

FATF “Grey List” – The Way Forward For Pakistan

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[Note: The author has worked on this comprehensive paper with Barrister Taimur Malik, an international law expert and Founder of Courting The Law. A more detailed version of the paper will be published soon and a copy can be requested by emailing us at team@courtingthelaw.com]

In June 2018, Pakistan was officially placed on the Financial Action Task Force (FATF) “grey list”, despite the country’s efforts to forestall the designation.[\[1\]](#)

This paper will analyze the legal framework of the Anti-Money Laundering (AML)/Combating the Financing of Terrorism (CFT) regime in Pakistan and the institutional measures that need to be taken to effectively implement reforms to achieve the '10-point agenda' set by FATF and to get Pakistan’s name off the ‘grey list’ permanently.

It is important to state at the outset that there are many other countries which probably have a far less comprehensive AML/CFT legislative regime but are not included on the FATF grey-list. Therefore, as such the timing and purpose of putting Pakistan on the list can be seen to be backed by international political reasons more than anything else. Nevertheless, it is in Pakistan’s interests to have a robust and effective AML/CFT regime and this paper critically analyzes the current legislative framework and proposes recommendations from that perspective.

What is the FATF?

The FATF is an inter-governmental organization established in 1989. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

Pakistan is not a member state of FATF. Instead, it is a member of the Asia/Pacific Group on Money Laundering (APG), which is an Associate Member of the FATF.[\[2\]](#)

What is the APG?

The Asia/Pacific Group on Money Laundering is a regional, inter-governmental organisation, consisting of 41 member jurisdictions. It is an FATF style regional body, focused on ensuring that its members effectively implement the international standards against money laundering, terrorist financing and proliferation financing.^[3] Pakistan joined the APG in May 2000.

The APG is an associate member in the FATF which permits APG delegates to attend FATF meetings and intervene on policy and other matters.

The APG, FATF and other regional anti-money laundering bodies (FATF-style regional bodies) constitute a global network to combat money laundering, financing of terrorism and financing of proliferation. All regional bodies use the FATF's 40 recommendations as their principal guidelines for the implementation of effective AML/CFT measures.

What are the FATF 40 + 8 Recommendations?

The FATF has developed **Recommendations**^[4] (**40 Recommendations + IX Special Recommendations**) that are recognised as the international standard for combating money laundering and the financing of terrorism.

Originally developed in 1990, the **40 Recommendations** provide a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, and international cooperation.

In October 2001, the FATF expanded its mandate to deal with the issue of terrorist financing and the **Eight Special Recommendations** (later expanded to 9) were developed in response to the same. The **Recommendations** set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.^[5] The **FATF Recommendations** were revised in 2012, in which the **IX Special Recommendations** on terrorist financing were fully integrated with the measures against money laundering.

The **FATF Recommendations** require countries and regions to:

- Identify, understand and assess the risks of money laundering and terrorist finance and develop policies to mitigate such risks;
- Criminalise money laundering, terrorist financing and proliferation financing in accordance with international law;
- Freeze terrorist assets and confiscate the proceeds of crime;
- Establish a financial intelligence unit to collect, analyse, evaluate and disseminate suspicious transaction reports from financial institutions and other reporting entities;
- Supervise those financial institutions and other reporting entities to ensure compliance with customer due diligence and other requirements as contained in the **Recommendations**;
- Enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and

- Ensure that comprehensive and effective mechanisms are in place to facilitate international cooperation.

What are the FATF's concerns?

1. The FATF found deficiencies in the enforcement of the AML/CFT regime in Pakistan and deficiencies in imposing sanctions against financial institutions for AML/CFT violations.
2. Pakistan did not demonstrate inter-agency cooperation between the federal and provincial authorities to prosecute terrorism financing commensurate with its terrorism financing risks.
3. Concerns over lack of measures to prevent illicit cross-border transportation of currency.
4. The lack of implementation of targeted financial sanctions under the **UNSC Resolutions 1267** and **1373** and the inability to freeze the property of UN-designated groups by Pakistan was also identified.

