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Legal Guides

Anti-Money Laundering 2021

A practical cross-border insight into anti-money laundering law

Fourth Edition

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1 The Crime of Money Laundering and Criminal Enforcement

1.1 What is the legal authority to prosecute money laundering at the national level?

The Anti-Money Laundering Act, 2010 (the Act) is the primary law governing the prevention of money laundering and combatting the financing of terrorism. The Act as federal legislation is applicable all over Pakistan.

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

Section 3 of the Act provides that any person shall be guilty of money laundering if they:

(a) acquire, convert, possess, use or transfer property, knowing or having reason to believe that such property is the proceeds of crime;

(b) conceal or disguise the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is the proceeds of crime;

(c) hold or possess on behalf of any other person any property knowing or having reason to believe that such property is the proceeds of crime; or

(d) participate in, associate, conspire to commit, attempt to commit, aid, abet, facilitate or counsel the commission of the acts specified in (a), (b) and (c) above.

The term "proceeds of crime" has been defined in the Act as "any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence".

The term "foreign serious offence" has been defined in the Act as "an offence:

(a) against the law of a foreign state stated in a certificate issued by, or on behalf of, the government of that foreign state; and

(b) which, had it occurred in Pakistan, would have constituted a predicate offence".

"Predicate offence" is an offence specified in Schedule I to the Act. Schedule I to the Act lists around 150 offences from amongst 20 different laws as predicate offences. Tax evasion is also a predicate offence when the tax sought to be evaded is PKR 10 million or more.

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

Since "foreign serious offence" is covered under the definition of "proceeds of crime", money laundering of the proceeds of foreign crimes is punishable. Section 26 of the Act in this regard empowers the Federal Government to enter into (on a reciprocal basis) a collaboration with the government of any country for the investigation and prosecution of any offence under the Act or under the corresponding law in force in that country.

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

A government authority responsible for investigating and prosecuting offences related to money laundering is referred to as an "investigating or prosecuting agency" in the Act; such authorities include the National Accountability Bureau, Federal Investigation Agency, Anti-Narcotics Force, Directorate General (Intelligence and Investigation – Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments and any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under the Act.

1.5 Is there corporate criminal liability or only liability for natural persons?

Criminal liability for committing an offence under the Act is also applicable to legal persons, in accordance with Section 37 of the Act.

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

Rigorous imprisonment between 1 to 10 years and a fine which may extend to PKR 25 million. The fine may extend up to PKR 100 million in case of a legal person. In addition, the offender shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

1.7 What is the statute of limitations for money laundering crimes?

The Act does not impose any time limit to investigate and prosecute an offence under the Act.

1.8 Is enforcement only at national level? Are there parallel state or provincial criminal offences?

The enforcement is at national level; as stated in question 1.1, the Act is applicable all over Pakistan.

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

The Act provides for the attachment and forfeiture of property involved in money laundering. An investigating officer (on the basis of the report received from the concerned investigating or prosecuting agency) by order in writing provisionally attaches, with prior approval of the court, a property which he reasonably believes to be the property involved in money laundering for a period not exceeding 180 days (the court may extend for a further period of 180 days). Where on conclusion of a trial for any predicate offence the person is acquitted, the attachment of the property shall cease to have effect. In other cases, where it is proved in the court that the subject property is involved in money laundering, the court shall make an order for forfeiture of such property. Where the court has passed the order of forfeiture of any property, all the rights and title in such property shall vest absolutely in the Federal Government, free from all encumbrances.

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

We have not identified any cases in which financial institutions or their directors, officers or employees have been convicted of money laundering.

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

Criminal actions are resolved under the judicial system as provided for in the Code of Criminal Procedure, 1908, and the Court of Session is competent to exercise jurisdiction to try and adjudicate the offences punishable under the Act. Any person can apply for a copy of a court judgment.

2 Anti-Money Laundering Regulatory/ Administrative Requirements and Enforcement

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

The following regulators are the anti-money laundering/ combatting the financing of terrorism (AML/CFT) regulatory authorities for the purposes of the Act:

(i) The State Bank of Pakistan (SBP) for any reporting entity licensed or regulated under any law administered by the SBP.
(ii) The Securities and Exchange Commission of Pakistan (SECP) for any reporting entity licensed or regulated by the SECP under any law administered by the SECP.
(iii) The Federal Board of Revenue (FBR) for real estate agents, jewellers, dealers in precious metals and precious stones, accountants who are not members of the Institute of Chartered Accountants of Pakistan (ICAP), and the Institute of Cost and Management Accountants of Pakistan (ICMAP).
(iv) National Savings (AML and CFT) Supervisory Board for national savings schemes.
(v) Pakistan Post (AML and CFT) Supervisory Board for Pakistan Post.

