

Facets of Money Laundering

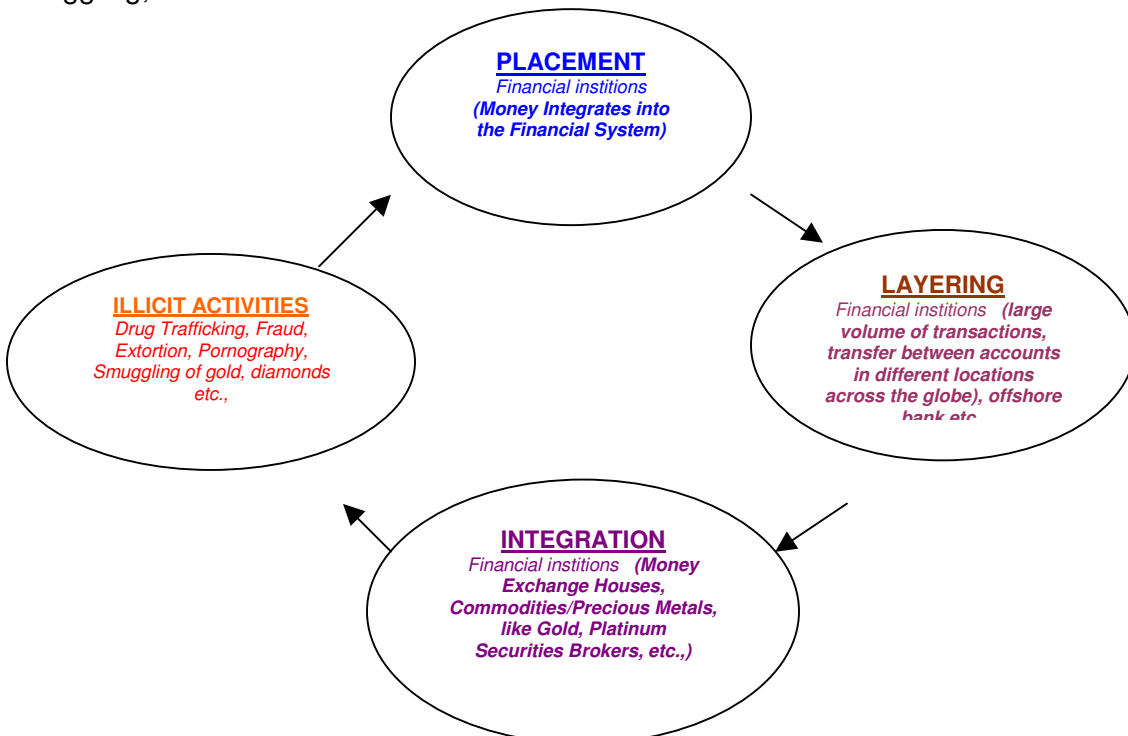
Introduction

Significant advancements in trade & commerce, information technology, economic and social sectors around the world have expanded the frontiers of financial transactions in several ways. However, the integrity of such financial institutions is threatening worldwide with the money being laundered relating to terror financing transactions under the guise of trade.

According to an estimate of International Monetary Fund (IMF) the aggregate size of money laundered every year in the world could be somewhere between two and five percent of the world's Gross Domestic Product (GDP). Money laundering is becoming an imminent threat to financial security around the world because of its serious effects on the economic, social and political factors of the countries. It affects demand for money, exchange, interest rate volatility, and heightened risks to asset quality havocs on the world economy and this need to be tackled.

Money laundering and its Process

Money laundering is the process of concealing the illegal source of dirty money and converting into legitimate funds. The money changes its appearance and difficult to trace out the source. The source of generating may be from drug trafficking, terrorism, smuggling, extortion etc. It is also called as the 'fruits of crime'.



Who will come across the suspicious Transactions?

