incoming MLA requests were executed by applying the NAO and the CrPC as necessary, even though the ambit of the CrPC applies only to local investigations. The NAO also empowers the NAB Chairman to provide MLA to foreign jurisdictions in corruption matters. All these factors point to the largely haphazard and uncoordinated methodology of addressing MLA requests in the absence of dedicated MLA legislation and central authority. The MLA (Criminal Matters) Act of 2020 sought to remedy these failings. The new framework for international cooperation as outlined in the MLA Act, 2020 and the recent inclusion of Money Laundering as an extraditable offence under the Extradition Act, 1972 shows the commitment of Pakistan in addressing money laundering, a transnational crime.

Ministry of Interior Internal Guidelines: International Cooperation

UNSC resolution 1373 aims for states to “find ways of intensifying and accelerating the exchange of operational information” and “exchange information in accordance with international and domestic laws.” In order to facilitate this, the MLA Act, 2020 permits the formulation of rules and regulations as to further furnish and implement the provisions of the Act.

In line with this, the Ministry of Interior (MoI) passed the Mutual Legal Assistance Internal Guidelines. These guidelines have been passed pursuant to the Act and they lay down the procedure and requirements for making and respond to MLA requests. Furthermore, these Guidelines have been designed to assist foreign countries to understand the steps which are to be followed when requesting international cooperation from Pakistan and the information which is required to be sent for meaningful reply. These guidelines also intend to raise awareness amongst the officials in all relevant ministries, departments, agencies, or organisations, etc. of Pakistan with respect to seeking international cooperation from other countries and providing in–time quality response on incoming requests from other countries.

According to the Guidelines, the Central Authority of a Requesting State sends a Mutual Legal Assistance Request (MLAR) to the Ministry of Foreign Affairs (MOFA) which forwards it to the Central Authority which is the Ministry of Interior in Pakistan or the National Accountability Bureau. Within the Ministry of Interior, the International Cooperation Wing (ICW) is responsible for handling MLARs. For countries with which Pakistan does not have a bilateral MLA agreement, the request requires Cabinet approval before processing by the ICW. Thereupon, the ICW sends the request to the relevant department depending on the nature of the request. The department then processes the request and sends it back to the ICW for approval. Where required, the response may be sent to the MOLJ for vetting before being sent to the Requesting Country through MOFA.

The process for MLA however, is tedious and subject to delays. Moreover, these Guidelines are not binding in nature the way regulations are, and furthermore, do not have in place comprehensive enforcement mechanisms due to which the timelines that have been defined are not followed, as discussed below.

**Flow of outgoing requests**

Moreover, the mechanism for assistance from persons serving imprisonment is also addressed to minimise any ambiguity. The section also explains the role of central authority in cases of freezing and seizure orders. In addition, the section also has provisions for assistance requests pertaining to


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detention of a person in Pakistan as well as assistance for foreign confiscation orders and assistance with respect to requests asking for recovery of fines. The section also expands upon the central authority's role when extending assistance with requests pertaining to electronic data. Section 5 discusses the grounds upon which the central authority may refuse requests for international cooperation. Section 6 details the framework for seeking an informal request made by a counterpart agency, generally via telephone, facsimile or email. Section 7 emphasises non-disclosure of confidential requests for assistance. Section 8 briefly discusses the expenses related to MLA requests.

Analysis

As is apparent above, in line with the AMLA framework, a nascent MLA framework is being developed to promote international cooperation in Pakistan. However, there are certain issues that warrant further discussion. Firstly, while the MLA framework offers clarity on sending and receiving information from other states, all activities are carried out through a highly centralized and bureaucratized system. This can result in problems pertaining to red-tapeism and add to delays in addressing incoming or frame outgoing MLA requests. Furthermore, for extradition, Cabinet-level approvals are required which can adversely impact the timeliness of responses to foreign jurisdictions. Additionally, there is a dearth of capacity within investigative agencies, particularly front-liner investigation officers (IOs) in understanding complex financial transactions required in the crime of money laundering as well as the need for reaching out to foreign jurisdictions for more intelligence and information. Investigations and case-building for ML is particularly impacted in this manner. Where MLA channels are pursued, often IOs are unable to draft MLA requests correctly, which again can impede in an ML investigation.

In terms of the MLA process, MLA Guidelines issued by the MOI offer some clarity. The process of executing incoming and outgoing MLA requests is detailed, including methods and details of assistance requested as well as the conditions for refusal of MLA request. The functions and powers of the Central Authority are also detailed, with the International Cooperation Wing of the MOI being set up to scrutinise and follow-up with all MLA requests. LEAs and other authorities will also be involved in international cooperation requests, and time frames for such requests are also provided for. Prioritisation of requests for international cooperation is also provided for, with requests for cooperation in TF/ML cases being top-priority for the MOI.

However, these MLA guidelines are not binding in nature, and therefore lack implementation. The MLA Act, 2020 requires the formulation of detailed rules/regulations that are binding on all LEAs and related authorities for the smooth functioning of MLA frameworks and timely execution of incoming and outgoing requests.

Additionally, while the MOI has been thorough in outlining timeframes for the processing of outgoing and incoming requests, the processing of such requests requires a significant amount of coordination between and among departments. Authorities may face challenges when attempting to balance the need to be thorough in their assessment of requests and the need to provide responses in a timely manner.

Informal Channels of Engagement

Bilateral engagement between law enforcement agencies across borders constitutes an informal channel of MLA. Police-to-police cooperation is one such example, where explicit mutual legal assistance instruments are not required between States. The INTERPOL National Central Bureau is one such channel that is available for the exchange of police information and intelligence particularly for asset tracing. A formal agreement, such as a Memorandum of Understanding (MOU) is sufficient for an informal MLA to operate. The data received through this can confirm the availability of an e-evidence,
direct of exclude an investigative inquiry, or serve as a supporting ground in an MLA request for a judicial order for disclosure of data from the service provider.

The limitations with police-to-police cooperation however is that it may create logistical challenges with disclosure or discovery obligations, such as it may require an MLA request to be produced at trial. International Joint Investigation Teams (JITs) is a parallel informal investigation channel between the requesting and requested States to obtain e-evidence. An International JIT will avoid the necessity of sending MLA requests as parties can share e-evidence produced through domestic orders. However, JITs may impede future investigations or prosecutions by revealing special investigation technique methodologies or sources due to the disclosure obligations in situations where States coordinate investigations and informally share information.531

The SOPs for International Cooperation, 2020 by the Government of Khyber Pakhtunkhwa include guidelines relating to both formal and informal channels of MLA and therefore offer more guidance to LEAs and other authorities.532

**International Best Practices**

**Global Legal Framework for International Cooperation**

*The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)*

Although the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, also known as the Vienna Convention, does not explicitly discuss the term “money laundering”, it defines the concept and calls upon countries to criminalize the activity. This convention, nevertheless, serves as a precursor for several of the FATF recommendations on preventing, detecting, and prosecuting money laundering. Pakistan ratified this treaty in October 1995. No reservations were expressed by Pakistan to the provisions of this Treaty. It covers a number of forms of international cooperation, including confiscation, extradition, and mutual legal assistance. The operative Article has been reproduced below:

**Article 10: International Cooperation and Assistance for Transit States**

1. The Parties shall cooperate, directly or through competent international or regional organizations to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programs of technical cooperation or introduction and other related activities.
2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.
3. The Parties may conclude bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article and may take into consideration financial arrangements in this regard.

*The United Nations Convention against Transnational Organized Crime*

531 (Eurojust)  
532 Ibid
This Convention, also known as the Palermo Convention, provides for a number of measures that shall apply to the prevention, investigation, and prosecution of certain offenses (including the laundering of proceeds of crime) and serious crimes which are transnational in nature and involve an organized criminal group. Akin to Section 30 of AMLA 2010, Article 13 of the Palermo Convention concerns international cooperation for the purposes of confiscation. The procedure for doing so is as follows:

1. A State Party that has received a request from another State Party having jurisdiction over an offense covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:
   a. submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
   b. submit to its competent authorities, with a view of giving effect to it to the extent requested, an order of confiscation issued by a Court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offense covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities.

Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime

The Convention on Laundering, Search Seizure, and Confiscation of the Proceeds from Crime, also known as the ‘Strasbourg Convention’ was promulgated to facilitate international cooperation and mutual assistance in investigating crime, and the proceeds thereof. It has been signed and ratified by 48 States. Chapter III of the Convention deals with international cooperation, a few articles have been reproduced below.

Article 7: General Principles and Measures for International Co-operation

1. The Parties shall cooperate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.

2. Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:
   a. for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
   b. for investigative assistance and provisional measures with a view to either form of confiscation referred to under the above.

Article 8: Obligation to assist.

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracking of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.
Article 9: Execution of assistance

The assistance pursuant to Article 8 shall be carried out as permitted by and in accordance with the domestic law of the requested Party and, to the extent not incompatible with such law, in accordance with the procedures specified in the request.

Article 10: Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

FATF Recommendations

The FATF standards deal with international cooperation in a holistic manner. As a baseline for cooperation, countries should become a party to and fully implement four important multilateral instruments\textsuperscript{533} - the Vienna Convention, 1988, the Palermo Convention, 2000; the United Nations Convention against Corruption, 2003, and the Terrorist Financing Convention, 1999. Pakistan is a signatory to all the above-listed Conventions.

Recommendation 37 deals with MLA between the countries\textsuperscript{534}. It states that countries should rapidly, constructively, and effectively provide the widest possible range of mutual legal assistance in relation to money laundering, associate predicate offences, and terrorist financing investigations, prosecutions, and related proceedings. Countries should have an adequate legal basis for providing assistance, and where appropriate, should have in place treaties, arrangements or other mechanisms to enhance cooperation. In particular, countries should:

(a) Not prohibit, or place unreasonable or unduly restrictive conditions on, the provision of mutual legal assistance.
(b) Ensure that they have a clear and efficient process for the timely prioritization and execution of mutual legal assistance requests. Countries should use a central authority, or another established official mechanism for effective transmission and execution of requests. To monitor progress on requests, a case management system should be maintained.
(c) Not refuse to execute a request for mutual legal assistance on the sole ground that the offense is also considered to involve fiscal matters.
(d) Not refuse to execute a request for mutual legal assistance on the grounds that laws require financial institutions or DNFBPs to maintain secrecy or confidentiality (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies).
(e) Maintain the confidentiality of mutual legal assistance requests they receive and the information contained in them, subject to fundamental principles of domestic law, in order to protect the integrity of the investigation or inquiry. If the requested country cannot comply with the confidentiality requirement, it should promptly inform the requesting country.