In addition to above, the following self-regulatory bodies (SRBs) are AML/CFT regulatory authorities for the purposes of the Act:

(i) the ICAP, for its members;
(ii) the ICMAP, for its members; and
(iii) the Pakistan Bar Council for lawyers and other independent legal professionals who are enrolled under the Pakistan Bar Council, Provincial Bar Councils or Islamabad Bar Council.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

In accordance with Section 6A(2) of the Act, SRBs are empowered to issue regulations, directions and guidelines with respect to their respective reporting entities. The ICAP and ICMAP have accordingly issued regulations for their respective reporting firms.

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

In accordance with Section 6A(2) of the Act, SRBs are responsible for compliance with and enforcement of AML requirements under the Act with regard to their respective reporting entities.

2.4 Are there requirements only at national level?

The Act operates at national level, and thus requirements are at national level.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? If so, are the criteria for examination publicly available?

The government agencies/competent authorities are listed in question 2.1, and the related criteria (Regulations/Guidelines) are publicly available on the agencies'/authorities' respective websites as well as on the website of the Financial Monitoring Unit (FMU).

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?

The Federal Government has established the FMU as an autonomous body and entrusted it with powers and functions under Section 6(4) of the Act, including to receive and analyse reports from reporting entities and to call for records/information from any agency or person in Pakistan related to the transaction in question.

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

Under the Act, there is no time limit for competent authorities to bring enforcement actions.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

Whoever wilfully fails to comply with the furnishing of information as required under Section 7 of the Act (suspicious transaction report (STR)) or gives false information is liable for imprisonment for a term up to five years or to a fine of up to PKR 500,000, or both. In case of conviction of a reporting entity, the concerned AML/CFT regulatory authority may revoke its licence or registration or take such other administrative action as it may deem appropriate (Section 33 of the Act).

Whoever wilfully fails or refuses to provide assistance/records/documents/information reasonably required by the investigating or prosecuting agency or by the FMU is guilty of misconduct (Section 25 of the Act): in the case of a natural person, punishment is imprisonment of up to five years, a fine up to PKR 1,000,000, or both; and in the case of a legal person, the punishment is a fine of up to PKR 10,000,000.

In accordance with the AML/CFT Sanctions Rules, 2020, the AML/CFT regulatory authority and the oversight body for the SRB can impose sanctions including a monetary penalty not exceeding PKR 100,000,000, in accordance with the risk-based penalty scale of the relevant AML/CFT regulatory authority or the respective supervisory body for the SRB.

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

The AML/CFT Sanctions Rules, 2020 provide for the following sanctions (other than a monetary penalty):

(i) imposition of any condition, limitation or restriction on the reporting entity's business or product offerings as is considered appropriate;
(ii) revocation of a licence or de-registration of the reporting entity, as applicable;
(iii) imposition of a temporary or permanent prohibition on a natural person including (but not limited to) issuing a written warning, imposing a temporary suspension or removing the person from service;
(iv) issuing of a statement of censure/warning/reprimand;
(v) issuing of directions to the person to undertake any actions including (but not limited to) compliance with the requirements within a specified time through a remedial plan, conducting internal inquires or taking disciplinary action against directors/senior management/other officers;
(vi) imposition of any other sanction permitted under the AML/CFT regulatory authority's enabling law; and
(vii) any other sanction or administrative requirement as deemed appropriate by the oversight body for the SRB.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

Violations of AML obligations are subject to criminal sanctions.

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

The process depends upon each respective AML/CFT regulatory authority/supervisory body for the SRB. As far as the investigating or prosecuting agencies are concerned, the process starts with the investigation, followed by trial and adjudication by the Court of Session. The final decision or order of the Court of Session is appealable before the High Court. Any person or SRB, against whom any sanction is imposed under the AML/CFT Sanctions Rules, 2020, has the right to file an appeal before the appellate body designated by the respective AML/CFT regulatory authority or by the oversight body for the SRB. Any person can apply for a copy of a court judgment. We are not aware of any financial institution that has challenged a money laundering penalty.

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and other businesses are subject to anti-money laundering requirements? Describe which professional activities are subject to such requirements and the obligations of the financial institutions and other businesses.

The Act is applicable to reporting entities. The term "reporting entities" is defined at Section 2(xxxiv) of the Act to include "financial institutions" and "designated non-financial businesses and professions" (DNFBPs). The Act at Sections 2(xiv) and 2(xii) defines financial institutions and DNFBPs, respectively.