FATF 10-point agenda for Pakistan

Pakistan will work to implement its action plan to accomplish these objectives by:

- (1) demonstrating that TF risks are properly identified, assessed, and that supervision is applied on a risk-sensitive basis;
- (2) demonstrating that remedial actions and sanctions are applied in cases of AML/CFT violations, and that these actions have an effect on AML/CFT compliance by financial institutions;
- (3) demonstrating that competent authorities are cooperating and taking action to identify and take enforcement action against illegal money or value transfer services (MVTs);
- (4) demonstrating that authorities are identifying cash couriers and enforcing controls on illicit movement of currency and understanding the risk of cash couriers being used for TF;
- (5) improving inter-agency coordination including between provincial and federal authorities on combating TF risks;
- (6) demonstrating that law enforcement agencies (LEAs) are identifying and investigating the widest range of TF activity and that TF investigations and prosecutions target designated persons and entities, and persons and entities acting on behalf or at the direction of the designated persons or entities;
- (7) demonstrating that TF prosecutions result in effective, proportionate and dissuasive sanctions and enhancing the capacity and support for prosecutors and the judiciary; and
- (8) demonstrating effective implementation of targeted financial sanctions (supported by a comprehensive legal obligation) against all 1267 and 1373 designated

terrorists and those acting for or on their behalf, including preventing the raising and moving of funds, identifying and freezing assets (movable and immovable), and prohibiting access to funds and financial services;

(9) demonstrating enforcement against TFS violations including administrative and criminal penalties and provincial and federal authorities cooperating on enforcement cases;

(10) demonstrating that facilities and services owned or controlled by designated persons are deprived of their resources and the usage of the resources.[\[6\]](#)

Legal and Regulatory Framework for AML/CFT

In Pakistan, there is a range of legislation pertaining to Anti-Money Laundering (AML) and combating the Financing of Terrorism (CFT). The primary laws relating to the subject include the following:

1. **Anti-Money Laundering Act, 2010** (as amended by the **Anti-Money Laundering (Amendment) Act, 2015**), (“AMLO”)
2. **Anti-terrorism Act, 1997** (as amended by the **Anti-terrorism (Amendment) Act, 2013** and the **Anti-terrorism (Second Amendment) Act, 2013**), (“ATA”)
3. **Anti-terrorism (Amendment) Ordinance, 2018** and the **Anti-terrorism Bill, 2018** (which is pending before the National Assembly)
4. **Anti-Money Laundering Regulations, 2015**
5. **Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Regulations for Banks & DFIs (2017)**
6. **Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018**

The aforementioned legislation read in conjunction forms a fairly comprehensive framework for the prosecution of AML/CFT violations. Nevertheless, it is not clear how effective the prosecution process has been and how many convictions have been obtained in respect of AML/CFT cases in Pakistan. [\[7\]](#)

Pakistan should attempt to further strengthen its legal/regulatory framework with respect to AML/CFT and improve implementation of the legal regime in place, so as to satisfy the FATF and permanently get off the list. This paper will attempt to identify the loopholes and the defects within the existing AML/CFT legal framework and propose workable suggestions to remedy the same.

1. **Anti-Money Laundering Act, 2010 (AMLO)**

<u>Serial No.</u>	<u>Relevant Section</u>	<u>Relevant Provision</u>	<u>Recommended Changes</u>
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1.	Section 2 - Definitions	<p>The term “money laundering” is not defined in the AMLO even though it is central to the definition of the offence of money laundering (Section 3). This leaves the scope of the offence ambiguous.</p>	<p>It is suggested that one of the following definitions be included in the AMLO:</p> <ul style="list-style-type: none"> • The United Nations Office on Drugs and Crime ('UNODC') identifies 'Money Laundering' as "the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence". • The FATF defines it as the "processing of criminal proceeds to disguise its illegal origin, thereby enabling the criminal to enjoy the profits without jeopardizing the source".
2.	Section 2(m)	<p>" non-financial businesses and professions" means real estate agents, jewellers, dealers in precious metals <i>and</i> precious stones, lawyers, notaries and other legal professionals, accountants, trust and company service providers and such other non-financial businesses and professions as may be notified by the Federal Government;"This definition does not include for instance, auditors and tax advisors.</p>	<p>It is suggested that the ambit of the non-financial businesses and professions be widened:</p> <ul style="list-style-type: none"> • Include auditors, tax advisors etc • Include other persons trading in goods to the extent that payments are made or received in cash in an amount of Rs 2 million or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked (Comparable to EU legislation on AML/CFT) <p>It is suggested that the AMLO Act requirements be extended to the full range of non-financial businesses and professions and effort be made to ensure that</p>

			they are effectively regulated and supervised.
3.	Section 2(q)	<p>“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;”</p>	<p>· To further strengthen the clause, it may be useful to include the phrase “<i>or in connection with</i>” after “<i>indirectly</i>”<u>India – PMLA 2002 (as amended by the Finance Act 2015) – defines “proceeds of crime” as <i>including</i> within its ambit not only the specific property (which is the subject matter of money laundering) <i>or its value</i>, but also the property-equivalent in value held within the country (in a situation where property which is the 'proceed of crime' is taken or held outside the country). To illustrate, if a person X has been accused of having proceeds of crime in country X, in that situation, his assets in India of the same value will qualify as 'proceeds of crime', even though these assets <i>per se</i> are not the 'proceeds of crime' or in no way connected to it. This has been done with a view to enable action in those cases where '<i>proceeds of crime</i>' are taken or held outside the country and to allow action to be taken for attachment of equivalent asset located within the country. This step appears to have been taken in view of the increasing internationalisation of crime.</u></p>
4.	Section 3 – Offence of Money Laundering	<p>“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</p>	<p>· Section 3 complies with the four elements of money laundering, as set out in Section 6 of the Organised Crime Convention.· To widen the net of individuals that can be prosecuted under this provision, it may be useful</p>