Countries should render MLA, notwithstanding the absence of dual criminality, if the assistance does not involve coercive actions. Countries should consider adopting such measures as may be necessary to enable them to provide a wide scope of assistance in the absence of dual criminality.

\textsuperscript{533} Recommendation 36, FATF
\textsuperscript{534} Recommendation 37, FATF
When dual criminality is required for MLA, that requirement should be deemed to be satisfied regardless of whether both countries place the offense within the same category of offense, or denominate the offense by the same terminology, provided that both countries criminalize the conduct underlying the offense.

Countries should ensure that the powers and investigative techniques required under Recommendation 31, and any other powers and investigative techniques available to their competent authorities are also available for use in response to requests for MLA and, if consistent with their domestic framework, in response to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.

To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for the prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Countries should, when making MLA requests, make their best efforts to provide factual and legal information that will allow for timely and efficient execution of requests, including any need for urgency, and should send requests using expeditious means.

Recommendation 38 concerns MLA in the context of freezing and confiscation. Countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize, and confiscate property laundered; proceeds from money laundering, predicate offenses, and terrorist financing; instrumentalities used in, or intended for use in, the commission of these offenses, or property of corresponding value. The authority should include being able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures unless this is inconsistent with fundamental principles of their domestic law. Countries should also have effective mechanisms for managing such property, instrumentalities, or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets.

The Interpretative Note to Recommendation 38 provides further guidelines on freezing and confiscation. It advises countries to consider establishing an asset forfeiture fund into which all, or a portion of the confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes. It also states that countries should take such measures as may be necessary to enable them to share among or between other countries’ confiscated property, in particular, when confiscation is directly or indirectly as a result of coordinated law enforcement actions. With regard to requests for cooperation made on the basis of non-conviction-based confiscation proceedings, countries need not have the authority to act on the basis of such requests but should be able to do so, at a minimum in circumstances when a perpetrator is unavailable by reason of death, flight, absence or the perpetrator is unknown.

Recommendation 39 deals with extradition. As per this recommendation, countries should constructively and effectively execute extradition requests in relation to money laundering and terrorist financing, without undue delay. Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts, or terrorist organizations. In particular, countries should:

- ensure money laundering and terrorist financing are extraditable offenses;
- ensure that they have clear and efficient processes for the timely execution of extradition requests including prioritization where appropriate. To monitor the progress of requests a case management system should be maintained;

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535 Recommendation 38, FATF
536 Recommendation 39, FATF
c. not place unreasonable or unduly restrictive conditions on the execution of requests; and
d. ensure they have an adequate legal framework for extradition.

Each country should either extradite its own nationals or, where a country does not do so solely on the
grounds of nationality, that country should, at the request of the country seeking extradition, submit the
case, without undue delay, to its competent authorities for the purpose of prosecution of the
offenses set forth in the request. Those authorities should take their decision and conduct their
proceedings in the same manner as in the case of any other offense of a serious nature under the
domestic law of that country. The countries concerned should cooperate with each other, in particular
on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions.

Where dual criminality is required for extradition, that requirement should be deemed to be satisfied
regardless of whether both countries place the offense within the same category of offense, or
denominate the offense by the same terminology, provided that both countries criminalize the conduct
underlying the offense.

Consistent with fundamental principles of domestic law, countries should have simplified extradition
mechanisms, such as allowing direct transmission of requests for provisional arrests between
appropriate authorities, extraditing persons based only on warrants of arrests or judgments, or
introducing simplified extradition of consenting persons who waive formal extradition proceedings.
The authorities responsible for extradition should be provided with adequate financial, human and
technical resources. Countries should have in place processes to ensure that the staff of such
authorities maintain high professional standards, including standards concerning confidentiality, and
should be of high integrity and be appropriately skilled.

Recommendation 40 deals with other forms of international cooperation. Countries should ensure that
their competent authorities can rapidly, constructively, and effectively provide the widest range of
international cooperation in relation to money laundering, associated predicate offenses, and terrorist
financing. Countries should do so both spontaneously and upon request, and there should be a lawful
basis for providing cooperation.

Countries should authorize their competent authorities to use the most efficient means to cooperate.
Should a competent authority need bilateral or multilateral agreements or arrangements, such as a
Memorandum of Understanding, they should be negotiated and signed in a timely way with the widest
range of foreign counterparts.

In a nutshell, the FATF guidelines advise the competent authorities to use clear channels or
mechanisms for the effective transmission and execution of requests for information or other types of
assistance. To ensure this, the competent authorities should have clear and efficient processes for the
prioritization and timely execution of requests, and for safeguarding the information received.

Model Provisions

The ‘Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds
of Crime’ provide guidelines on international cooperation with foreign countries. The applicable
provisions have been reproduced:

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537 Recommendation 40, FATF
538 ‘Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing,
Section 35: Cooperation with Foreign Counterpart Agencies

(1) The [insert name of FIU] may, acting on its own initiative or upon request, seek from or share any information relevant to its functions with a foreign counterpart agency that performs similar functions and is subject to similar obligations of confidentiality, secrecy, and disclosure with respect to the performance of its functions.

(2) Whenever [insert name of FIU] provides information pursuant to subsection (1) to a foreign counterpart agency, it shall obtain from that agency a suitable declaration or undertaking that the information will be used only for the purpose for which it was sought unless the foreign counterpart agency seeks and obtains the agreement of [insert name of FIU] for the information to be used for another purpose.

(3) [insert name of FIU] may enter into an agreement or arrangement to facilitate the exchange of information with a foreign counterpart agency that performs similar functions and is subject to similar secrecy obligations.

(4) [insert name of FIU] may make enquiries on behalf of a foreign counterpart agency where the enquiry may be relevant to the foreign counterpart agency’s functions.

(5) [Insert name of FIU] may:
   a. Utilize its own databases, including information related to reports of suspicious and/or cash transactions, and other databases to which [insert name of FIU] has direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases and commercially available databases;
   b. Obtain from an accountable person information that is relevant in connection with such request;
   c. Obtain from competent authorities’ information that is relevant in connection with such request to the extent [insert name of FIU] could obtain such information in a domestic matter; and
   d. Take any other action in support of the request of the foreign counterpart that is consistent with the authority to insert the name of CITY in a domestic matter.

Section 41: Restraint Orders and International Requests

(1) This Section applies:
   a. If a restraint order under Section 40 has been made; or
   b. In respect of an offense under the law of a foreign State in relation to acts and or omissions that, had they occurred in [insert name of State], would have constituted an offense in [insert name of State] and a request for assistance has been made by the foreign State for the restraint or confiscation of property relating to such acts and or omissions, or for the information or evidence that may be relevant to the proceeds, benefits or instrumentalities of the offense.

(2) Where the enforcement authority believes that property in which the relevant person has an interest is situated in a State or territory outside [insert name of the State], it may request assistance from such State or territory to enforce the restraint order in that State or territory.

(3) Where the enforcement authority is asked to assist a foreign State pursuant to subsection (2) above, it may make an application to the relevant court for such orders as are appropriate having regard to all the circumstances of the request for assistance.
# Chapter 10

## Miscellaneous Provisions

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Overview

This chapter of the Anti-Money Laundering Act 2010 encompasses a set of miscellaneous provisions that are crucial for the effective functioning and enforcement of the Act.

Section 39 of the AMLA establishes the Act’s overriding effect over other laws that might conflict with it. However, this supremacy is subject to certain conditions, and the AMLA does not diminish or override certain other laws that deal with serious offenses such as narcotics trafficking, terrorism, and corruption. These laws include the Anti Narcotics Force Act, 1997, the Control of Narcotics Substances Act, 1997, the Anti-terrorism Act, 1997, and the National Accountability Ordinance, 1999.

In Section 41, the AMLA introduces a provision that exempts certain fiscal offenses under the Sales Tax Act, 1990, and the Federal Excise Act, 2005, from the application of the Act. Prior consultation with the Financial Monitoring Unit (FMU) is required before pursuing money laundering charges related to these fiscal offenses. The FMU holds the discretion to determine whether money laundering charges should be pursued for these specific offenses, ensuring effective coordination and assessment in combating money laundering in fiscal matters.

Moving on, Section 43 grants the Federal Government the authority to establish rules in consultation with the National Executive Committee, through notification in the Official Gazette. These rules facilitate the effective implementation of the AMLA, providing a regulatory framework to combat money laundering and related illicit activities. By involving the National Executive Committee and publishing the rules in the Official Gazette, the government aims to promote transparency, collaboration, and compliance in the fight against money laundering.

Additionally, Section 44 empowers the Financial Monitoring Unit (FMU) to create regulations necessary for its operations and the achievement of the objectives set forth in the AMLA. Under the supervision and control of the National Executive Committee, the FMU can issue notifications in the official Gazette to establish guidelines and standards for combating money laundering. This regulatory power ensures transparency, consistency, and coordination in Pakistan’s efforts to prevent illicit financial activities and protect the integrity of its financial system.

Section 45 provides the Federal Government with the power to address any difficulties that may arise in implementing the AMLA. By issuing orders published in the Official Gazette, the government can make necessary provisions to overcome these challenges, ensuring flexibility and prompt action in resolving practical obstacles that may hinder the effective enforcement of the Act.

