

# Money Laundering and Its Fall-out



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The Associated Chambers of Commerce and Industry of India

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## PREFACE

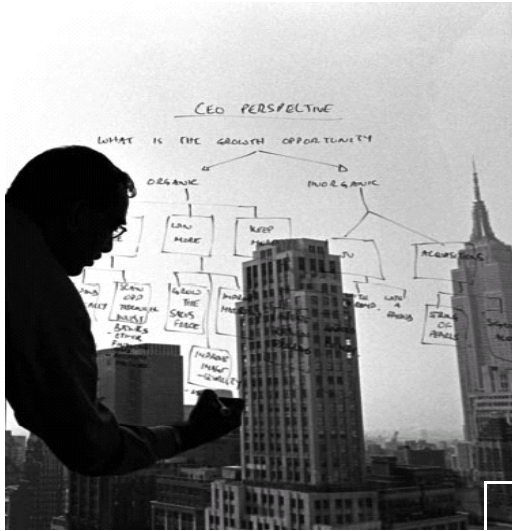


Money Laundering has a close nexus with organized crime. Money Launderers accumulate enormous profits through drug trafficking, international frauds, arms dealing etc. Cash transactions are predominantly used for Money Laundering as they facilitate the concealment of the true ownership and origin of money. It is well recognized that through the huge profits the criminals earn from drug trafficking and other illegal means, by way of money laundering could contaminate and corrupt the structure of the State at all levels. Further, this adds to constant pursuit of profits and the expansion into new areas of criminal activity.

It undermines free enterprise and threatens financial stability by crowding out the private sector, because legitimate businesses cannot compete with the lower prices for goods and services that businesses using laundered funds can offer. All Govts. across the globe have developed frameworks to identify such illegal transactions which qualify under Money Laundering and initiate action. But a lot more needed to be done. This Conference will deliberate all relevant issues and may come up with a broad vision for experts to deliberate.

I wish you all a wonderful conference and look upto each one of you to make your contribution to make it a grand success.

Mr. R. K. Handoo  
Co-Chairman, ASSOCHAM's National Council on Legal Affairs  
& Advocate, Handoo & Handoo Legal Consultants LLP



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**MESSAGE FROM  
SECRETARY GENERAL,  
ASSOCHAM**



Money laundering is considered as an unlawful financial transaction which is a serious threat to the economy.

Developing countries often bear the impact of money laundering because the governments are still in the process of updating and fine-tuning regulations for their financial sectors. With the increased use of technology for transfer of funds, banks need to be in a state of high alert so that they can steer clear of Money Laundering. Section 12 of PML Act 2002 is self-explanatory as to what constitutes the gross violation of KYC norms and RBI regulations framed to prevent money laundering. Banks and other financial institutions can protect themselves against Money Laundering by implementing an effective KYC Policy and verifying the source of funds.

Banks and Financial Institutions are required to report suspicious transactions to different agencies of the Govt. for appropriate analysis and actions. They are also expected to train their employees to spot potentially suspicious activity. In order to establish comprehensive anti-money laundering legislation, we must address the scope of the right to financial privacy. If banks and financial Institutions are to comply with strict governmental regulation, they must be able to do so without the fear of future actions against them for breach of contract or defamation. Public awareness is equally necessary as masses by and large do not understand the problem.

ASSOCHAM along with Resurgent India have come out with this backgrounder to address this vital issue. It is hoped that this will give a bird's eye view of the problem and prevailing situation in India and globally.

My best wishes to every one for making this initiative a success.

A handwritten signature in black ink, appearing to read "D. S. Rawat", written over a horizontal line.