		<p>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).”</p>	<p>to include “or from an act of participation in such activity”^[8] after “proceeds of crime” in (a), (b), (c)</p> <ul style="list-style-type: none"> It is observed that the APG recommendations in the Mutual Evaluation Report were incorporated and the net of people that can be prosecuted for AML violations has been widened. <p>In the 2007 AMLO Act, there was no offence for participation in, aiding and abetting the commission of money laundering offences.^[9]</p>
5.	<p>Section 4 - Punishment for Money Laundering</p>	<p>Imprisonment from between 1 year to a maximum term of 10 years</p>	<p>The punishment for money laundering appears to be at par with international standards. Money laundering activities are punishable by a maximum term of imprisonment for 4 years. To make sure sanctions against AML are dissuasive and effective, it may be worthwhile to amend this clause to a minimum imprisonment for a term of not less than 2 years. <u>India</u> – There is no upper cap on the fine that may be imposed for money laundering (Section 4, PMLA 2002).</p> <p><u>India</u> - The offence of money laundering is non-bailable, which means that a person arrested is not entitled to bail as a matter of right, and bail becomes a matter of discretion for the court. If the predicate offence provides for</p>

			<p>punishment more than 3 years, then there is an embargo on release on bail, unless either the offence concerns a child, woman, sick or infirm; if not, then bail can only be granted after hearing the Prosecutor and only after the court comes to the conclusion that <i>"there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail"</i>. For a court to record a finding, at that stage, that there are no reasonable grounds for believing commission of the offence is an unnaturally high threshold (Section 45, PMLA 2002)</p>
6.	<p>Section 6 – Financial Monitoring Unit</p>	<p>(6) “...the Director-General may, if there appear to be reasonable grounds to believe that a property is the property involved in money laundering, order freezing of such property, for a <u>maximum period of fifteen days...</u>”</p>	<p>It is suggested that the period of time for which the Director-General may freeze assets be increased.</p>
7.	<p>Section 8 – Section 10 Forfeiture Provisions</p>	<p>(9) (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.”</p>	<p>Sections 8 and 9 provide a complicated 4-pronged mechanism of forfeiture: (i) provisional attachment by an investigator; (ii) confirmation of provisional restraint by the Court; (iii) Court declaration, following trial, that the order be rendered “final”; and (iv) apparent conversion of attachment into an order for forfeiture. This is further complicated by Section 9(7). There should be conclusive evidence that the properties that are being released are not proceeds of crime or linked in any way, to money laundering. That evidence may be difficult</p>

			<p>to find. <u>India</u> - Section 24 of the PMLA casts the burden of proving that (alleged) proceeds of crime are not involved in Money Laundering on the Accused. This prima facie appears harsh, but on a deeper scrutiny it seems that this section will not relieve the prosecution of its responsibility of making a specific allegation that the monies that are allegedly being laundered are earned by committing a particular schedule offence or offences under the PMLA and are, therefore, proceeds of crime.</p> <p><u>India</u> - The law incorporates the presumption that where money-laundering involves two or more connected transactions and one or more such transactions is/are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under Section 8, it shall, unless otherwise proved to the satisfaction of the adjudicating authority, be presumed that the remaining transactions form part of such interconnected transactions i.e., involved in money-laundering as well (Section 23 of PMLA, 2002).</p>
8.	Section 20 - Jurisdiction	Court of Sessions	<p>There are, on any particular day, about a 100-200 cases pending on the cause list. It would be worthwhile to include a time limit within which the cases have to be decided, so that cases pertaining to AML/CFT are fast-tracked.</p>