Lastly, Section 46 validates actions, orders, instruments, notifications, agreements, proceedings, processes, and powers exercised by the Federal Government, Financial Monitoring Unit, or its officers during a specific period. This provision deems those actions to be valid and in accordance with the provisions of the AMLA, providing legal certainty and ensuring the continuity of administrative decisions under the Act.

Together, these miscellaneous provisions play a crucial role in establishing the legal framework, addressing potential conflicts, facilitating effective implementation, and validating past actions within the ambit of the AMLA.
Relevant Definitions

**Actions taken**: In the context of the provided section 46, the term "actions taken" refers to steps or measures that have been implemented or carried out by the Federal Government, Financial Monitoring Unit, or its officers.

**Agreements made**: Agreements refer to formal understandings or contracts that have been entered into by the Federal Government, Financial Monitoring Unit, or its officers. These agreements establish legally binding obligations and rights between parties involved, outlining the terms and conditions under which they agree to act or cooperate.

**Derogation**: This term refers to the partial repeal or abolition of a law, or the relaxation of its strictness. When a law is in derogation of another, it means that the law has been modified or limited in some way by the later law.

However, in the AMLA 2010, the phrase "not in derogation of" is used. This means that the AMLA does not limit or modify the laws mentioned, but rather, it operates in addition to them. The AMLA does not replace these laws but adds to the legal framework that they establish.

**Difficulty**: In the context of Section 45 of the Anti-Money Laundering Act, the term "difficulty" refers to any challenge, obstacle, or practical issue that arises in the process of implementing the provisions of the Act. It encompasses situations where the application or execution of the AMLA provisions may face practical or procedural hindrances, making it difficult to give full effect to the intended objectives of the Act.

The term "difficulty" is not explicitly defined within the Act itself. Therefore, its interpretation would rely on the general understanding of the word and the context in which it is used. In legal terms, a "difficulty" can be understood as any problem, complication, or obstacle that hampers the smooth and effective functioning of a law or its provisions.

Difficulties in implementing the AMLA provisions could arise due to a variety of reasons, such as:

- Ambiguities in the language or interpretation of specific provisions.
- Practical challenges in conducting investigations, gathering evidence, or proving money laundering offenses.
- Complexities in the identification, tracing, and freezing of proceeds of crime.
- Operational challenges faced by financial institutions in implementing anti-money laundering measures.
- Technological or procedural constraints that hinder the reporting and sharing of information between relevant authorities.
- Lack of coordination or cooperation between different stakeholders involved in combating money laundering.

When such difficulties arise, Section 45 empowers the Federal Government to take appropriate action to address them. The government may issue an order, which is published in the Official Gazette, to make provisions that are necessary for removing the identified difficulty. These provisions should be consistent with the overall framework and objectives of the AMLA, ensuring that they do not contradict or undermine the existing provisions of the Act.

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539 “Actions taken” is referred to in Section 46 of the AMLA 2010.
540 “Agreements made” is referred to in Section 46 of the AMLA 2010.
541 “Derogation” is referred to in Section 39 of the AMLA 2010.
542 “Difficulty” is referred to in Section 45 of the AMLA 2010.
**Federal Government**: In the Mustafa Impex case, Justice Nisar of the Supreme Court stated that Article 90 of the Constitution clearly defines the Federal Government: ‘it consists of the Prime Minister and the Federal Ministers’. This change in definition was primarily influenced by two factors. Firstly, the 18th Constitutional amendment removed the delegation clause, which previously allowed the transfer of government functions to subordinate authorities and officers. Secondly, the 18th amendment modified Article 99, making it mandatory to follow rules when executing official instruments and orders by replacing the term ‘may’ with ‘shall’. Thus, making it compulsory to follow guidelines enshrined in the Rules of Business.

**Fiscal Offences**: Although the AMLA 2010 does not define what a fiscal offence is, under Pakistani law, fiscal offenses encompass various violations related to taxation and financial regulations. These offenses include tax evasion, false statements or misrepresentation, non-payment or non-filing of taxes, tax fraud, money laundering, and customs and excise offenses. The Income Tax Ordinance, 2001, and the Sales Tax Act, 1990, serve as key legal frameworks. The FBR is responsible for enforcement and investigation.

**FMU (Financial Monitoring Unit)**: “FMU” means the Financial Monitoring Unit established under section 6 of the AMLA 2010. The Financial Monitoring Unit (FMU) is established by the Federal Government and operates independently within Pakistan, headed by a Director General appointed in consultation with the State Bank of Pakistan (SBP). The FMU’s responsibilities include receiving and analyzing Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) from reporting entities, maintaining a comprehensive database of reports and related information, cooperating with international financial intelligence units, framing regulations for report receipt, and exercising necessary powers to achieve the objectives of the Anti-Money Laundering Act. Additionally, the FMU can convey matters for regulatory or administrative action, order the temporary freezing of suspicious properties, and represent Pakistan in international forums related to money laundering and financing of terrorism.

**Inconsistent**: In a legal context, when two laws or provisions are said to be “inconsistent”, it means they cannot both be applied at the same time because they contradict each other. For example, if one law says that a particular action is legal and another law says that the same action is illegal, those laws are inconsistent. This means that in the event of any conflict or contradiction between laws, the law with the “overriding effect” will prevail.

**National Executive Committee**: The National Executive Committee (NEC) is a committee established under Section 5 of the AMLA 2010. It consists of members specified in Schedule-II of the Act and is responsible for making recommendations to the Federal Government on various aspects related to combating money laundering and terrorist financing. The NEC advises on policy implementation, determines predicate offenses, suggests countermeasures as per FATF guidelines, provides guidance for rule-making, oversees the national strategy, and collects reports from relevant authorities.

**Notifications issued**: Notifications refer to official notices or communications that are disseminated by the Federal Government, Financial Monitoring Unit, or its officers. These notifications serve to provide information, make announcements, or communicate specific instructions, requirements, or changes within the scope of their authority.

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541 “Federal Government” is referred to in Sections 43, 45, and 46 of the AMLA 2010.
542 Mustafa Impex, Karachi v. The Government of Pakistan through Secretary Finance, Islamabad – 2016 PLD 808
543 “Fiscal Offences” is referred to in Section 41 of the AMLA 2010.
544 “FMU” is referred to in Sections 41 and 44 of the AMLA 2010.
545 “Inconsistent” is referred to in Sections 39 and 45 of the AMLA 2010.
546 “National Executive Committee” is referred to in Sections 43 and 44 of the AMLA 2010.
547 “Notifications issued” is referred to in Section 46 of the AMLA 2010.
**Notwithstanding**\(^{550}\): This term is used in legislation to mean “in spite of” or “despite”. It is used to emphasize that a particular provision applies regardless of certain facts or circumstances that might otherwise affect its application.

For example, consider a piece of legislation that states, “Notwithstanding any other law, no person shall be discriminated against on the basis of race, color, or national origin.” This means that the prohibition against discrimination applies regardless of what any other law might say. Even if there are other laws that might seem to allow such discrimination, this law prohibits it. The “notwithstanding” clause ensures that this law takes precedence in the event of any conflict with other laws.

**Orders passed**\(^{551}\): In the context of the provided section 46, the term "orders passed" refers to official directives or commands that have been issued by the Federal Government, Financial Monitoring Unit, or its officers. These orders represent authoritative decisions or instructions that carry legal significance and are intended to guide or govern specific actions, obligations, or procedures.

**Official Gazette**\(^{552}\): The Gazette of Pakistan is the official government gazette of the Government of Pakistan. This Gazette provides information about government acts, ordinances, regulations, orders, S.R.Os, notifications, appointments, promotions, leaves, and awards. The official gazette plays a crucial role in the legal and administrative framework of Pakistan. It serves as a means to disseminate information and make official announcements accessible to the general public, government departments, legal professionals, and other interested parties.

**Overriding Effect**\(^{553}\): This term is used when a particular law or provision is given supremacy over other laws. This means that in the event of any conflict or contradiction between laws, the law with the “overriding effect” will prevail. This is often used in situations where there is a need to ensure that a particular law is given priority in its application. For example, a constitution of a country usually has an overriding effect over other laws in the country. If a law is passed that contradicts the constitution, the constitutional provision will override the conflicting law.

**Predicate offence**\(^{554}\): A “predicate offence” refers to an underlying criminal activity from which the illicit proceeds or funds subject to money laundering are derived. It denotes the primary criminal act that generates the unlawfully obtained funds. Predicate offences encompass a wide range of illegal activities and can vary in nature. In simpler terms, a predicate offence refers to the original crime that generates the illegal funds that are later involved in money laundering.\(^{555}\)

**Proceedings initiated**\(^{556}\): Proceedings initiated refers to the legal or administrative actions that have been formally commenced by the Federal Government, Financial Monitoring Unit, or its officers. These proceedings typically involve the initiation of legal actions, investigations, hearings, or other official processes to address a particular matter or enforce legal rights.

**Processes or communication issued**\(^{557}\): Processes or communication issued refers to the procedures or exchanges of information that have been officially carried out or disseminated by the Federal Government, Financial Monitoring Unit, or its officers. These processes and communication can

\(^{550}\) “Notwithstanding” is referred to in Section 39 of the AMLA 2010.
\(^{551}\) “Orders passed” is referred to in Section 46 of the AMLA 2010.
\(^{552}\) “Official Gazette” is referred to in Sections 43, 44, and 45 of the AMLA 2010.
\(^{553}\) “Overriding Effect” is referred to in Section 39 of the AMLA 2010.
\(^{554}\) “Predicate Offence” is referred to in Sections 39 and 41 of the AMLA 2010.
\(^{555}\) Section 2(xxvi) of the AMLA 2010: “predicate offence” means an offence specified in Schedule -I to this Act;
\(^{556}\) “Proceedings initiated” is referred to in Section 46 of the AMLA 2010.
\(^{557}\) “Processes or communication issued” is referred to in Section 46 of the AMLA 2010.
include various administrative, operational, or organizational activities involved in executing their functions.