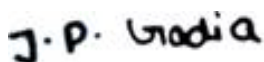
D. S. Rawat  
Secretary General  
The Associated Chamber of Commerce and Industry of India  
(ASSOCHAM)

**MESSAGE FROM MD/CEO,  
RESURGENT**

The world is a global village. This saying was propagated a few years ago. The truth of this saying is starkly evident today when we look at the global economy and its ripple effect on our economy. The world is in such a situation that we cannot wish away the economic woes being faced by other countries across the globe. Whatever economic problems are evident in other countries are bound to have an effect on other countries as well – only the severity of the effect may vary from country to country.

Having said that it's evident that the economic condition of one country has its effect on other countries of the world. 'Money-Laundering' – A sophisticated crime, not taken as seriously at first glance by anyone in the society as compared to street crimes. To start with, in this research paper, the references are not limited to national context, as any instance of money laundering would have a tinge of international flavor as money laundering typically involves transferring money through several countries in order to obscure its origin.

Even though it does not appear to be crime at first glance, but is a predicate offence, as the criminal activities that generated proceeds, thus making laundering necessary. In this research paper, we have discussed on various topics related to Money laundering and also devastating implication of this menace if left unchecked. I am quite hopeful that all of us would gain further insight into the Money Laundering mechanism during the course of today's conference.



Jyoti P Gadia  
Managing Director  
Resurgent India Limited

## NATIONAL CONFERENCE ON “MONEY LAUNDERING AND ITS FALL-OUT”

(Saturday) 20th April, 2013 Hotel Royal Plaza, New Delhi

### Programme Schedule

09:00 am – 10:00 am	Registration of Delegates
<b>Inaugural Session- 10:00 am- 11:30 am</b>	
Opening Remarks	Mr. D. S. Rawat, Secretary General, ASSOCHAM
Welcome Address	Mr. R. K. Handoo, Co-Chairman, ASSOCHAM's National Council on Legal Affairs & Advocate, Handoo & Handoo Legal Consultants LLP
Special Address	Mr. S. C. Aggarwal, Chairman & Managing Director, SMC Global Securities Ltd.  Padma Shri D. R. Kaarthikeyan, I.P.S. (Retd.), Former Director, CBI & Chairman, ASSOCHAM's National Council on Security
Industry Perspective	Mr. B. D. Narang, Ex-CMD, Oriental Bank of Commerce  Mr. Jyoti Prakash Gadia, Managing Director/CEO, Resurgent India Limited
Inaugural Address by Chief Guest	Justice Shri. Anil Kumar  Chairman, PMLA Tribunal
Vote of Thanks	Mr. R. K. Bhasin, Joint Director, ASSOCHAM
11:30 am – 12:00 noon	Networking Tea / Coffee
<b>TECHNICAL SESSION – 12:00 noon – 2:00 pm</b>	
<b>Session Theme: Money Laundering and its Fall-out</b>	
<b><u>Session Chairman</u></b>	
<b>Mr. B. D. Narang, Ex-CMD, Oriental Bank of Commerce</b>	
<b>Distinguished Speakers</b>	<b>Topics</b>
General Manager, Central Bank of India	Role of Banks to check Money Laundering
Dr. Shamsuddin, Additional Director (Prosecution), Directorate of Enforcement	Role of Enforcement Directorate in en-forcing PMLA
Mr. R. K. Handoo, Co-Chairman, ASSOCHAM's National Council on Legal Affairs & Advocate, Handoo & Handoo Legal Consultants LLP	Legal Framework to check Money Laundering
Mr. Anand Jha, Additional Director, Financial Intelligence Unit	Role of Financial Intelligence Unit
Mr. Prithvi Haldea, Chairman, Capital Market Committee, ASSOCHAM & CMD, Prime Database	Black Money and Capital Market
Mr. Sanjay Modi, Vice President, Resurgent India Limited	Role of Information Technology
<b>Question &amp; Answer Session</b>	
<b>Vote of Thanks: Mr. R. K. Bhasin, Joint Director, ASSOCHAM</b>	
<b>Networking Lunch – 2:00pm onwards</b>	

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## INTRODUCTION

A layman would probably equate money laundering with something related to washing, cleaning and drying of currency notes. To some extent this is right, since it is that process, where illegally obtained money is given the appearance of having originated from legitimate sources. In simple words, it is conversion of black money earned from illegal activities to white money and makes it appear as if it is earned legal means.