9.	Section 26 – Agreements with foreign countries	1(d) “transfer of property relating to any offence under this Ordinance or under the corresponding law in force in that country”.	No such agreements have yet been concluded. Accordingly, AMLO does not currently enable Mutual Legal Assistance related to freezing and confiscation of criminal proceeds. [10] We understand that Pakistan is currently in talks with various countries to finalize Mutual Legal Assistance treaties.
10.	Section 28 and Section 30(2)	(28) “Where a letter of request is received by the Federal Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act or under the corresponding law in force in that country, the Federal Government <u>may</u> forward such letter of request to the Court or to the authorized officer or any authority under this Act ...”(30)(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 offence under section 3 committed in that contracting State, the Federal Government <u>may</u> forward such letter of request to the investigating agency...”	It is suggested that requests for investigation and attachment of property from Contracting States should be <i>mandatorily</i> looked into. Hence, the use of the word “may” should be replaced with “shall”.
11.	Section 29 - Reciprocal arrangements	(2) “Where a Court, in relation to an offence punishable under section	It is unclear whether any extradition treaties, pertaining to or including AML/CFT

	for processes and assistance for transfer of accused persons	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;”(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 or Government deems fit.”	offences, have been enacted pursuant to this. Money laundering, is an extraditable offence, as it was added to the Schedule of the Extradition Act, 1972 by way of Gazetted notification dated 17 March 2009. However, there is no detailed data concerning extraditions so it is not possible to comment on the regime’s effectiveness.
12.	Schedule		Smuggling has been included in the list of Predicate Offences in the Schedule to the Act ^[11]

Section 26 – Agreements with foreign countries

A mutual legal assistance treaty (MLAT) is an agreement between two or more countries for the purpose of gathering and exchanging evidence for use in the investigation and prosecution of criminal cases.

There should be a standalone Mutual Legal Assistance (MLA) Regime in Pakistan to facilitate legal cooperation between states for transnational crimes such as money laundering and terrorism financing.

Pakistan does not have a consolidated MLA regime – although officials advise that steps are underway to enact legislation that would establish one. Pakistan could consider improving its legal framework for MLA by enacting a law that deals specifically with MLA. The **CrPC** is designed for domestic and not foreign investigations, it does not expressly address matters such as dual criminality, offenses eligible for assistance, grounds for denying assistance, channel of communication with foreign states, designation of a central authority to handle requests, taking evidence by video conference, production orders, etc. A special law that expressly addresses these matters could add certainty and transparency to the MLA process.

It is suggested that the other recommendations made by the APG group in the Mutual Evaluation Report should also be considered for implementation.

Combating the Financing of Terrorism

“Terrorist financing” is defined in the **UN Convention for the Suppression of the Financing of Terrorism** at **Article 2** as follows:

"Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

FATF recommendation 6 expands the scope of the offence:

"Terrorist financing offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used, in full or in part: (a) to carry out a terrorist act(s); or (b) by a terrorist organisation or by an individual terrorist (even in the absence of a link to a specific terrorist act or acts)."

UNSC Resolutions 1267 and 1373

- **Resolution 1267**

United Nations Security Council Resolution 1267 was adopted unanimously on 15 October 1999; the Council designated [Osama bin Laden](#) and associates as terrorists and established a [sanctions regime](#) to cover individuals and entities associated with [Al-Qaida](#), [Osama bin Laden](#) and/or the [Taliban](#) wherever located.

The **1267** sanctions regime was initially based on three UNSC resolutions. First, **UNSCR 1267 (1999)**, adopted following the Al-Qaeda attacks on United States (US) embassies in East Africa, imposed a limited air embargo and assets freeze on individuals and entities connected with the Taliban in Afghanistan. Second, **UNSCR 1333 (2000)**, extended those sanctions to individuals and entities associated with Osama Bin Laden and Al-Qaeda. This regime evolved to include asset freezes, travel bans and arms embargoes against individuals and entities named on the 1267 Sanctions List, without the requirement of any territorial connection and for a potentially unlimited period of time (**UNSCR 1390 (2002)**). Finally, **UNSCR 2253 (2015)** extended the Al-Qaida Sanctions List to individuals and entities connected with the Islamic State of Iraq and Levant (ISIL/Da'esh), changing the title of the Sanctions List to what is now the ISIL (Da'esh) and Al-Qaida Sanctions List.[\[12\]](#)

The regime is composed of a [UN Security Council Committee](#), *Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities*, which oversees a "[consolidated list](#)" of people and entities it has determined as being associated with Al-Qaeda or the Taliban, and the laws which must be passed within each member nation in order to implement the sanctions.

Under the listing procedure, any UN member state may submit names to the Sanctions Committee to request their inclusion on the Sanctions List. The committee approves or rejects the listing requests, unless a UNSC member objects within a certain period. Once an individual or entity is placed on the Sanctions List, all UN member states are obliged to implement the asset freeze, arms embargo and travel ban against them.[\[13\]](#)