**Powers conferred**[^558]: Powers conferred refers to the granting of authority or rights to individuals or entities by the Federal Government, Financial Monitoring Unit, or its officers. These powers can include specific legal powers, privileges, or abilities that enable the exercise of certain functions or decision-making within the scope of their designated roles.

[^558]: “Powers conferred” is referred to in Section 46 of the AMLA 2010.
Section 39 – Act to have Overriding Effect

39. Act to have overriding effect.—(1) Subject to sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

(2) The provisions of this Act shall be in addition to, and not in derogation of, the Anti Narcotics Force Act, 1997 (III of 1997), the Control of Narcotics Substances Act, 1997 (XXV of 1997), the Anti-terrorism Act, 1997 (XXVII of 1997) and the National Accountability Ordinance, 1999 (XVIII of 1999) and any other law relating to predicate offences.

Analysis of Section 39 of the AMLA

Subsection 1 of Section 39 of the AMLA 2010 establishes the Act’s supremacy over other laws that might contradict it. This is known as having an “overriding effect.” The phrase “notwithstanding anything inconsistent contained in any other law for the time being in force” signifies that the AMLA’s provisions will apply even if there are other existing laws that contain provisions contrary to those in the AMLA. This kind of clause is common in many pieces of legislation to ensure that the new law can operate effectively without being hindered by older, potentially conflicting laws. However, this supremacy is subject to the conditions set out in the second part of Section 39.

Subsection 2 of Section 39 specifies that the AMLA does not diminish or take away from certain other laws, including the Anti Narcotics Force Act, 1997, the Control of Narcotics Substances Act, 1997, the Anti-terrorism Act, 1997, and the National Accountability Ordinance, 1999. These laws are significant pieces of legislation in their own right, dealing with serious crimes such as narcotics trafficking, terrorism, and corruption. The phrase “and any other law relating to predicate offences” includes any other laws that deal with crimes that are part of, or lead to, money laundering.

The phrase “in addition to, and not in derogation of” means that the AMLA is meant to supplement these laws, not replace or override them. The AMLA is intended to strengthen the legal framework for dealing with money laundering, but it is not meant to interfere with or weaken the existing laws dealing with the underlying crimes that often lead to money laundering.

In essence, Section 39 of the AMLA is about balancing the need for a strong and effective law against money laundering with the need to maintain and respect the existing legal framework for dealing with other serious crimes. It ensures that the AMLA can operate effectively and take precedence where necessary, but without disrupting or weakening the other important laws in this area.

Under Section 39(2), the Act lists some laws which the Act is to be read in ‘addition to’, and notes additional laws by reference to ‘predicate offences’. The term ‘predicate offence’ is defined in the Act as ‘an offence specified in Schedule-I to this Act.’ Schedule-I to the Act lists some 150 offences from 20 different domestic laws. Majority of these offences are taken from The Pakistan Penal Code, 1860 (Act XLV of 1860). All predicate offences are reproduced for ease of reference below.

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559 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 10.
560 Section 2(xxvi) of the AMLA 2010: “predicate offence” means an offence specified in Schedule-I to this Act;
561 Section 2 (xxvi), AMLA.
562 Schedule-I, AMLA.
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There is some confusion regarding the way in which predicate offences are listed in the Act. For example, the Anti-Narcotics Force Act, 1997 (III of 1997), the Control of Narcotics Substances Act, 1997 (XXV of 1997), the Anti-terrorism Act, 1997 (XXVII of 1997) and the National Accountability Ordinance, 1999 (XVIII of 1999) are explicitly stated in the text of Section 39(2), AMLA, and three out of four of these acts are also listed in Schedule-I, AMLA. It is not clear why the Anti-Narcotics Force Act, 1997 (III of 1997) is missing from Schedule-I if the purpose of Schedule-I, as per the definition provided within the Act itself under S.2, is to list all predicate offences.
In addition, whilst the text of Section 39(2), AMLA explicitly states the above four laws, Schedule-I, AMLA elucidates that not all the offences listed in these laws are ‘predicate offences.’ Thus, for instance, only Subsections 5, 9, 11, 13, 15, 41, and 42, Control of Narcotics Substances Act, 1997 (XXV of 1997) and Section 9, National Accountability Ordinance, 1999 (XVIII of 1999) are predicate offences according to Schedule-I, but all offences under the Anti-terrorism Act, 1997 (XXVII of 1997) are predicate offences.

**Key Cases**

**Badrul Haq Khan v. The Election Tribunal, Dacca – PLD 1963 SC 704**

In the landmark case of Badr ul Haq v. The Election Tribunal, Dacca (PLD 1963 SC 704), the Supreme Court established a fundamental principle of statutory interpretation. The Court held that a statute should be interpreted “according to the intent of them that made it.” This principle underscores the importance of the legislative intent in the interpretation of statutes. When faced with multiple possible interpretations of a statute, the interpretation that most closely aligns with the intention of the Legislature should be adopted.

This principle has significant implications for the interpretation of Section 39 of the AMLA 2010. Section 39 states that the provisions of the AMLA 2010 shall have overriding effect, notwithstanding anything inconsistent contained in any other law for the time being in force. However, it also clarifies that the provisions of the AMLA 2010 shall be in addition to, and not in derogation of, several other specific laws.

Applying the principle established in Badr ul Haq, the interpretation of Section 39 should be guided by the intent of the Legislature. Given that the AMLA 2010 is designed to combat money laundering, it is reasonable to infer that the Legislature intended for the AMLA 2010 to have a broad application and to override other laws where necessary to achieve this purpose. However, the specific mention of other laws in sub-section (2) suggests that the Legislature also intended for the AMLA 2010 to operate in conjunction with these laws, rather than to derogate from them. Therefore, the interpretation of Section 39 that best gives effect to the legislative intent is one that allows for the AMLA 2010 to have an overriding effect, but also respects the operation of the other specified laws.

**Muhammad Mohsin Ghuman & others v. Government of Punjab – 2013 SCMR 85**

In the case of Muhammad Mohsin Ghuman & others v. Government of Punjab, the Supreme Court of Pakistan reinforced the legal principle that a special law overrides a general law. The Court stated that a special statute takes precedence over a general statute, even if the general statute was enacted later. This principle is based on the understanding that a special law is enacted with a specific purpose in mind and should therefore take precedence when its provisions conflict with those of a general law.

The Supreme Court further clarified the application of the non-obstante clause, which allows a law to override other laws in certain circumstances. The Court stated that the non-obstante clause should only be invoked in cases of irreconcilable conflict between laws. This means that if two special laws conflict, the courts should strive to interpret them in a way that allows both to operate harmoniously and without conflict, thereby giving due deference to both expressions of the legislature’s intent.

However, the Court acknowledged that there may be situations where harmonious interpretation is not possible. In such cases, a non-obstante clause would indicate the legislature’s intention to favor one statute over another. This principle becomes particularly important when dealing with conflicting statutes that each contain a non-obstante clause. In such situations, where multiple laws, each having a non-obstante clause, are in conflict, the courts are tasked with a complex challenge. They must
meticulously examine the specific purposes and provisions of each conflicting law to discern which one should be given precedence. This careful interpretation is crucial to ensure that the legislative intent behind each statute is respected to the greatest extent possible.

In light of this principle, the interpretation of Section 39 of the AMLA 2010 becomes particularly nuanced. Section 39 contains a non-obstante clause, asserting that the provisions of the AMLA 2010 shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

However, as the case establishes, the presence of a non-obstante clause does not automatically mean that the law with such a clause will override all others. If there are other special laws that also contain non-obstante clauses and are in conflict with the AMLA 2010, the courts must strive to interpret them in a way that allows both to operate harmoniously.

In cases where harmonious interpretation is not possible, the courts must carefully consider the specific purposes and provisions of each conflicting law to determine which should take precedence. In the context of Section 39 of the AMLA 2010, this means that while the AMLA 2010 is intended to have overriding effect, this effect may be limited or modified by the presence of non-obstante clauses in other special laws that are in conflict with it. The ultimate interpretation will depend on a careful consideration of the legislative intent behind each law.

Packages Limited v. Muhammad Maqbool & others – PLD 1991 SC 258

In this case, the Supreme Court held that a non-obstante clause operates as an ouster of earlier provisions only where there is a conflict and inconsistency between the statute containing the non-obstante clause and the earlier provisions. This means that the presence of a non-obstante clause does not automatically invalidate or override all other laws. Instead, it only takes effect when there is a direct conflict between the laws, and the application of the earlier law would undermine the purpose or object of the statute containing the non-obstante clause.

Applying this principle to Section 39 of the AMLA 2010, it can be inferred that the AMLA 2010 is intended to override other laws only when there is a conflict that would undermine its purpose. Therefore, while Section 39 asserts that the AMLA 2010 shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force, this overriding effect is not absolute. It applies only in situations where there is a direct conflict between the AMLA 2010 and another law, and the application of the other law would be inconsistent with the purpose of the AMLA 2010.


In this case, Justice Afzal Zullah elaborated on the principle that a later statute generally prevails over an earlier one, as it represents the latest will of the legislature. This principle is based on the legal maxim "leges posteriores priores contrarias abrogant," which means that later laws repeal earlier ones that are in conflict with them. If the provisions of a later act are so inconsistent with those of an earlier act that both cannot stand together, the earlier act is considered to be impliedly repealed by the later one.

However, Justice Zullah emphasized that the doctrine of implied repeal is a last resort. Courts should exhaust all possible and reasonable constructions that offer an escape from repeal by implication. This means that courts should strive to interpret the statutes in a way that allows both to operate harmoniously, if at all possible.
Applying this principle to Section 39 of the AMLA 2010, it can be inferred that if there is a conflict between the AMLA 2010 and an earlier law, the AMLA 2010 would generally prevail as it represents the later will of the legislature. However, this does not mean that the earlier law is automatically repealed. Courts should first attempt to interpret the laws in a way that allows both to operate harmoniously. Only if this is not possible, and the provisions of the AMLA 2010 are so inconsistent with the earlier law that both cannot stand together, would the earlier law be considered to be impliedly repealed.