Money laundering is the process used by launderers across the world to conceal criminal activity associated with it such as drug / arms trafficking, terrorism and extortion. It's a criminal practice of filtering ill-gotten gains or "dirty" money through a series of actions so that the funds are "cleaned" to appear like proceeds from legal activities. This process is fuelled by criminal activities and conceals the true source of funds. As per The International Monetary Fund, the size of money laundering in the world could be somewhere between 2-5% of the world's gross domestic product.

Money laundering has close connections with organized crime and is the process used to conceal the true ownership of huge profits accumulated from illegal activities. The types of criminals who need to launder money are drug traffickers, embezzlers, mobsters, terrorists and con artists. Drug traffickers are in serious need of a good laundering network as they deal almost exclusively in cash, which causes all sorts of logistics problems. One important aspect of money laundering is the tendency and need for perpetrators to operate cross border schemes for the purpose of concealment and/or to take advantage of the uneven developments in the national anti money laundering regimes.

Once the process is successful, it allows the criminals to maintain control over the proceeds and ultimately provide a legitimate cover for their source of income. Money laundering plays a primary role in facilitating the ambitions



*Money is like fire, an element as little troubled by moralizing as earth, air and water. Men can employ it as a tool or they can dance around it as if it were the incarnation of a god. Money votes socialist or monarchist finds a profit from illegal activity. It acquires its meaning from the uses to which it is put.*

*Mahatma Gandhi once said Capital as such is not evil; it is its wrong use that is evil. Capital in some form or other will always be needed.*

of drug traffickers, terrorists, organized criminals, tax evaders and many others who would like to avoid the kind of attention from the authorities that sudden wealth brings in its wake. These criminal enterprises seek to obtain money and power through criminal conduct and then attempt to infiltrate the legitimate society. Banks and financial institutions are vulnerable from Money Laundering as criminal proceeds can enter banks in the form of large cash deposits. Bank officials should therefore need to exercise constant vigil and need to keep a check on large cash deposits and other suspicious transactions.

### **Money Laundering: The Concept**

Money Laundering as an expression is one of fairly recent origin. It is a sophisticated crime not taken seriously at first glance by anyone in the society. As compared to street crimes, it is a modern crime. At times it is also referred to as a victimless crime, since in reality it is not a crime against a particular individual, but it is a crime against nations, economies and governments, rule of law and world at large. Money laundering has become a matter of concern worldwide and governments across the world are taking stringent measures to control this global menace.

Money Laundering is not an independent crime in itself, it depends upon another crime, the proceeds of which is the subject matter of the crime in money laundering. From the legal point of view, the defining and criminalizing factor in money laundering relates to the so-called 'predicate offences' understood as the criminal offences which generated the proceeds thus making laundering necessary. Hiding or disguising the source of certain proceeds will of course, not amount to money laundering unless these proceeds were obtained from a criminal activity. Therefore, what exactly amounts to money laundering, which actions and who can be prosecuted is largely dependent on what constitutes a predicate crime for the purpose of money laundering.

The main objective of criminal activities is to generate profit for the individual or group that carries out the act

and then hide either the source or the destination of money. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance to the criminals, as it enables them to enjoy these profits without jeopardizing their source. Criminal activities like illegal arms sales, smuggling, corruption, drug trafficking and the activities of organized crime including tax evasion generate huge sums of money. Insider trading, bribery and computer fraud also generate large profits for the perpetrators of the crime and create the incentive to legitimize the ill-gotten gains through money laundering.