A "financial institution" includes any person carrying out acceptance of deposits, lending, financial leasing, money or value transfers, issuing and managing means of payments, financial guarantees or commitments. It also includes persons trading in money market instruments, foreign exchange, exchange/interest rate/index instruments, transferable securities, and commodity futures, etc.

DNFBPs include real estate agents, dealers in precious metals and precious stones, lawyers/notaries/accountants and other legal professionals and trust and company service providers.

The reporting entities (financial institutions and DNFBPs) are required to furnish reports to the FMU in the prescribed manner. In addition, the reporting entities are required to comply with customer due diligence (CDD), recordkeeping and risk assessment requirements, and to implement compliance management policies and procedures to ensure compliance with the provisions of the Act.

3.2 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry?

The SBP does not recognise virtual assets (cryptocurrency) as legal tender to store and transfer value. There are no specific requirements applied to the cryptocurrency industry.

3.3 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

In accordance with Section 7G of the Act, every reporting entity must implement a compliance programme. A compliance programme requires compliance management arrangements, including the appointment of a compliance officer and training programmes having regard to the money laundering and terrorism financing risks and size of the business. The respective AML/CFT regulatory authorities have issued regulations in this regard.

3.4 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

Section 7C of the Act requires that every reporting entity maintain a record of all transactions for a period of at least five years following the completion of the transactions, along with records of account files, business correspondence, documents of all records obtained through CDD and the results of any analysis undertaken, also for a period of at least five years following the termination of the business relationship.

In addition, Section 7(4) of the Act requires that every reporting entity keep and maintain all records related to STRs and reports on currency transactions (CTRs) filed by it for a period of at least 10 years from the date of reporting.

Regulation 5 of the Anti-Money Laundering Regulations, 2015 requires a financial institution or DNFBP (in case of a cash-based transaction exceeding the minimum threshold) to file a report to the FMU in a prescribed manner. This report is required to be filed immediately but no later than seven working days from the date of the transaction. The minimum threshold is PKR 2 million.

3.5 Are there any requirements to report routinely transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

Reporting entities are required to provide STRs to the FMU, as discussed in question 3.9.

3.6 Are there cross-border transactions reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

Persons bringing into Pakistan currency and/or bearer negotiable instruments exceeding the aggregate value of USD 10,000 or its equivalent are required to make a declaration to the Customs authorities on a prescribed form.

3.7 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

Every reporting entity is required to conduct CDD in the following matters (the respective AML/CFT regulatory authorities having issued regulations in this regard):

(i) when entering into a business relationship;
(ii) when conducting an occasional transaction above the prescribed threshold;
(iii) where there is a suspicion of money laundering or terrorist financing; and
(iv) where there are doubts with regard to the veracity or adequacy of previously obtained data.

Every reporting entity is to:

(i) identify the customer and verify the customer's identity on the basis of documents, data or information obtained from reliable independent sources;
(ii) identify the beneficial owner and take reasonable measures to verify the beneficial owner's identity on the basis of documents, data or information obtained from reliable sources, and to be satisfied that it knows who the beneficial owner is;
(iii) understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship; and
(iv) monitor the business relationship on an ongoing basis.

Enhanced due diligence (EDD) is required in the following circumstances:

(i) in business relationships and transactions with natural and legal persons when the risks are higher;
(ii) in business relationships and transactions with natural and legal persons from countries mentioned in the Counter Measures for High Jurisdictions Rules, 2020, or from countries for which EDD is called for by the Financial Action Task Force; and
(iii) politically exposed persons (PEPs) and their close associates and family members.

3.8 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

Regulations issued by the SBP require that reporting entities shall not enter into or continue correspondent banking relations with a shell bank, and shall take appropriate measures when establishing correspondent banking relations to ensure that their correspondent banks do not permit their accounts to be used by shell banks, and to themselves ensure that their own platforms are not used by any shell bank for execution of a financial transaction or provision of financial services.

3.9 What is the criteria for reporting suspicious activity?

Section 7 of the Act read with Regulation 4 of the Anti-Money Laundering Regulations, 2015 require every reporting entity to file a STR to the FMU if it knows, suspects or has 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 effected in order to hide or

disguise proceeds of crime, is designed to evade any requirements of Section 7 of the Act, or has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction. The STR is to be filed immediately but no later than seven working days after the suspicion arises in respect to a particular transaction, regardless of whether the transaction was completed or not.