Furthermore, the presence of a non-obstante clause in Section 39 of the AMLA 2010 indicates a clear intention of the legislature for the AMLA 2010 to have overriding effect, even at the expense of another Act, if necessary. This reinforces the principle that the AMLA 2010 should generally prevail in the event of a conflict with an earlier law. However, as always, the ultimate interpretation will depend on a careful consideration of the specific purposes and provisions of each law, and the intent of the legislature.

**Syed Mushahid Shah & others v. FIA & others – 2017 SCMR 1218**

In this case, the Supreme Court of Pakistan provided important guidance on the interpretation of statutes that both operate in the same field and contain non-obstante clauses. The Court endorsed a consistent chain of Indian rulings stating that the presence of a non-obstante clause or the fact that one statute is later in time does not automatically confer supremacy over an earlier, inconsistent statute.

The Court held that in cases where two or more laws each contain a non-obstante clause, conflicts between these laws must be resolved by reference to the object and purpose of the laws under consideration. This means that the interpretation of the laws should be guided by the purpose and policy underlying each enactment, and the clear intention conveyed by the language of the relevant provisions.

Applying this principle to Section 39 of the AMLA 2010, it can be inferred that the interpretation of this section should be guided by the purpose and policy underlying the AMLA 2010 and the clear intention conveyed by the language of Section 39. If there is a conflict between the AMLA 2010 and another law that also contains a non-obstante clause, the resolution of this conflict should be guided by the object and purpose of each law, rather than by the mere presence of a non-obstante clause or the fact that one law is later in time. This approach ensures that the interpretation of the laws gives effect to the legislative intent, rather than being dictated by formalistic rules of statutory interpretation.

**International Best Practices**

**FATF Recommendations**

As every country has a diverse legal system, the FATF Recommendations set an international standard concerning measures that countries are advised to implement through their regulatory and legal frameworks in order to combat money laundering, terrorist financing, and financing of proliferation of weapons of mass destruction.

Recommendation 3 published by FATF advises countries to criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention, and that countries ‘should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.’

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564 Recommendation 3, FATF
CHAPTER 10: MISCELLANEOUS PROVISIONS

The interpretative guidance to this Recommendation provides countries with a wide latitude in determining how to ascertain predicate offences: whether through use of a threshold approach linking to a category of offences or penalty of imprisonment applicable to the said offence; through listing all predicate offences; by referencing all offences; or through a combination of the aforementioned approaches. It further states that regardless of the approach adopted, each category of offence should at a minimum contain a range of offences that fall within that designated category. In addition, predicate offences linked to money laundering should extend to extra-territorial offences that constitute offences in the foreign country and which would have constituted offences in the home country had the offence been committed domestically. Finally, the interpretive guidance also notes that appropriate ancillary offences should also be included (such as abetting/facilitating, etc) unless this not permitted by fundamental principles of domestic law.

Recommendation 5 states countries should criminalize terrorist financing (on the basis of the Terrorist Financing Convention) and the financing of terrorist organizations and individual terrorists even absent a link to a specific terrorist act(s). It further states that such offences should be designated as money laundering predicate offences.

The FATF recommendations neither explicitly state a requirement concerning the overriding effect of a country’s money laundering act over all other laws, nor do they contain detailed/explicit provisions on legal interoperability. However, they do, in general, state the requirement of cooperation and coordination between relevant national authorities, and in many recommendations state that a particular standard should apply ‘unless this not permitted by fundamental principles of domestic law.’

**India**

The Prevention of Money Laundering Act, 2002 contains a provision stating the overriding effect of the Act, in language similar to AMLA (the difference in wording is in bold):

> 71. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

However, unlike Section 39(2), AMLA, there is no provision concerning legal interoperability with regard to other national laws concerning predicate offences.

**Australia**

The Anti–Money Laundering and Counter–Terrorism Financing Act, 2006 contains several provisions that deal with legal interoperability. They are as follows:

> 105 Privacy Act not overridden by this Part\(^{565}\)

\(^{565}\) ‘This part’ refers to Part 10—Record–keeping requirements.

This Part does not override Part IIIA of the Privacy Act 1988

> 240 Concurrent operation of State and Territory laws
This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

241 Act not to limit other powers

(1) This Act does not limit any power that a person has, under any other law, to obtain information.

(2) This Act does not limit any power that a customs officer or police officer has under any other law.

242 Law relating to legal professional privilege not affected

This Act does not affect the law relating to legal professional privilege.

246 This Act does not limit other information-gathering powers

This Act does not limit:

(a) any power conferred on the Commissioner of Taxation, by any other law, to obtain information; or

(b) any power conferred on any other person or body, by any other law, to obtain information.

United Kingdom

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2017, which is one of the key laws used to prosecute money laundering in the UK along with the Proceeds of Crime Act, 2002 contains the following provision regarding legal interoperability:

General restrictions

106. These Regulations do not authorise or require—

(a) a disclosure, in contravention of any provisions of the Data Protection Act 1998(1), of personal data which are not exempt from those provisions; or

(b) a disclosure which is prohibited by any of Parts 1 to 3 or 5 to 7 of the Investigatory Powers Act 2016(2).
Section 41 – Act not to Apply to Fiscal Offences

Section 41 of the AMLA 2010 introduces a provision that excludes two specific domestic laws, namely the Sales Tax Act, 1990 (VII of 1990), and the Federal Excise Act, 2005, from the scope of the AMLA. Under this provision, the AMLA does not automatically apply to predicate offenses punishable under these laws, except when there is prior consultation with the FMU.

By exempting these two frameworks from the application of the AMLA, Section 41 creates a specific exception. It suggests that the FMU can exercise discretion in determining whether predicate offenses under the Sales Tax Act, 1990, and the Federal Excise Act, 2005, warrant money laundering charges. The requirement for prior consultation with the FMU implies that the decision to proceed with money laundering charges lies with the FMU after a careful assessment of the particular circumstances.

To determine which offenses under the Sales Tax Act, 1990, and the Federal Excise Act, 2005, can be considered predicate offenses for money laundering charges, Section 41(2) provides a specific definition. According to this subsection, only the offenses listed below qualify as predicate offenses:

- s.33(11) and s.33(13) read with s.2(37) of the Sales Tax Act, 1990 (VII of 1990);
- s.19(3) of the Federal Excise Act, 2005.

Therefore, it is important to note that only the offenses outlined in Section 41(2) can be pursued as predicate offenses for money laundering charges under the frameworks mentioned in Section 41(1). However, even in these cases, the predicate offenses are only punishable under the framework of the AMLA when there is prior consultation with the FMU. This requirement emphasizes the role of the FMU in determining whether money laundering charges are warranted for these specific offenses.

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566 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 10.
The following are the predicate offences under the Sales Tax Act, 1990 (VII of 1990) as per AMLA:

<table>
<thead>
<tr>
<th>Offences</th>
<th>Penalties</th>
<th>Section of the Act to which offence has reference</th>
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<tbody>
<tr>
<td>11. Any person who, – (a) submits a false or forged document to any officer of [Inland revenue]; or (b) destroys, alters, mutilates or falsifies the records including a sales tax invoice; or (c) Knowingly or fraudulently makes false statement, false declaration, false representation, false personification, gives any false information or issues or uses a document which is forged or false.</td>
<td>Such person shall pay a penalty of twenty five thousand rupees or one hundred per cent of the amount of tax involved, whichever is higher. He shall, further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to three years, or with fine which may extend to an amount equal to the amount of tax involved, or with both.</td>
<td>2(37) and General</td>
</tr>
<tr>
<td>13. Any person who commits, causes to commit or attempts to commit the tax fraud, or abets or connives in commissioning of tax fraud.</td>
<td>Such person shall pay a penalty of twenty five thousand rupees or one hundred per cent of the amount of tax involved, whichever is higher. He shall, further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to five years, or with fine which may extend to an amount equal to the loss of tax involved, or with both.</td>
<td>2(37)</td>
</tr>
</tbody>
</table>

s.2(37), Sales Tax Act, 1990 (VII of 1990) states:

(37) “tax fraud” means knowingly, dishonestly or fraudulently and without any lawful excuse (burden of proof of which excuse shall be upon the accused) –

(i) doing of any act or causing to do any act; or

(ii) omitting to take any action or causing the omission to take any action, “[including the making of taxable supplies without getting registration under this Act ];” or,

((iii)) falsifying [or causing falsification [of] the sales tax invoices,]
in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder with the intention of understating the tax liability for two consecutive tax periods or overstating the entitlement to tax credit or tax refund to cause loss of tax.

s.19(3), Federal Excise Act, 2005 states:

19. Offences, penalties, fines and allied matters.—

(3) Any person who,—

(a) illegally removes, stores, keeps, or withdraws or in any way assists or is concerned in the illegal removal or withdrawal of any goods in the manner other than the manner prescribed under this Act or rules made there under;

(b) is in any way concerned in conveying, removing, depositing or dealing with any goods with intent to defraud the Government of any duty of excise due thereon, or to violate any of the provisions of this Act or rules made there under;

(c) is in any way concerned in any fraudulent evasion or attempt at fraudulent evasion of any duty of excise;

(d) claims, takes or avails adjustment of duty not admissible under this Act or the rules made there under; and

(e) is in any way concerned in the manufacture of any dutiable goods in contravention of the provisions of this Act or rules made there under; shall be guilty of an offence and for each such offence, shall be liable to fine which may extend to fifty thousand rupees or five times of the duty involved, whichever is higher and to punishment with imprisonment which may extend to five years or both.