- **Resolution 1373**

The other main counter-terrorist sanctions regime was set up by the UNSC by means of **Resolution 1373 (2001)** in the aftermath of the attacks on 11 September, 2001. The **Resolution** requires states to criminalise the support of terrorism, by freezing the funds of those suspected of making financial resources available to terrorists and by introducing domestic legislation making support for terrorist acts a serious criminal offence, sanctioned accordingly. **UNSCR 1373 (2001)** therefore establishes a 'parallel' or 'decentralised' listing system, whereby UN member states are given discretion over decisions on who to list. Under this regime, suspects or groups need not therefore necessarily be associated with Al-Qaeda or the Taliban, as **UNSCR 1373** allows for the listing of individuals or groups as considered necessary 'to prevent and suppress the financing of terrorist acts'. These designations are made at national or regional level, however, individuals or groups have greater means to challenge their listing, including through judicial review. The 1373 Counter-Terrorism Committee (CTC) was established as a subsidiary body of the UNSC to monitor the implementation of the 1373 regime.[\[14\]](#)

The Committee, comprising all 15 Security Council members, was tasked with monitoring implementation of **Resolution 1373 (2001)**, which requested countries to implement a number of measures intended to enhance their legal and institutional

ability to counter terrorist activities at home, in their regions and around the world, including taking steps to:

- Criminalize the financing of terrorism;
- Freeze without delay any funds related to persons involved in acts of terrorism;
- Deny all forms of financial support for terrorist groups;
- Suppress the provision of safe haven, sustenance or support for terrorists;
- Share information with other governments on any groups practising or planning terrorist acts;
- Cooperate with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts; and
- Criminalize active and passive assistance for terrorism in domestic law and bring violators to justice.[\[15\]](#)

In addition, with respect to terrorist financing, the **UN Convention on the Suppression of Terrorist Financing** was introduced in 1999.

Framework for implementation of UNSC Resolutions in Pakistan

The Government of Pakistan under the **United Nations (Security Council) Act, 1948** gives effect to the decisions of UNSC whenever the Consolidated List maintained by the Sanctions Committee is updated. The **United Nations (Security Council) Act, 1948** transposes these **Resolutions** into domestic law. It states that:

“2. Measures under Article 41 of the Charter of the United Nations.— If, under Article 41 of the Charter of the United Nations signed at San Francisco on the 26th day of June 1945, the Security Council of the United Nations calls upon [Government] to apply any measures, not involving the use of armed force, to give effect to any decision of that Council, may, by order published in the official Gazette, make such provisions (including provisions having extra-territorial operation) as appear to it necessary or expedient for enabling those measures to be effectively applied, and without prejudice to the generality of the foregoing power, provision may be made for the punishment of person offending against the order.”

The State Bank of Pakistan has issued, **Guidelines on Compliance of Government of Pakistan’s Notifications under the United Nations Security Council (UNSC) Resolutions.**

The Ministry of Foreign Affairs issues **Statutory Regulatory Orders (SROs)** to provide legal cover for implementing sanction measures under **Security Council Resolutions**. These **SROs** in respect of listed individuals/ entities require assets freeze, travel ban and arms embargo in accordance with the **Security Council Resolutions**.

Similarly, for implementing sanction measures under **Security Council Resolution 1373(2001)**, the Ministry of Interior issues Notifications of proscribed entities/ individuals pursuant to the **Anti-Terrorism Act, 1997**. State Bank of

Pakistan circulates the subject **SROs/Notifications** to its regulated entities for taking necessary action as per **SRO**.[\[16\]](#)

Further, the Government of Pakistan has already prescribed penalty up to Rs. 10 million for non-compliance of sanctions regime being implemented through **SROs** under the **UN (Security Council) Act, 1948**.[\[17\]](#)

Problems with the implementation of UNSC Resolutions

Pakistan's failure to adequately crack down on the activities of proscribed organisations under **UNSC Resolutions 1267** and **1373** was probably a sticking point for some members of the FATF, specifically in connection to the movement of leaders of certain organizations. The Pakistani government had put the leaders of these organisations under house arrest but they were released by the High Court, as had happened on previous occasions as well, including in relation to Hafiz Saeed, who was listed by the UN Security Council in December 2008.[\[18\]](#) Designated individuals have been released by Pakistani courts several times. A case in point is the recent Supreme Court decision allowing Hafiz Saeed and his charities to continue work.[\[19\]](#) This can be attributed to the lack of evidence to convict such individuals in Pakistani courts.

2. Anti-Terrorism Act, 1997 (ATA)

The ATA is particularly pertinent in the context of the FATF grey listing.

On 11 February, 2018, the President promulgated an Ordinance further amending the **ATA, 1997**, enabling the federal government to freeze, seize and manage properties, assets and charitable works of the banned organisations and individuals.

3. Anti-terrorism (Amendment) Ordinance, 2018 and the Anti-terrorism Bill, 2018

It is important to note that there is a Bill pending before the National Assembly, titled the **Anti-Terrorism Bill 2018**, which seeks amendments in **sections 11B** and **11EE** of the **Anti-Terrorism Act 1997** so that the federal government can take action against a person or organisation solely based on the **Resolutions** of UN Security Council. The passage of the **Bill** will translate the **Ordinance** into an Act of Parliament.