- **Financial entities**, Includes banks, credit societies, trusts and lending Institutions/companies and agents of the such institutions who accept deposit liabilities;
- **Life insurance companies**, brokers or agents;
- **Securities dealers**, portfolio managers and investment bankers, and other middleman in Securities markets.
- **Forex Dealers**: Persons who are engaged in the business of foreign exchange;
- **Money services businesses**, Which includes alternative remittance systems, popularly known as Hawala, Hundi, Chitti, etc.
- **Agents**, Who are selling National Saving Certificates, money orders and other Financial Instruments etc.,
- **Chartered Accountants** while carrying out certain activities on behalf of their clients
- **Real estate**, brokers or sales representatives of real estate when they carrying out certain activities on behalf of their clients;

The process of money laundering involves disguising the sources of money or assets derived from criminal activity. The techniques of laundering funds vary considerably and quite often ticklish. However, there are generally three stages in the process, which are briefly as under –

Placement: The proceeds of crime are diverted into the financial system. The form of money is changed or converted. This mechanism usually involves the conversion of currency into some other form, or the physical movement of the currency. In total, the form of the money i.e., cash is deposited in multiple transactions into bank accounts.

Layering: At this stage, launderer moves the funds in anticipation to find an adequate financial or business infrastructure, offshore transferring, transfers involving large volume of funds between different locations across the globe. It also involves creating complex layers of financial transactions to disguise the audit trail and the source and ownership of funds (e.g., the purchasing and selling of stocks, commodities or real estate etc.,)

Integration: In this layer the launderer finds a beneficial mode of investment and makes his dirty money to appear legitimate. He may invest in financial markets, real estate and other commercial/industrial assets. Hence, the laundered funds are integrated into the mainstream economy and it is difficult to trace out source of money.

Tools of money laundering

Smurfing: It is used as a tool by money launderer. It involves multiple deposits of low-value monetary instruments purchased from banks or financial institutions with proceeds of crime. It may be in several forms like, multiple deposits of cash or monetary instruments in amounts specifically below the ceiling amount (it is Rs.50, 000 in India). It can be done by one or more persons by making deposits into one or more accounts during several visits to bank. Some times, it involves, deposit of multiple monetary instruments into accounts with different financial institutions.

Structuring

It is through multiple cash deposits or withdrawals at amounts below than ceiling amount. Both structuring and smurfing are similar types of suspicious activity, which may result in money laundering.

E-Banking/Cyber Banking Many banks have started providing their banking services on net by taking advantage of the global reach of the Internet and World Wide Web. Cyber banking is vulnerable to money laundering because it facilitates fast movement of funds across the globe within a short span of time and anonymity of user.

Money laundering in Insurance

Insurance is another mode used in different ways by money launderers. In this regard, International Association of Insurance Supervisors has issued guidance paper on Anti-Money laundering and Combating the financing of terrorism. Accordingly, insurer should assess the customer prior to establishment of a business relationship. It has clearly specified factors to be considered while issuing the policy and how to investigate. Some of the important factors are –

- ◆ Type and background of customer and/or beneficial owner
- ◆ The customer's and/or beneficial owner's geographical base
- ◆ The geographical sphere of the activities of the customer and/or beneficial owner

- ◆ The nature of the activities
- ◆ Means of payment as well as the type of payment (cash, wire transfer, etc.,)
- ◆ The source of funds
- ◆ The source of wealth
- ◆ The frequency and scale of activity
- ◆ The type and complexity of the business relationship
- ◆ Whether or not payments will be made to third parties
- ◆ Whether a business relationship is dormant
- ◆ Any bearer arrangements

International Initiatives in Anti-money laundering

Deception is the heart of money laundering. Laundered funds find their way into legitimate trade and commerce. It becomes difficult to carry the business in legal way for an honest businessman due to competition by a money launderer who has unlimited cash resources from undisclosed source. With these and other factors money laundering is considered as a crime and the United States became first country to enact law as the Money Laundering Control Act, 1986. Subsequently, the international community also felt the need for curbing transactions resulting money laundering.