Section 41 of the AMLA 2010 introduces a provision that exempts certain offenses under the Sales Tax Act, 1990, and the Federal Excise Act, 2005, from the jurisdiction of the AMLA. It grants discretionary power to the FMU to decide whether predicate offenses under these frameworks should be pursued as money laundering charges. This provision ensures that there is a consultation process in place to assess the appropriateness of applying the AMLA to these specific fiscal offenses, promoting effective coordination and oversight in combating money laundering.
**International Best Practices**

**The APG MER**

In 2019, the APG, an inter-governmental organization concerned with the effective implementation of FATF standards, published a Mutual Evaluation Report (MER). In this report, it stated the following with respect to s.41, AMLA:

> s 41 of the AMLA operates in an analogous way. This provision requires LEAs to consult with the FMU, prior to initiating a ML investigation in relation to predicate offences under the Sales Tax Act and Federal Excise Act (i.e. types of tax fraud). Though there is no express explanation on what “consultation” means, the FMUs discretion in this regard may have an adverse impact on effectiveness.

**The United Kingdom**

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2017 provides detailed Exclusions concerning the persons to whom specific Parts of the Regulation do not apply in Regulation 15.

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568 Regulation 15 has not been reproduced here as it is quite detailed and relates to persons as opposed to offences (the latter of which is addressed under s.41, AMLA).
Section 43 – Power to Make Rules

43. Power to make rules. — The Federal Government may in consultation with the National Executive Committee and by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Analysis of Section 43 of the AMLA

Section 43 of the AMLA 2010 grants the Federal Government of Pakistan the power to make rules necessary for carrying out the purposes of the Act. This provision plays a crucial role in enabling the government to effectively combat money laundering and associated illicit activities. The Federal Government is required to consult with the National Executive Committee, which likely consists of high-ranking officials from relevant government departments, regulatory bodies, and law enforcement agencies involved in anti-money laundering efforts. This consultation process ensures a collaborative approach, drawing upon the expertise and insights of various stakeholders.

Once formulated, the rules must be published through a notification in the Official Gazette, which serves as the official medium for government communications. By publishing the rules in this manner, the government ensures their accessibility and compliance. The rules made under Section 43 serve the objectives outlined within the Anti Money Laundering Act 2010, primarily focusing on combating money laundering, terrorist financing, and other illicit financial activities. They provide specific measures, obligations, and procedures to be followed by stakeholders such as financial institutions, regulatory bodies, and law enforcement agencies.

The power granted to the Federal Government through Section 43 allows for flexibility and adaptability in responding to the ever-changing landscape of money laundering and related crimes. The rules can be adjusted and updated as needed to address emerging threats, technological advancements, and international standards. This flexibility ensures that the Anti Money Laundering Act remains relevant and effective in its efforts to combat money laundering.

In conclusion, Section 43 empowers the Federal Government to create rules necessary for the proper implementation of the AMLA 2010. Through consultation with the National Executive Committee and publication in the Official Gazette, these rules provide a framework for combating money laundering and achieving the objectives of the Act. The flexibility and adaptability of the rules under Section 43 ensure that Pakistan’s anti-money laundering efforts remain robust and responsive to the evolving challenges posed by illicit financial activities.

International Best Practices

Australia

The Australian AML/CFT regime includes the AML/CTF Act and the AML/CTF Rules, which aim to prevent money laundering and the financing of terrorism. Reporting entities in sectors such as finance, gambling, remittance services, and bullion dealing are subject to obligations when providing designated services. The Australian Transaction Reports and Analysis Centre (AUSTRAC) is the government agency responsible for detecting and deterring criminal abuse of the financial system.

569 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 10.
Under Section 229 of the AML/CTF Act, the AUSTRAC CEO is granted the power to make rules, known as the AML/CTF Rules. These rules prescribe matters required or permitted by other provisions of the Act. The AUSTRAC CEO can exercise this power by writing, and the AML/CTF Rules are considered legislative instruments.

In contrast to Section 43 of the AMLA, which grants the power to make rules to the Federal Government in consultation with the National Executive Committee, the Australian AML/CFT Act provides this power directly to the AUSTRAC CEO in Section 229(1). However, the Australian regime incorporates a provision for ministerial directions, enabling the Minister to provide written guidance and instructions to the AUSTRAC CEO regarding the exercise of the rule-making powers conferred by Section 229(1). The AUSTRAC CEO is required to comply with these directions.

The inclusion of ministerial directions in the Australian AML/CFT Act enhances coordination and alignment of rule-making activities with the government’s strategic priorities. It allows the Minister to provide guidance on policy focus, emerging risks, and international standards. This approach ensures that the rules made by the AUSTRAC CEO are consistent with the government’s objectives in combating money laundering and terrorism financing.

In contrast, Section 43 of the AMLA provides flexibility to the Federal Government in making rules without explicitly incorporating ministerial directions. This flexibility allows the government to respond to emerging threats and adapt to changing circumstances effectively.

By analyzing these international best practices, we can identify potential strategies and considerations for strengthening the rule-making framework within the Pakistani anti-money laundering regime. Incorporating elements of centralized oversight and guidance, as demonstrated by the Australian regime, could enhance coordination and alignment of rule-making activities with the government’s priorities while maintaining the flexibility necessary to address evolving challenges effectively.

In conclusion, the Australian AML/CFT regime, through the power granted to the AUSTRAC CEO and the provision for ministerial directions, demonstrates an approach that combines centralized oversight with flexibility in rule-making. Comparatively, Section 43 of the AMLA grants power to the Federal Government, enabling responsiveness to emerging threats without explicitly incorporating ministerial directions. By analyzing these international best practices, policymakers can consider potential improvements to the rule-making framework within the Pakistani anti-money laundering regime.

**India**

Section 73 of the PMLA grants the Central Government the power to make rules for carrying out the provisions of the Act. This provision consists of two subsections: Section 73(1) provides the Central Government with general power to make rules, while Section 73(2) outlines specific matters for which the government may make rules. The detailed nature of Section 73(2) aims to provide guidance on the various aspects for which the government can formulate rules, allowing for a more comprehensive framework.

Comparatively, Section 43 of the AMLA also grants power to the Federal Government of Pakistan to make rules for carrying out the purposes of the Act. However, Section 43 of the AMLA does not provide explicit details or specify the matters for which rules may be made. This distinction implies that the Pakistani AMLA grants broader discretionary power to the government in formulating rules, whereas the Indian PMLA is more specific and detailed in identifying the areas in which rules may be established.
The inclusion of Section 73(2) in the PMLA results in a more comprehensive rule-making framework compared to Section 43 of the AMLA. While both provisions empower the respective governments to make rules, the PMLA provides more guidance and direction regarding the specific matters for which rules can be formulated. This specificity ensures that the rules made under the PMLA address a wide range of relevant areas, such as record maintenance, attachment and freezing of property, salaries and allowances of adjudicating authorities, identification of clients, monitoring of transactions, and more.

It is important to note that the additional details provided in Section 73(2) of the PMLA may have practical implications for the production of rules by the Indian government. The specificity in the Indian law helps ensure a comprehensive and robust regulatory framework. However, it is unclear whether this additional level of detail significantly impacts the overall production and effectiveness of rules compared to the more general power provided by Section 43 of the AMLA.

In conclusion, while both the Indian PMLA and the Pakistani AMLA grant power to their respective governments to make rules, the Indian PMLA, particularly through Section 73(2), provides more specific guidance on the matters for which rules can be established. This distinction ensures a more detailed and comprehensive rule-making framework in India. Further analysis is needed to determine the practical implications and effectiveness of the additional detail provided in the PMLA compared to the broader discretionary power granted by Section 43 of the AMLA.
**Section 44 – Power to Make Regulations**

44. Power to make regulations. — Subject to the supervision and control of the National Executive Committee, FMU may, by notification in the official Gazette, make such regulations as may be necessary for carrying out its operations and meeting the objects of this Act.

**Analysis of Section 44 of the AMLA**

Section 44 of the AMLA 2010 empowers the FMU to create regulations through the issuance of notifications in the official Gazette. These regulations are deemed necessary for the FMU to effectively carry out its operations and fulfill the objectives set forth in the Anti Money Laundering Act.

The authority granted to the FMU under Section 44 is subject to the supervision and control of the National Executive Committee. This provision ensures that the FMU operates within the framework of the larger oversight and coordination mechanism established by the Committee. The power to make regulations is a crucial tool that enables the FMU to adapt to evolving money laundering threats and implement effective measures to combat this illicit activity. By issuing regulations, the FMU can establish detailed procedures, guidelines, and standards that financial institutions, designated non-financial businesses and professions, and other relevant stakeholders must adhere to.

These regulations play a vital role in clarifying the obligations, responsibilities, and best practices for entities subject to anti-money laundering regulations. They provide a comprehensive framework for reporting suspicious transactions, conducting customer due diligence, and implementing robust internal controls to detect and prevent money laundering activities.

Moreover, the FMU’s ability to make regulations ensures consistency and uniformity in the implementation of anti-money laundering measures across the country. It helps create a level playing field by setting standardized requirements that all relevant entities must follow, regardless of their size or sector.

The notification of regulations in the official Gazette is an important aspect of Section 44. The official Gazette serves as a public record and widely recognized medium for disseminating legal information in Pakistan. By publishing regulations in the official Gazette, the FMU ensures their accessibility and awareness among the stakeholders affected by these regulations.

The role of the National Executive Committee in supervising and controlling the FMU’s exercise of regulatory power is crucial for maintaining accountability and oversight. This committee ensures that the FMU’s regulations are aligned with the broader national anti-money laundering strategy and objectives, preventing any potential misuse or arbitrary exercise of power.

In summary, Section 44 of the AMLA 2010 empowers the FMU to create regulations necessary for its operations and the achievement of the objectives set forth in the Act. The provision ensures that these regulations are issued in a transparent manner through notifications in the official Gazette, subject to the supervision and control of the National Executive Committee. This regulatory power enhances the FMU’s effectiveness in combating money laundering by establishing clear guidelines, promoting

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570 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 10.
consistency, and enabling coordination among relevant entities in Pakistan's anti-money laundering efforts.

**International Best Practices**

**Model Provisions**

The Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures, and Proceeds of Crimes serve as a valuable reference for international best practices in the fight against money laundering. These provisions provide guidelines for the effective implementation of anti-money laundering measures, including the furnishing of information from reporting entities.