3.10 What mechanisms exist or are under discussion to facilitate information sharing 1) between and among financial institutions and businesses subject to anti-money laundering controls, and/or 2) between government authorities and financial institutions and businesses subject to anti-money laundering controls (public-private information exchange) to assist with identifying and reporting suspicious activity?

There exists no mechanism for information sharing between and among financial institutions and businesses subject to money laundering. Section 25 of the Act requires that officers of the Federal Government, provincial governments, local authorities and reporting entities provide every assistance to the investigating or prosecuting agency and to the FMU, including but not limited to the production of records, documents and information required for the purposes of money laundering, predicate offences and financing of terrorism proceedings and investigations under the Act.

3.11 Is adequate, current, and accurate information about the beneficial ownership and control of legal entities maintained and available to government authorities? Who is responsible for maintaining the information? Is the information available to assist financial institutions with their anti-money laundering customer due diligence responsibilities as well as to government authorities?

Section 123A of the Companies Act, 2017 requires companies to maintain information on their ultimate beneficial owners and to submit the same to the Registrar of Companies (SECP) in accordance with the procedure/Form 45 prescribed under Rule 19A of the Companies (General Provisions and Forms) Regulations, 2018. Financial institutions and government authorities can obtain an attested copy of a Form 45 submitted by a company from the SECP.

3.12 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions?

Regulations issued by the SBP requires that the ordering institution, beneficiary institution and intermediary institution must include information on the originator/beneficiary in the message or payment instruction, which shall accompany or remain with the wire transfer throughout the payment chain.

3.13 Is ownership of legal entities in the form of bearer shares permitted?

There is no concept of bearer shares under the Companies Act, 2017.

3.14 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

The AML/CFT regulatory authorities mentioned at question 2.1 have issued detailed regulations applicable to their respective reporting entities.

3.15 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

None other than those mentioned at question 3.14 above.

3.16 Are there government initiatives or discussions underway regarding how to modernise the current anti-money laundering regime in the interest of making it more risk-based and effective, including by taking advantage of new technology, and lessening the compliance burden on financial institutions and other businesses subject to anti-money laundering controls?

No information is publicly available regarding any new initiatives under consideration.

4 General

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

No information is publicly available regarding any additional AML measures.

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force ("FATF")? What are the impediments to compliance?

The 2019 Mutual Evaluation Report (MER) of the FATF's Asia/Pacific Group (APG) graded Pakistan as compliant with one FATF recommendation, largely compliant with nine recommendations, partially compliant with 26 recommendations and non-compliant with four recommendations, out of the total 40 recommendations.

Legislative, regulatory and administrative mechanisms for combatting money laundering are largely in place in Pakistan. The challenge is effective implementation.

4.3 Has your country's anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Council of Europe (Moneyval) or IMF? If so, when was the last review?

In addition to the MER referred to in question 4.2, in September 2020 the APG issued its 1st Follow-Up Report on Pakistan's 2019 MER.

4.4 Please provide information on how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

The relevant material with regard to AML law, regulations, etc. is publicly available in English on the FMU website (https://www.fmu.gov.pk/).

Saifullah Khan is an International Trade, IT and Policy lawyer, with 20 years' experience in international trade policy and law advisory, serving a large client base in the domestic and international market. He is a very successful and renowned anti-dumping lawyer not only in Pakistan but in various jurisdictions, due to his rich experience and expertise in the Trade Defense Laws of the WTO. He has been engaged in more than 85% of the anti-dumping investigations initiated by the Pakistani anti-dumping authority (i.e. National Tariff Commission, Ministry of Commerce – Pakistan) to date, and has been providing trade remedial consultancy services to the domestic industry in Pakistan as well as a large number of foreign producers/exporters in various countries. Mr. Khan writes and presents papers on subjects relating to International Trade laws, Competition law, Dispute Settlement, Preferential Trade Agreements, Data Protection & e-Commerce, Trade in Services, etc. To keep himself up to date with respect to the development of trade and other related policies, Mr. Khan completed an Executive Education Program on "Mastering Trade Policy" from Harvard Kennedy School, Boston, USA. He is an Advocate of the High Court, a Fellow Member of the Institute of Cost & Management Accountants of Pakistan and a Member of the Chartered Institute of Arbitrators (UK).

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Mr Khan has developed a keen professional interest in emerging laws on personal data protection and has gained an understanding of the underlying concepts and principles governing global data protection laws, including the General Data Protection Regulation of the European Union. He has carried out great deal of research on personal data protection laws in various jurisdictions in order to compare their core legal principles.

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