However, it remains to be seen how effective the **Ordinance** and the **Bill** (if passed by an Act of Parliament) will be to reign in the proscribed organizations and freeze their assets.

<u>Serial No.</u>	<u>Relevant Section</u>	<u>Relevant Provision</u>	<u>Recommended Changes</u>
1.	11B. Proscription of organisations	“(1) The Federal Government may, by order published in the official Gazette, list an organisation as a proscribed	The Presidential Ordinance amended this clause to include: “In Section 11B, “in sub-section (1), after clause

		<p>organisation in the First Schedule on an ex parte basis, if there are reasonable grounds to believe that it is:-</p> <p>(a) concerned in terrorism; or</p> <p>(b) owned or controlled, directly or indirectly, by any individual or organisation proscribed under this Act; or</p> <p>(c) acting on behalf of, or at the direction of, any individual or organisation proscribed under this Act.</p>	<p><i>(a), the following new clause shall be inserted, namely:- "(aa) listed under the United Nations (Security Council) Act, 1948 (XIV of 1948), or".</i></p> <p>This is a welcome step. It may be questioned if this is too little, too late and whether this will pacify the FATF members.</p>
2.	<p>11EE. Proscription of person and surety</p>	<p>(1) The Federal Government may, by order published in the official Gazette, list a person as a proscribed person in the Fourth Schedule on an ex parte basis, if there are reasonable grounds to believe that such person is:-(a) concerned in terrorism;</p> <p>(b) an activist, office bearer or an associate of an organization kept under observation under section 11D or proscribed under section 11B; and</p> <p>(c) in any way concerned or suspected to be concerned with such organization or affiliated with any group or organization suspected to be involved in terrorism or sectarianism; or acting on behalf of, or at the direction of, any person or organisation proscribed under this Act.</p> <p>(2) The Proscribed Organization shall submit all accounts of its income and expenditure for its political and</p>	<p>The Presidential Ordinance, 2018 also amended this clause to include the proscription of individuals listed in UNSC resolutions 1267 and 1373.<i>"in sub-section (1), after clause (a), the following new clause shall be inserted, namely:-"(aa) listed under the United Nations (Security Council) Act, 1948 (XIV of 1948); or".</i> Furthermore, Subsection 2(e) needs to be amended as all assets of the proscribed person should be frozen indefinitely. All assets where there is a suspicion that they may be connected to proscribed person, either directly or indirectly, should also be frozen. Assets of other family members, including grandparents and uncles should also be scrutinised. Lastly, the period applicable to such scrutiny should also be extended to at least 5 years from 3 years. The fine should also be defined and increased.</p>

		<p>social welfare activities and disclose all funding sources to the competent authority designated by the Federal Government.</p> <p>....(e) – <i>“check and probe the assets of such persons or their immediate family members i.e., parents, wives and children through police or any other Government agency, which shall exercise the power as are available to it under the relevant law for the purposes of the investigation, to ascertain whether assets and sources of income are legitimate and are being spent on lawful objectives...”</i></p>	
3.	<p>11EEE. Powers to arrest and detain suspected persons</p>	<p>(1)“The Government if satisfied that with a view to prevent any person whose name is included in the list referred to section 11EE, it is necessary so to do, may, by order in writing, direct to arrest and detain, in such custody as may be specified, such person for such period as may be specified in the order, and Government if satisfied that for the aforesaid reasons it is necessary so to do, may, extend from time to time the period of such detention for a total period <u>not exceeding twelve months.</u>”</p>	<p>The detention/arrest period for proscribed persons should be extended to at least 2 years.</p>
4.	<p>11F. Membership, support and meetings relating to a Proscribed Organization</p>	<p>1) A person is guilty of an offence if he belongs or professes to belong to a proscribed organization.(2) A person guilty of an offence under sub-section (1) shall be liable on conviction to a term not exceeding six months imprisonment and a fine.(3) A person commits an offence if</p>	<p>The imprisonment period should be increased for members of a proscribed organisation to at least 1 year (Subsection 2) to have a deterrent effect.</p>

he:(a) solicits or invites support for support for a proscribed organization, and the support is not, or is not restricted to, the provisions of 1[money or other property]; or(b) arranges, manages or assists in managing, or addressing meeting which he knows is:- (i) to support a proscribed organization;

. (ii) to further the activities of a proscribed organization; or

. (iii) to be addressed by a person who belongs or professes to belong to a proscribed organization.

(4) A person commits an offence if he addresses a meeting, or delivers a sermon to a religious gathering, by any means whether verbal, written, electronic, digital or otherwise, and the purpose of his address or sermon, is to encourage support for a proscribed organization or to further its activities.