*Money laundering is called what it is because that perfectly described what takes place-illegal of dirty, money is put through a cycle of transactions or washed, so that it comes out the other end as legal, or clean money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income.*

When a criminal activity generates substantial profits, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the persons involved. This is done by disguising the sources, changing the form, or moving the funds to a trail is not effectively covered the very purpose of doing the whole process is defeated as the law enforcement authorities would be able to detect the transaction easily. After conversion, eventually channelizing them into the financial market legitimizes the ill-gotten gains. It is against the law to utilize laundered money. Further, facilitating money laundering indirectly supports the underlying activity; thus it is considered a criminal activity.

Money laundering occurs through banks and through NBFIs (Non-bank Financial Institutions) i.e., real estate companies, securities brokers/intermediaries, leasing companies and insurance companies. It is most likely to be more prevalent in countries that do not have a developed financial and legal framework for detection/prevention of money laundering.

It has negative effects in the development of the country as it causes a diversion of resources to less productive areas of the economy which in turn depresses economic growth. The legitimization of large profits emanating from illegal activities encourages corruption and crime.

## An Organized Crime

The need of money laundering rose as the crime syndicates had to conceal the enormous profits accumulated from illegal activities. Cash transactions are predominantly used for Money Laundering as they facilitate the concealment of the true ownership and origin of money. It is well recognized that through the huge profits the criminals earn from drug trafficking and other illegal means, money laundering contaminates and corrupts the structure of the country at all levels. Further, this adds to constant pursuit of profits and the expansion into new areas of criminal activity. Through money laundering, organized crime diversifies its sources of income and enlarges its sphere of action. The social danger of money laundering consists in the consolidation of the economic power of criminal organizations, enabling them to penetrate the legitimate economy. In advanced societies, crime is increasingly economic in character. Criminal associations now tend to be organized like business enterprises and to follow the same tendencies as legitimate firms; specialization, growth, expansion in international markets and linkage with other enterprises. The holders of capital of illegal origin are prepared to bear considerable cost in order to legalize its use.



## Evolution of Money Laundering

Money Laundering as an expression is one of fairly recent origin and as a crime attracted interest in 1980. Efforts to launder money and finance terrorism have been evolving at a fast pace in recent years as against the increasing countermeasures. The international community has witnessed the use of increasingly sophisticated methods to move illicit funds through financial systems across the globe and has acknowledged the need for improved multilateral cooperation to fight these criminal activities.

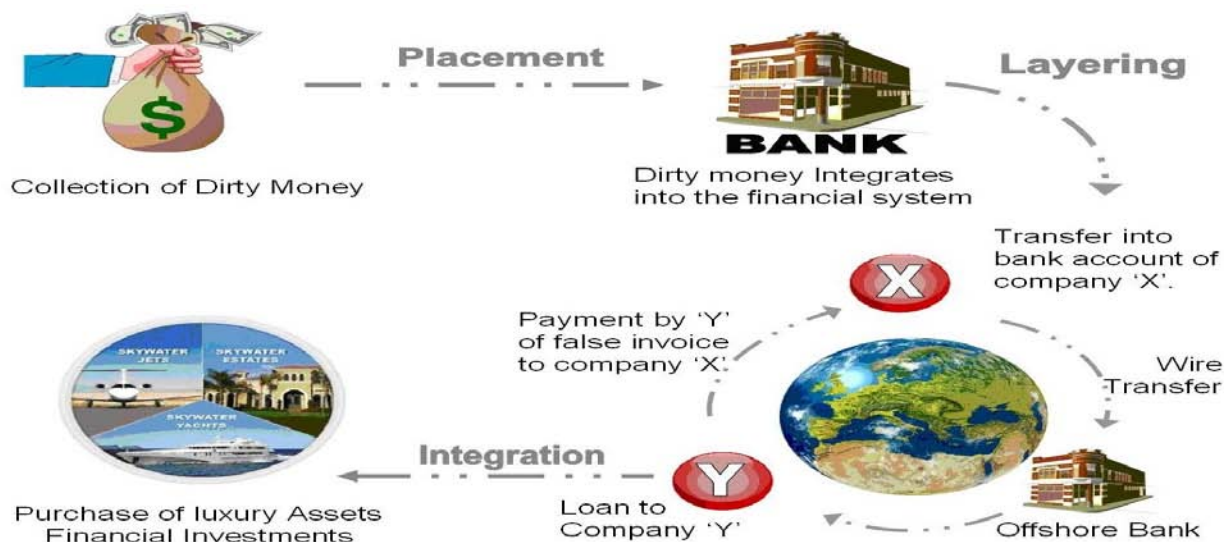
The word 'Money laundering' was reported in newspapers reporting the Watergate scandal in the United States in 1973. The expression first appeared in a judicial or legal context in 1982 in America. It was from an increasing awareness of the huge profits generated from this criminal