The International Criminal Police Organisation (INTERPOL): An International organisation having 168 member countries headquartered at France, functioning as a means for exchanging information about crime and criminals. This agency is coordinating through National Central Bureau of all member countries (for example CBI in India) around the world. INTERPOL is continuously monitoring and taking aggressive steps towards international crimes money laundering and drug trafficking, etc., developing and implementing model legislation, providing training and other technical inputs to member countries.

United Nations: The United Nations Narcotics Convention of 1988, popularly known as Vienna Convention, made the member signatories to make money laundering as criminal offence, and an extraditable. It also ensures co-operation and greatest assistance amongst member countries in investigations, prosecutions, and judicial proceedings.

British Commonwealth: The member countries have set up a “Common Wealth Scheme for Mutual Assistance in Criminal Matters”, for tackling international money laundering activities. Each members are assisting each other in criminal investigations, to include “identifying, locating, and assessing the value of, property believed to have been derived or obtained, directly or indirectly, from, or to have been used in, or in connection with, the commission of an offence and believed to be within the requested country”.

Financial Action Task Force

It is an international organization formed with the initiatives of G-7 countries in July 1989 at Paris. The Task force continuously monitors its members' progress in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. It has also released a series of task reports recommending changes in legislation on criminal law, banking and international cooperation.

Accordingly, FATAF is active in its aim of curbing the money laundering activities and accepted to the working definition of money laundering as -

- ◆ The conversion or transfer of property, knowing it is derived from a criminal offence, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of his actions,
- ◆ The concealment or disguising of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property knowing that it is derived from a criminal offence,
- ◆ The acquisition, possession or use of property, knowing at the time of its receipt that it was derived from a criminal offence or from participation in a crime.

Asia / Pacific Group on Money Laundering (APG)

It ensures the adoption, implementation and enforcement of internationally accepted anti-money laundering and counter-terrorist financing standards as set out in the FATF Forty Recommendations and FATF Eight Special Recommendations. It is assisting countries and territories of the region in enacting laws to deal with the proceeds of crime, mutual legal assistance, confiscation, forfeiture and extradition; providing guidance in setting up systems for reporting and investigating suspicious transactions and helping in

the establishment of financial intelligence units. The APG also enables regional factors to be taken into account in the implementation of anti-money laundering measures. The APG also expanded its scope of functions to counter terrorist financing after the events of 11 September 2001.

The Financial Crimes Enforcement Network (FinCEN)

It is a network formed in 1990 and acts as a means of bringing people and information together to fight the complex problem of money laundering. It has worked to maximize information sharing among law enforcement agencies and its other partners in the regulatory and financial communities. Through cooperation and partnerships, FinCEN's network approach encourages cost-effective and efficient measures to combat money laundering domestically and internationally.

The mission is to support law enforcement investigative efforts and foster interagency and global cooperation against domestic and international financial crimes; and to provide U.S. policy makers with strategic analyses of domestic and worldwide money laundering developments, trends and patterns. FinCEN works toward those ends through information collection, analysis and sharing, as well as technological assistance and innovative, cost-effective implementation of the Bank Secrecy Act and other Treasury authorities.

Software solutions

Recently many software development enterprises have come out with innovative banking and financial solutions towards Anti-money laundering and it can be useful to Retail Banks, Commercial Banks, Investment Banks, Brokers & Trading Organisations and Insurance Firms etc., This solution pro-actively monitor all transaction activities across the organisation and effectively detects money laundering activities and terrorist financing. The system generates all statutory reports and provides for generation of suspicious activity reports. It also captures customer details, stores compliance rules, monitors transactions and flags any violation of transactions against customer profile and compliance rules.

Indian Initiatives

With the intention of protecting our society from the globally recognized and, growing problem of money laundering, the Central Government moved the Prevention of Money-laundering Bill in the Parliament on 29th October 1999. After incorporating several suggestions both Rajaya Sabha and Lok Sabha passed the Bill in the winter session of the Parliament in 2002. Further, the Government recently amended certain provisions of this Act.