(5) A person commits an offence if he solicits, collects or raises 1[money or other property] for a proscribed organization.

(6) A person guilty of an offence under sub-section (3),(4), and (5) shall be liable on conviction to a term of imprisonment, not less than one year and not more than five years and a fine.

5.

**11H.
Fundraising**

This is the definition for Terrorism Financing in the Pakistani AML/CFT legal regime. It would be worthwhile to clarify the ambiguities surrounding the scope of the TF offence. For the purposes of clarity, the UN Model clause defining TF may be adopted. It is provided below: Consider adopting the Model UN clause on terrorism financing“(2) Any person who by any means, directly or indirectly, [*wilfully*] provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part:

(a) in order to carry out a terrorist act; or

(b) by a terrorist to facilitate that person’s activities related to terrorist acts or membership in a terrorist organization; or

(c) by a terrorist organisation commits an offence.

(3) An offence under subsection (2) of this section is committed:

(a) even if the terrorist act referred to in subsection (2) of this section does not occur or is not attempted;

(b) even if the funds were not actually used to commit or attempt the terrorist act referred to in subsection (2) of this section; and

(c) regardless of the State or territory in which the terrorist act is intended to or does occur.

(4) It shall also be an offence to:

(a) participate as an accomplice in an offence within the meaning of subsection (2) of this section;

(b) organise or direct others to commit an offence within the meaning of subsection (2) of this section;

(c) intentionally contribute to the commission of an offence under subsection (2) by a group of persons acting with a common purpose, where the contribution is to further the criminal activity or purpose of the group that includes commission of an offence under subsection (2) or where the contribution is made knowing the intention of the group is to commit an offence under subsection (2).

(5) The offences set forth in subsections (2) and (4) of this section shall be punishable in the case of a natural person by imprisonment of [insert number] to [insert number] years and a fine of [insert amount] to [insert amount] or either of these penalties, and in the case of a legal person by a fine not exceeding [ten] times that amount. [\[20\]](#)

6.	11K. Money laundering	(1) A person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property:-(a) by concealment;(b) by removal from the jurisdiction;(c) by transfer to nominees; or(d) in any other way.(2) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.	
7.	11L. Disclosure of Information	“...Provided that this subsection does not require disclosure by a professional legal advisor of any information which he obtains in privileged circumstances.”	Disclosure should be extended to legal professionals.
8.	11N. Punishment under Sections 11H to 11K.	“Any person who commits an offence under sections 11H to 11K, shall be punishable on conviction with imprisonment for a term not less than 1[five years] and not exceeding 1[ten years] and with fine.”	The fine should be defined and should be substantial to act as a deterrent.
9.	11O. Seizure, freeze and detention.	(1) On proscription made under section 11B or, as the case may be, section 11EE,- (a) (b) (c) (d) the money or other property owned or controlled, wholly or partly, directly or indirectly, by a proscribed organisation or proscribed person shall be frozen or seized, as the case may be; the money or other property derived or generated from any property referred in clause (a) shall be frozen or seized, as the case may be;no person shall	Proscription does not affect a comprehensive freeze in accordance with UNSCR 1373. Freezing is limited to the sealing of the offices of the entity, the freezing of its accounts and the detention of any cash found in its possession: s 11E and s 11O. Whether offices and accounts held by third parties on behalf of a proscribed organisation or person is unclear.

	use, transfer, convert, dispose of or remove such money or other property with effect from proscription; and within forty-eight hours of any freeze or seizure, the person carrying out the freeze or seizure shall submit a report containing details of the property and the persons affected by the freeze or seizure to such office of the Federal Government as may be notified in the official Gazette.
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In short, Pakistan needs stronger provisions preventing the raising and moving of funds, identifying and freezing assets (movable and immovable) and prohibiting access to funds and financial services, for proscribed organisations and persons (linked to them directly or indirectly).

Furthermore, the ATA should apply to all Pakistanis, wherever they may be resident, as is the case in India.[\[23\]](#)