Section 7(2) of the Model Provisions grants the designated authority, often a minister or competent authority, the power to make regulations for the implementation of the provisions contained in the Act. Similarly, Section 44 of the AMLA 2010 provides the Financial Monitoring Unit (FMU) with the power to create regulations necessary for carrying out its operations and achieving the objectives of the Act. However, in both cases, this power is subject to oversight and control by the respective authorities.

The parallel between Section 7(2) of the Model Provisions and Section 44 of the AMLA 2010 lies in their recognition of the importance of regulatory frameworks in combating money laundering effectively. Both provisions acknowledge the need for detailed regulations that complement the broader legislative framework, ensuring that entities subject to anti-money laundering obligations have clear guidance on compliance requirements.

By empowering the designated authority (such as the FMU) to make regulations, both Section 7(2) of the Model Provisions and Section 44 of the AMLA 2010 recognize the dynamic nature of money laundering and the necessity for agile responses to new and emerging threats. This authority allows the designated body to adapt the regulations to changing circumstances, evolving technologies, and international best practices.

Furthermore, the requirement of supervision and control by a higher committee, as stated in both provisions, enhances accountability and oversight. The National Executive Committee in the case of Section 44 of the AMLA 2010 and the respective minister or competent authority under the Model Provisions play crucial roles in ensuring that the regulations align with the broader national strategy, prevent misuse of power, and maintain consistency in the application of anti-money laundering measures.

While the specific content and wording of the provisions may differ, the underlying objective remains the same: to establish a robust regulatory framework that enables effective implementation of anti-money laundering measures. Both Section 7(2) of the Model Provisions and Section 44 of the AMLA 2010 emphasize the importance of regulations as a tool for achieving the objectives of the respective anti-money laundering frameworks.

Section 44 of the AMLA 2010 shares commonalities with Section 7(2) of the Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Measures, and Proceeds of Crimes. Both provisions recognize the significance of empowering designated authorities to create regulations that support the implementation of anti-money laundering measures. They also highlight the importance of oversight and control to ensure the effectiveness, consistency, and alignment of the regulations with the broader national anti-money laundering strategy.
Australia

The Australian anti-money laundering and counter-terrorism financing regime consists of the AML/CFT Act and the AML/CFT Rules. The primary objective of this framework is to prevent money laundering and the financing of terrorism by imposing obligations on various sectors, including the financial sector, gambling sector, remittance services, bullion dealers, and other professionals or businesses acting as reporting entities. These reporting entities are required to comply with specific obligations when providing designated services.

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is the government agency responsible for overseeing and enforcing compliance with the AML/CFT Act. Similar to the FMU in Pakistan, AUSTRAC plays a pivotal role in detecting, deterring, and disrupting criminal abuse of the financial system to protect the community from serious and organized crime.

Section 252 of the AML/CFT Act grants the Governor-General the authority to make regulations to prescribe various matters necessary for carrying out or giving effect to the Act. These regulations may include matters required or permitted to be prescribed by the Act or matters deemed necessary or convenient for its implementation.

While the Australian AML/CFT Act and the AMLA 2010 in Pakistan empower different authorities—the Governor-General in Australia and the FMU in Pakistan—to make regulations, the underlying purpose of these provisions is similar. Both Section 44 and Section 252 recognize the importance of establishing detailed regulations to support the effective implementation of anti-money laundering and counter-terrorism financing measures.

The power conferred to the Governor-General and the FMU to create regulations demonstrates the need for agility and adaptability in responding to evolving money laundering threats. By having the authority to make regulations, these designated entities can ensure that reporting entities have clear guidance and instructions on compliance requirements, reporting obligations, and risk mitigation measures.

Furthermore, both Section 44 of the AMLA 2010 and Section 252 of the AML/CFT Act share commonalities in terms of the matters that can be prescribed through regulations. These matters include those necessary for carrying out the operations of the respective agencies and meeting the objectives of their respective acts.

It is important to note that while the Governor-General is the head of state in Australia, the FMU in Pakistan operates under the supervision and control of the National Executive Committee. This distinction highlights the different governance structures and oversight mechanisms in place within the two jurisdictions.

In summary, Section 44 of the AMLA 2010 and Section 252 of the Australian AML/CFT Act grant regulatory powers to the FMU and the Governor-General, respectively. These provisions recognize the need for comprehensive regulations to support the implementation of anti-money laundering and counter-terrorism financing measures. Both provisions aim to ensure clarity, consistency, and adaptability in combating money laundering and terrorist financing activities.
Section 45 – Power to Remove Difficulties

45. Power to remove difficulties. — If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

Analysis of Section 45 of the AMLA

Section 45 of the Anti-Money Laundering Act (AMLA) grants the power to the Federal Government to address any difficulties that may arise in implementing the provisions of the Act. It enables the government to make necessary provisions, through an order published in the Official Gazette, to remove such difficulties. The purpose of this section is to ensure that any challenges or obstacles encountered in the application of the AMLA can be promptly addressed and resolved.

The provision empowers the Federal Government to take appropriate action when there are practical issues or impediments that hinder the smooth implementation of the AMLA. These difficulties could arise due to various reasons, such as ambiguous interpretations of the law, unforeseen circumstances, or challenges in practical implementation. By granting this power, the legislature intends to provide flexibility to the government in dealing with unforeseen circumstances or emerging challenges related to the effective enforcement of the AMLA.

The language used in Section 45 is broad and flexible. It allows the Federal Government to make provisions that are necessary for removing the difficulties faced in implementing the Act. However, it is important to note that these provisions must not be inconsistent with the existing provisions of the AMLA. This ensures that any actions taken by the government under this section are in line with the overall objectives and principles of the Act.

The process of removing difficulties involves the issuance of an order by the Federal Government, which is then published in the Official Gazette. This ensures transparency and dissemination of information to the public and relevant stakeholders. The order issued by the government may contain specific measures, guidelines, or clarifications aimed at addressing the identified difficulties. These measures could include procedural modifications, additional requirements, or any other relevant provisions that are deemed necessary.

Section 45 grants the government the authority to respond swiftly to emerging challenges and adapt the implementation of the AMLA accordingly. It allows for a dynamic approach to ensure the effectiveness of the Act in combating money laundering and related offenses. By providing the government with the power to address difficulties, this section reinforces the commitment to the continuous improvement and adaptability of anti-money laundering measures.

It is worth noting that the exercise of power under Section 45 should be guided by the principles of fairness, reasonableness, and consistency with the objectives of the AMLA. The government should ensure that any provisions made to address difficulties are proportionate, justified, and aimed at enhancing the effectiveness of anti-money laundering efforts.

571 Words within this provision that are bolded are defined in the “Relevant Definitions” section of Chapter 10.
In conclusion, Section 45 of the AMLA empowers the Federal Government to remove difficulties that may arise in implementing the Act. It grants the government the authority to make necessary provisions, through an order published in the Official Gazette, to address practical challenges or obstacles. This provision reflects the legislature's intention to ensure the smooth and effective implementation of the AMLA by allowing for flexibility and adaptability in response to emerging difficulties.

**Substantive Issues**

Some substantive issues can be identified regarding Section 45 of the Anti-Money Laundering Act (AMLA). Firstly, there is a lack of clear criteria or guidelines for determining what qualifies as a "difficulty" under this section. This ambiguity could lead to subjective judgments and potential misuse of power, as the government's decision-making process may lack transparency and consistency.

Another concern is the potential for abuse of power by the Federal Government. The broad discretion granted to the government under Section 45 raises the need for appropriate checks and balances to ensure that their actions align with the overall objectives of the AMLA and do not infringe upon individual rights or due process.

Moreover, the absence of specific guidelines or limitations within Section 45 creates uncertainty and unpredictability for individuals and businesses affected by the provisions made under this section. Without clear parameters, there is a risk of overreach or excessive intervention by the government, which may unintentionally undermine the rule of law.

Furthermore, the lack of a mechanism for review or accountability regarding the provisions made under Section 45 is a substantive issue. Without proper transparency and accountability measures, affected parties may have limited recourse to challenge or seek redress if they believe the provisions are inconsistent with the Act or their rights.

Additionally, the broad language used in Section 45 allows the government to make provisions that are "not inconsistent with the provisions of this Act." This lack of specificity raises concerns about the potential for provisions made under this section to deviate from the intended scope and purpose of the AMLA, thereby potentially undermining the coherence and integrity of the legislation.

In conclusion, there are several substantive issues with Section 45 of the AMLA. These include the lack of clear criteria for determining difficulties, the potential for abuse of power, uncertainty for affected parties, the absence of review mechanisms, and the broad language that may allow provisions to stray from the Act's intended purpose. Addressing these issues would help ensure a more balanced and effective implementation of the AMLA, protecting the rights of individuals and maintaining the rule of law.

**International Best Practices**

**United States**

In 2021, the United States Congress enacted the FY2021 National Defense Authorization Act (NDAA), which includes significant reforms to the US AML regime. Among the reforms is the Anti-Money Laundering Act of 2020 (AML Act) and the Corporate Transparency Act (CTA). A relevant section of the AML Act is the power to remove difficulties, as outlined in Section 6216.

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Section 6216

Section 6216 of the US AML Act mandates the Secretary of the Treasury, in consultation with various government entities, to conduct a formal review of regulations and guidance related to the Bank Secrecy Act. The purpose of this review is to ensure that the Department of the Treasury maintains appropriate safeguards to protect the financial system from threats such as money laundering, terrorism financing, and proliferation risks. The review aims to identify outdated, redundant, or non-risk-based regulations and guidance, as well as those that do not align with international standards in combating financial crimes. The Secretary is further directed to make necessary changes to improve the efficiency of these provisions.

In comparison, the Pakistani AMLA 2010 also includes provisions for the removal of difficulties. Section 45 of the AMLA grants the power to the Federal Government to address any difficulties that arise in implementing the provisions of the AMLA. The government is authorized to make provisions that are not inconsistent with the AMLA to overcome such difficulties.