Recent changes in the Amended legislation 2005

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| <ul style="list-style-type: none">• Definition of Investigation has been extended. Now investigation includes, investigations conducted by the Director or any authority authorised by the Central Government. |
| <ul style="list-style-type: none">• Chairman and members of existing Appellate Tribunal under any other Act shall be appointed as such under this Act. |
| <ul style="list-style-type: none">• Police officer has to get authorisation by the Central Government for investigating offences under this Act. |

Vistas for CAs

Legislation on Anti-money laundering has opened wide professional opportunities to the profession of Chartered Accountancy.

- ◆ **Development of Accounting & Auditing Standards:** Guidance notes and Standards can be set and can be made compulsory to follow while undertaking auditing of clients books of accounts. A chartered accountant who audits the books of accounts of a client may come across the several transactions which may directly/indirectly reflects money-laundering practices. He is also under professional obligation to report such activities in his audit report and to concerned authorities.
- ◆ **Monitoring Mechanism:** As a profession of great importance on financial sovereignty and integrity, research studies can be enunciated to know and assess the new methods of deployment of illegal funds by launderer. It can also assist enforcement directorate in framing regulations to curb financial crimes of the nation.
- ◆ **Enforcement Directorate:** It should contain efficient staff with sufficient knowledge on insurance, banking, securities market, foreign exchange etc., Here, a qualified

chartered accountant who is adept in the above filed of knowledge shall be a right person for this right job. He can also undertake an Independent investigation under this authority.

- ◆ **Adjudicating Authority:** There is no doubt that a CA excels in the filed of finance, accountancy, etc., Hence, he shall be having an advantage over others in becoming a member to the adjudicating authorities. [Under section 6(3) of the Prevention of Money-laundering Act, 2002.]
- ◆ **Member to Appellate Tribunal** Act specifically provides an opportunity to a practicing Chartered Accountant in becoming a member to 'Appellate Tribunal', which hears appeals against the orders of the Adjudicating Authority and authorities. [Under section 28(2) of the Prevention of Money-laundering Act, 2002.]
- ◆ **Legal representation** A person preferring an appeal to the Appellate Tribunal [under section 39(1) of the Prevention of Money-laundering Act, 2002] may appoint a representative of his choice to present his case before the Appellate Tribunal. Here, a qualified Chartered Accountant, who is an authoritative in finance, accounting, taxation and other matters shall be in better position to appreciate the client's case before the Tribunal.

Conclusion

Money laundering is serious threat to global financial system and good governance. It is also boosting international crimes and terrorist activities. In this regard, most of the governments have already enacted statute to combat money-laundering activities. In this regard, the effort of the Indian Government in enacting the Prevention of Money Laundering Act 2002 is most timely, appropriate and appreciable.

International developments

Sl. No.	Countries	Statue
1.	USA	<ul style="list-style-type: none"> ◆ The Money Laundering Act, 1986 ◆ The Bank Secrecy Act ◆ USA PATRIOT Act ◆ Canadian Proceeds of Crime (Money Laundering) and Terrorist Financing Act

		<ul style="list-style-type: none"> ◆ Office of Foreign Assets Control (OGAC) regulations ◆ Financial Action Task Force of South America (GAFISUD)
2.	Caribbean	<ul style="list-style-type: none"> ◆ Caribbean Financial Action Task Force (CFATF)
3.	Europe	<ul style="list-style-type: none"> ◆ First EU Money Laundering Directive (1991) ◆ Second EU Money Laundering Directive (2001)
4.	UK	<ul style="list-style-type: none"> ◆ Proceeds of Crime Act 2002 (PoCa) ◆ Terrorism Act 2000 ◆ Financial Services Authority (FSA)'s Handbook of rules and guidance (2001) ◆ Joint Money Laundering Steering Group (JMLSG) Guidance
5.	Asia	<ul style="list-style-type: none"> ◆ Asia Pacific Group on Money Laundering (APG)

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