4. Anti-Money Laundering Regulations, 2015

<u>Serial No.</u>	<u>Relevant Section</u>	<u>Relevant Provision</u>	<u>Recommended Changes</u>
1.	Regulation 3	Suspicious transaction reports STRs and Currency transaction Reports CTRs should only be made to the Financial Monitoring Unit.	The FMU was set up in 2007. Hence, it is a relatively new body that does not have the sort of experience NAB and the FIA have. Therefore, a collaborative approach between agencies might be more effective. The APG report recommended that Pakistan avoid a fragmentation of rule-making by using the ongoing revision of the Banking Company Ordinance and the SECP Act to expressly confer these powers on the prudential supervisors, with proper coordination with the FMU. It also recommended more coordination and harmonization of the requirements to avoid the

			risks of regulatory arbitrage. [21]
2.	Regulation 5	<p>“Accordingly, all cash-based transactions of two million rupees or above involving payment, receipt, or transfer are to be reported to FMU as CTR. Likewise, cash-based foreign currency transaction equivalent to two million rupees or above are to be reported as CTR.[22] Every single cash transaction of two million rupees or above is to be reported as CTR. Aggregation of cash transactions during the day for the purpose of reporting a CTR is not required, unless there is a suspicion that it is being reported as such..”</p>	<p>This cash limit should be reduced to 1 million rupees. To compare, in the EU, the cash limit is EUR 1000 (Section 2(5) – EU directive 15[23]). In India, is it 10 lakhs or its equivalent in foreign currency. Furthermore, it may be useful to adopt a similar provision to the one provided in the Indian Prevention of Money-Laundering (Maintenance of Records), 2005 in Rule 3:“(b) All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency;(c) <i>All transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency;</i>(d) All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions;</p> <p>(e) All suspicious transactions whether or not made in cash;</p> <p><i>(f) All cross border wire transfers of the value of more than five lakh rupees or its</i></p>

			<p><i>equivalent in foreign currency where either the origin or destination of fund is in India; and</i></p> <p><i>(g) All purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity, as the case may be."</i></p>
3.	Regulation 7	<p>Order freezing of "any property or account" reasonably believed to be "involved in money laundering or terrorist financing" for a maximum period of 15 days.</p>	<p>The freezing period should be at least a month.</p>
4.			<p>It may also be useful to include a provision limiting the amount of cash deposit that third parties may make into a person's account (such as is the policy with the Bank of America cash deposits).</p>

5. **Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Regulations for Banks & DFIs (2017)**

These are comprehensive. There is a need to work on the implementation of the above along with capacity building of the State Bank of Pakistan. Specifically, in relation to **Regulation 23**:

"Banks/DFIs are prohibited, on an ongoing basis, from providing any banking services to proscribed/ designated entities and persons or to those who are known for their association with such entities and persons, whether under the proscribed/ designated name or with a different name."

It may be useful to add "members of proscribed organisations" as prohibited from being provided banking services to widen the ambit of the regulation.

6. **Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018**

The Securities and Exchange Commission of Pakistan (SECP) notified the **Anti Money Laundering and Countering Financing of Terrorism Regulations, 2018**. The regulations supersede all earlier circular/notifications which had separate AML/CFT requirements for financial institutions regulated by the SECP, namely Securities Brokers, Insurance Companies, Non-Banking Finance Companies and *Modarabas*. These **Regulations** provide a single set of regulations for all the aforementioned financial institutions with the aim to harmonize the AML/CFT regime.

In order to ensure that criminals are not able to hide their identity through the use of complex ownership structure of companies, partnerships, trusts or other similar forms, the financial institutions are required to identify the ultimate beneficial owner, who is a natural person, of all legal persons and legal arrangements before offering their services to them (**Regulation 6**).[\[24\]](#)

Conclusion

As highlighted above, Pakistan has a comprehensive legislative regime related to AML/CFT. There are certain deficiencies indeed and the government has been working to overcome them through legislative amendments and new laws.

The main issue is the implementation of the existing and proposed laws and the training of public sector officials and members of the judiciary to deal with such matters. Considering the scope of this exercise and the sheer number of officials that need to be trained properly, this cannot be expected to be done overnight.

Moreover, the new government has initiated the process of negotiating Mutual Legal Assistance treaties with key partner countries and this should lead to an improvement in information sharing about AML/CFT matters as well.

Furthermore, the training and capacity building functions of the federal and provincial judicial academies, the National Police Academy and the State Bank should be strengthened and utilized for intensive training of relevant officials in the AML/CFT field.

[Note: The author has worked on this comprehensive paper with Barrister Taimur Malik, an international law expert and Founder of Courting The Law. A more detailed version of the paper will be published soon and a copy can be requested by emailing us at team@courtingthelaw.com]

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[20] https://www.unodc.org/documents/money-laundering/Model_Provisions_2009_Final.pdf

[21] para 23, APG report

[22] <https://www.fmu.gov.pk/docs/FrequentlyAskedQuestions-CTR.pdf>

[23] 5. For the purposes of point (b) of paragraph 3, Member States shall apply a maximum threshold per customer and per single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That maximum threshold shall be established at national level, depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for money laundering or terrorist financing, and shall not exceed EUR 1 000.

[24] <https://www.secp.gov.pk/wp-content/uploads/2018/06/Press-Release-June-20-SECP-notifies-AML-and-CFT-Regulations-2018.pdf>

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