While both the US AML Act and the Pakistani AMLA 2010 provide powers to address difficulties, they differ in their approach. The US AML Act places the responsibility on the Secretary of the Treasury, along with various government entities, to conduct a review and make necessary improvements to regulations and guidance. In contrast, the Pakistani AMLA grants the power to the Federal Government to address difficulties but does not specify the entities involved in the process.

In conclusion, the US AML Act and the Pakistani AMLA 2010 share provisions for removing difficulties in implementing their respective AML frameworks. However, the US AML Act specifically designates the Secretary of the Treasury and various government entities for conducting a review and making improvements, while the Pakistani AMLA grants this power to the Federal Government without specifying the entities involved.

India

The Prevention of Money Laundering Act 2002 (PMLA) in India and the Anti-Money Laundering Act 2010 (AMLA) in Pakistan share similar provisions regarding the power to remove difficulties in implementing their respective anti-money laundering frameworks. In the PMLA, this power is outlined in Section 75.

Section 75 of the PMLA grants the Central Government the authority to address any difficulties that may arise in implementing the provisions of the Act. If such difficulties occur, the Central Government can issue an order, published in the Official Gazette, to make necessary provisions that are not inconsistent with the Act in order to resolve the difficulty. However, it is important to note that the PMLA sets a time limit for exercising this power, stating that no order shall be made under this section after two years from the commencement of the Act573.

Comparatively, the AMLA in Pakistan also provides the power to remove difficulties but does not specify any time limit on the exercise of this power. This distinction indicates that the PMLA in India places a temporal constraint on the government’s authority to address difficulties, ensuring that such provisions are made within a specific timeframe.

The inclusion of the two-year time limit in the PMLA serves as a mechanism to ensure that the government promptly addresses any difficulties that may arise during the implementation of the Act. It emphasizes the need for timely resolution of issues and prevents indefinite use of the power to remove difficulties.

573 Section 75(1), Prevention of Money Laundering Act 2002 (India).
In conclusion, both the PMLA in India and the AMLA in Pakistan have provisions granting the power to remove difficulties. However, the PMLA sets a specific time limit of two years for exercising this power, highlighting the importance of timely resolution, while the AMLA does not contain such a time limit.
Section 46 – Validation of Actions, etc.

46. Validation of actions, etc. ––574 Anything done, actions taken, orders passed, instruments made, notifications issued, agreements made, proceedings initiated, processes or communication issued powers conferred, assumed or exercised, by the Federal Government, Financial Monitoring Unit or its officers on or after the 5th January, 2008 and before the commencement of this Act, shall be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed, and exercised and provisions of the Act shall have, and shall be deemed always to have had, effect accordingly.

Analysis of Section 46 of the AMLA

Section 46 of the Anti-Money Laundering Act (AMLA) provides for the validation of actions, orders, instruments, notifications, agreements, proceedings, processes, communications, and powers exercised by the Federal Government, the Financial Monitoring Unit, or its officers during a specific period. The section states that anything done or carried out by these entities between the 5th of January 2008 and the commencement of the AMLA shall be deemed to have been validly executed, and the provisions of the Act will have, and will be deemed to have always had, effect accordingly.

This section serves as a legal safeguard to validate and give retrospective effect to actions and decisions made by the mentioned entities during the specified period. It aims to prevent any legal challenges or disputes arising from actions taken prior to the enactment of the AMLA.

By validating these actions, Section 46 provides legal certainty and ensures that any rights, obligations, or consequences resulting from those actions are upheld. It prevents the retrospective invalidation of actions taken by the Federal Government, the Financial Monitoring Unit, or its officers, and establishes the legal basis for their validity.

This provision is particularly relevant when there have been changes in the legislative framework, as it confirms the continued legal effect of actions taken under the previous laws or regulations. It is intended to preserve the continuity and efficacy of prior administrative decisions and actions, ensuring that they are recognized and given effect under the new AMLA.

In terms of its implications, Section 46 brings stability and certainty to the legal framework by ratifying past actions. It provides reassurance to individuals and organizations involved in money laundering-related matters, as it confirms the validity of prior actions taken by the Federal Government and its agencies. Additionally, it promotes efficiency and avoids the need for reevaluation or reprocessing of actions that occurred before the AMLA came into force.

However, it is important to note that while Section 46 validates past actions, it does not grant immunity from liability or shield individuals or entities from prosecution if their actions were unlawful under the relevant provisions of the AMLA or any other applicable laws.

In summary, Section 46 of the AMLA serves as a legal provision to validate and give retrospective effect to actions, orders, instruments, notifications, agreements, proceedings, processes, communications, and powers exercised by the Federal Government, the Financial Monitoring Unit, or its officers between

574 Words within this provision that are **bolded** are defined in the “Relevant Definitions” section of Chapter 10.
a specific period. Its purpose is to provide legal certainty, uphold the validity of past actions, and ensure the continuity of administrative decisions and processes under the new AMLA.

**Substantive Issues**

Section 46 of the Anti-Money Laundering Act addresses the validation of actions, orders, instruments, notifications, agreements, proceedings, processes, communications, and powers exercised by the Federal Government, Financial Monitoring Unit, or its officers within a specific timeframe. This provision seeks to ensure that any activities or decisions made by these entities between January 5, 2008, and the commencement of the Act are deemed valid and effective, in accordance with the provisions of the Act.

One substantive issue that arises from this provision is the retrospective validation of actions. By deeming these actions as validly done, made, issued, and exercised, Section 46 introduces a retrospective effect to the actions taken by the Federal Government, Financial Monitoring Unit, or its officers during the specified period. This raises concerns regarding legal certainty and the potential impact on individuals or entities who may have been affected by those actions. It is essential to carefully examine the consequences of validating past actions and to ensure that the retrospective effect does not infringe upon legal rights or create unjust outcomes.

Another substantive issue is the broad scope of activities covered by Section 46. The provision encompasses a wide range of actions, including orders passed, agreements made, proceedings initiated, and powers conferred or exercised. This expansive coverage may lead to questions about the specific circumstances and criteria under which these actions are validated. Clarity and precision in defining the scope of validation would be important to avoid potential abuse or misuse of this provision.

Additionally, the provision raises the issue of accountability and oversight. Validating actions, orders, or decisions made by the Federal Government, Financial Monitoring Unit, or its officers without explicit review or scrutiny may undermine the checks and balances necessary for a transparent and accountable system. It is crucial to ensure that adequate mechanisms are in place to assess the validity and appropriateness of these actions, particularly when they may have significant consequences for individuals' rights or the functioning of financial systems.

Furthermore, the retrospective validation of actions may raise concerns about the fairness and equitable treatment of affected parties. Individuals or entities that were subject to actions or decisions during the specified period may question the fairness of retrospectively deeming those actions as valid. The potential impact on legal rights, obligations, and remedies should be carefully considered to prevent any unjust outcomes resulting from the validation of past actions.

**International Best Practices**

**Kenya**

While the Proceeds of Crime and Anti-Money Laundering Act, 2009 in Kenya does not have an identical provision to Section 46 of the Pakistani Anti-Money Laundering Act (AMLA), it does contain a similar provision in Section 118. Section 118 of the Kenyan Act addresses the validation of actions taken under the Act before its commencement.

Under Section 118, any act, matter, or thing done, as well as any decision, order, or direction made by any person under the Act prior to its commencement, is deemed to have been done or made under the
corresponding provisions of the Act. This means that actions taken before the Act came into force are retrospectively validated and considered to have been carried out in accordance with the law.

The purpose of including Section 118 in the Kenyan Act is to ensure the continuity and legality of actions taken during the transitional period leading up to the enforcement of the Act. By deeming these pre-commencement actions as having been conducted under the Act, the provision provides legal certainty and ensures that they are recognized as valid.\(^{575}\)

Comparing this provision with Section 46 of the Pakistani AMLA, both sections serve a similar purpose of validating actions taken before the commencement of the respective Acts. However, there are some differences in their wording and scope. Section 46 of the Pakistani AMLA broadly validates anything done, actions taken, orders passed, instruments made, notifications issued, agreements made, proceedings initiated, processes or communication issued, powers conferred, assumed, or exercised by the Federal Government, Financial Monitoring Unit, or its officers during a specific period.

On the other hand, Section 118 of the Kenyan Act specifically focuses on acts, matters, decisions, orders, or directions made by any person under the Act. It does not explicitly mention instruments, notifications, agreements, or other elements mentioned in Section 46 of the Pakistani AMLA. Nevertheless, both provisions aim to ensure the legal validity of actions taken under the respective Acts before their commencement, providing consistency and legal certainty in the application of the law.

**India**

The Prevention of Money Laundering Act, 2002 (PMLA) in India may not have an identical provision to Section 46 of the Pakistani Anti-Money Laundering Act (AMLA), but it does contain a provision for the validation of actions taken under the Act. Section 71 of the PMLA addresses the presumption of validity for acts and proceedings conducted under the Act.

According to Section 71, any act done or proceedings taken under the PMLA shall be presumed to be valid and cannot be challenged on the basis of any defect, irregularity, or omission. This provision aims to provide certainty and stability to actions carried out under the PMLA, ensuring that they are legally recognized and protected from being questioned solely on technical grounds.\(^{576}\)

of validating actions and proceedings. However, there are some notable distinctions in their formulation. While Section 46 of the Pakistani AMLA explicitly deems the actions and exercises of powers to have been validly done, made, and exercised, Section 71 of the Indian PMLA establishes a presumption of validity. This means that acts and proceedings conducted under the PMLA are deemed valid unless proven otherwise, ensuring their legal enforceability.

Both provisions, despite their slight differences, seek to ensure the continuity and legality of actions taken under their respective Acts. By providing a presumption of validity, Section 71 of the PMLA and Section 46 of the Pakistani AMLA contribute to the smooth implementation and effectiveness of the legislation, safeguarding the integrity of actions and proceedings carried out to combat money laundering and related offenses.

\(^{575}\) (Proceeds of crime and Anti-Money Laundering Act - VERTIC)  

\(^{576}\) The Prevention Of Money-Laundering Act, 2002  