activity and a concern at the massive drug abuse problem in western societies which created the impetus for governments to act against the drug dealers by creating legislation that would deprive them of their illicit gains. The term "money laundering" is said to originate from Mafia ownership of Laundromats in the United States.

In 1993, a UN Report noted: The basic characteristics of the laundering of the proceeds of crime, which to a large extent also mark the operations of organized and transnational crime, are its global nature, the flexibility and adaptability of its operations, the use of the latest technological means and professional assistance, the ingenuity of its operators and the vast resources at their disposal.

And at the domestic level, money laundering is popularly known as Hawala transactions. It gained popularity during early 90's when many persons were caught in its net. Hawala is an alternate remittance system that facilitated the conversion of money from black into white. "Hawala" is an Arabic word meaning the transfer of money or information between two persons using a third person. The system dates to the Arabic traders as a means of avoiding robbery. It predates western banking by several centuries.

## PHASES OF MONEY LAUNDERING



Money laundering is not a single act but is in fact a process that is completed in three basic steps given below:

1. **Placement:** Placement refers to the physical disposal of bulk cash proceeds derived from illegal activity. Under this stage, the launderer infuses the black money into a legitimate financial institution. This is the first step of the money-laundering process and the ultimate aim of this phase is to remove the cash from the location of acquisition so that it does not attract attention from the authorities. This is achieved by investing criminal money into the legal financial system by opening up a bank account in the name of unknown individuals or organizations and depositing the money in that account. This is the riskiest stage of the laundering process because large amounts of cash are pretty conspicuous, and banks are required to report high-value cash transactions.
2. **Layering:** Layering refers to the separation of illicit proceeds from their source by creating complex layers of financial transactions. It involves sending the money through various financial transactions to change its form and make it difficult to track. It conceals the audit trail and provides anonymity and this process consists of several bank-to-bank transfers, wire transfers between different accounts in different names in different countries, making

deposits and withdrawals to continually vary the amount of money in the accounts, changing the money's currency, and purchasing high-value items to change the form of the money. Nowadays, Electronic Funds Transfer (EFT) has come as a boon for such layering exercise. Different techniques like correspondent banking, loan at low or no interest rates, money exchange offices, back-to-back loans, fictitious sales and purchases, trust offices, and recently the Special Purpose Vehicles (SVPs) are utilized for the purpose of laundering the money. This is the most complex step in any laundering scheme, and it's all about making the original dirty money as hard to trace as possible.

3. **Integration:** Integration refers to re-injecting the money into mainstream economy. Under this process the laundered proceeds re-enter the economy in legitimate-looking forms -- it appears to come from a legal transaction. The launderers normally accomplish this by establishing unknown institutions in nations where secrecy is guaranteed. Under this process, a final bank transfer into the account of an unknown institution in which the launderer is investing in exchange for a cut of the profits. At this point, the launderer can use the money without getting caught. It is very difficult to catch a launderer during the integration stage if there is no documentation during the previous stages.



## TECHNIQUES AND AREAS OF OPERATION

At each of the three stages of money laundering various techniques are utilized. Some of the techniques used by launderers enumerated below.

*With changing times, launderers have found innovative ways of money laundering to escape from the authorities. With changing regulation it can be observed that launderers explore new routes with the help of technology to hide the illegally earned money.*

1. **Hawala:** Hawala is an alternative or parallel remittance system, which exists and operates parallel to 'traditional' banking or financial channels. It was developed in India, before the introduction of western banking practices, and is currently a major remittance system followed around the world. In hawala networks the money is not moved physically. For instance, a typical hawala transaction would be like a resident in USA of Indian origin doing some business wants to send some money to his relatives in India. The person has an option either to send the money through formal channel of banking system or through the hawala system. The commission in hawala is less as compared to the bank charges and is without any complications for opening account or visits the bank, etc. The money reaches to the doorstep of the person's relative and the process is speedier and cheaper.

**Structuring Deposits:** Also known as smurfing is a method that entails breaking up large amounts of money into smaller, less-suspicious amounts. The smaller amount is deposited into one or more accounts either by multiple people (smurfs) or by a single person over an extended period of time.

**Third-Party Cheques:** Utilizing counter cheques or banker's drafts drawn on different institutions and clearing them via various third-party accounts. Third party cheques and traveler's cheques are often purchased using proceeds of crime. Since these are negotiable in many countries, the nexus with the source of money is difficult to establish.

**Peso Broker:** A drug trafficker turns over dirty U.S. dollars to a peso broker in Colombia. The peso broker then uses those drug dollars to purchase goods in the United States for Colombian importers. When the importers receive those goods (below government radar) and sell them for pesos in Colombia, they pay back the peso broker from the proceeds. The peso broker then gives the drug trafficker the equivalent in pesos of the original, dirty U.S. dollars that began the process.

5. **Overseas banks underground/alternative banking:** Money launderers often send money through various "offshore accounts" in countries that have bank secrecy laws, meaning that for all intents and purposes, these countries



allow anonymous banking. A complex scheme can involve hundreds of bank transfers to and from offshore banks.

6. **Shell companies:** These are fake companies that exist for no other reason other than to launder money. They take in dirty money as "payment" for supposed goods or services but actually provide no goods or services; they simply create the appearance of legitimate transactions through fake invoices and balance sheets.
7. **Investing in legitimate business:** Launderers sometimes place dirty money in otherwise legitimate businesses to clean it. They may use large business like brokerage firms or casinos that deal in so much money it's easy for the dirty stuff to blend in, or they may use small, cash-intensive businesses.

*It is observed that, launderers focus on economies with growing or developing financial centres, but inadequate controls than countries with established financial centres as the latter must have implemented comprehensive money-laundering regimes.*

This gives an overview as to how this menace has developed into transnational business involving various sophisticated techniques and procedures. The above mentioned techniques are the ones which have been in operation from quite a long time. The below discussed are the new areas of operation emerged in recent years.

### **New areas of Operation of Money Laundering:**

Both authorities and the money launderers seem to permanently change their behavior when trying to hunt and escape money laundering. One can notice changed techniques of money laundering as a reaction to regulation. Launderers continuously explore new routes for laundering their money. Economies with growing or developing financial centres, but inadequate controls are more vulnerable than countries with established financial centres as the latter must have implemented comprehensive money-laundering regimes.

1. **Insurance Sector:** The insurance sector is a relatively less haunted sector compared to banks and other avenues of financial services. However, there has been a gradual increase in laundering activity in insurance as well.
2. **Open Securities Market:** Money launderers have traditionally targeted banks, which accept cash and facilitate domestic and international funds transfers. However, the securities markets, which are known for their liquidity, may also be targeted by criminals seeking to hide and obscure illicit funds. Money launderers can target any of the various types of businesses that participate in securities industry. Broker-dealers, for instance, provide a variety of products and services to retail (usually individual) and institutional investors—buying and selling

stocks, bonds, and mutual fund shares. This is moreover possible due to the instruments like Hedge Funds and Participatory Notes which have very limited disclosures as to the source. These funds can be effectively used as Laundromats. Although the number of documented cases in which broker-dealer or mutual fund accounts have been used to launder money is limited, law enforcement agencies are concerned that criminals may increasingly attempt to use the securities industry to launder money. This is a new area which requires a serious thought processing.

3. **Cyber Crime** – These days one has to confront with hybrid crimes, the crimes with many attributes. Cyber crimes such as identity theft, illegal access to e-mail, and credit card fraud are coming together with money laundering and terrorist activities. Large amount of money is now stored in digital form and can be transferred through electronic and online gateways to multiple accounts.

## IMPACT ON THE ECONOMY OF THE COUNTRY

Money laundering has negative effects on economic development. It poses a serious threat to national economies and respective governments. The infiltration and sometimes saturation of dirty threaten economic and political stability. Economic crimes have a devastating effect on a national economy since potential victims of such crimes are far more numerous than those in other forms of crime. Economic crimes also have the potential of adversely affecting people who do not prima-facie, seem to be the victims of the crime. For example, tax evasion results in loss of government revenue, thus affecting the potential of the government to spend on development schemes thereby affecting a large section of the population who could have benefited from such government expenditure.

*The Fish sees the bait,  
not the hook; a person  
sees the gain, not the  
danger”.*

*–Chinese Proverb*

The negative economic effects of money laundering on economic development are difficult to quantify, yet it is clear that such activity damages the financial-sector institutions that are critical to economic growth, reduces productivity in the economy by diverting resources and encouraging crime and corruption, which slows economic growth.

Developing countries’ strategies to establish Offshore Financial Centre (OFC) as vehicles for economic development are also impaired by significant money laundering activity through OFC channels.

Ill-effects of money laundering are witnessed across the globe and almost all the sectors of life. Developing countries often bear the brunt of modern money laundering because the governments are still at the nascent stage of establishing regulations for their newly privatized financial sectors. In the 1990s, numerous banks in the developing Baltic states ended up with huge, widely rumored deposits of dirty money. Bank patrons withdraw their own clean money for fear of losing it if the banks came under investigation and lose their insurance, which is likely to shut down the banks.

Other major issues facing the world's economies include errors in economic policy resulting from artificially inflated financial sectors. Massive influxes of dirty cash into particular areas of the

economy that are desirable to money launderers create false demand, and officials act on this new demand by adjusting economic policy. When the laundering process reaches a certain point or if law enforcement officials start to show interest, all of that money will suddenly disappear without any predictable economic cause resulting in that financial sector to fall apart. Laundered money is usually untaxed, meaning the rest of us ultimately have to make up the loss in tax revenue.

The negative economic effects of money laundering on economic development are difficult to quantify. It is clear that such activity damages the financial-sector institutions that are critical to economic growth, reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption, which slow economic growth, and can distort the economy's external sector – international trade and capital flows – to the detriment of long-term economic development. Money laundering also facilitates crime and corruption within developing economies, which is the antithesis of sustainable economic growth. Money laundering reduces the cost of doing business for the criminal element, thereby increasing the level of crime.

Money laundering can also be associated with significant distortions to a country's imports and exports. On the import side, criminal elements often use illicit proceeds to purchase imported luxury goods, either with laundered funds or as part of the process of laundering such funds. Such imports do not generate domestic economic activity or employment, and in some cases can artificially depress domestic prices, thus reducing the profitability of domestic enterprises.

Further, the negative effects of money laundering activities may be on financial sector, real sector of formal agents such as state, financial institutions and banking sector.

### **The Financial Sector**

Financial sector may get negative effects of money laundering especially financial institutions including banking and non – banking financial institutions (NBFIs) and equity markets. Basically, these institutions facilitate concentration of capital resources from domestic savings and funds from abroad. These institutions provide impetus for furtherance of investment prospects by

providing conducive environment and efficient allocation of these resources to investment projects which contribute substantially to long run economic growth.

**Money Laundering impairs the sustainability and development of financial institutions in two ways:**

1. The financial institutions are weakened directly through money laundering as there seems to be a correlation between money laundering and fraudulent activities undertaken by employees of the institutions. Similarly, with the increase in money laundering activities, major parts of financial institutions of a state are vulnerable to crime by criminal elements. This strengthens the criminals and other parallel system of money laundering channels.

2. Customer trust is fundamental to the growth of sound financial institutions, and the perceived risk to the growth of sound financial institutions, and the perceived risk to depositors and investors from institutional fraud and corruption is an obstacle to such trust.

**The Real Estate Sector**

Money laundering adversely affects economic growth through the real sector by diverting resources to less productive activities and by facilitating domestic corruption and crime. Money laundering carried out through the channels other than financial institutions includes more “sterile” investments such as real estate, art, antiques, jewelry and luxury automobiles, or investments of the type that gives lower marginal productivity in an economy. These sub optimal allocations of resource give lower level of economic growth which is a serious detriment to economic growth for developing countries. Launderers reinvest their proceeds in companies and real estate with the purpose to make further profits. Most of these investments are in sectors that are familiar to the launderer.

The real estate sector is the largest and most vulnerable sector for money laundering. Real estate is important for money laundering, because it is a non-transparent market where the values of the objects are often difficult to estimate and where big value increases can happen and is an efficient method to place large amounts of money. The price increase in real estate is profitable

*The less expensive the money laundering input to crime is, As a result of lax anti money laundering policies, the more productive (active) the criminal will be.*

and the annual profits on real estate business create a legal basis for income. The real estate has the following features, which make it attractive for laundered money:

- A safe investment
- The objective value is difficult to assess
- It allows realizing “white” returns.

### **The External Sector**

Money laundering activities may impair any country’s economy through the trade and international capital flows. Excessive illicit capital flight from a state may be facilitated by either domestic financial institutions or by foreign financial institutions. That illicit capital flight drains scarce resources specially from developing economies. Therefore the economic growth of respective economy is adversely affected. Money laundering negatively affects trust of local citizens in their own domestic financial institutions as well as trust of foreign investors and financial institutions in a state’s financial institution which ultimately contributes to economic growth. Money laundering channels may also be associated with distortions of a country’s imports and exports.

Such imports do not generate domestic economic activity or employment, and in some cases can artificially depress domestic prices, thus reducing the profitability of domestic enterprises. The integrity of the banking and financial services market place depends heavily on the perception that it functions within a framework of high legal, professional and ethical standards. A reputation for integrity is the one of the most valuable assets of a financial institution. Dangers for the reputation can occur when a country deliberately declares to want to attract ‘criminal money’.

If funds from criminal activity can be easily processed through a particular institution-either because its employees or directors have been bribed or because the institution turns a blind eye to the criminal nature of such funds-the institution could be drawn into active complicity with criminals and become part of the criminal network itself. Evidence of such complicity will have a damaging effect on the attitudes of other financial intermediaries and of regulatory authorities as well as ordinary customers. Money laundering not only threatens the financial system of a

country by taking away command of the economic policy from the government, but also deteriorates the moral and social standing of the society by exposing it to activities such as drug trafficking, smuggling, corruption and other criminal activities.

### **The Global Sector**

Money Laundering has become a global problem. Criminals target foreign jurisdiction with liberal bank secrecy laws and weak anti-money laundering regulatory regimes as they transfer illicit funds through domestic and international financial institutions often with the speed and ease of faceless internet transactions. This easy and vast infiltration of Criminal proceeds into world market can destabilize them and can have a corrupting effect on those who work within the market system. The penetration of criminals into the legitimate markets can also shift the balance of economic power from responsible and responsive entities to rogue agents who have no political or social accountability. In short, when criminal enterprises are able to enjoy the fruits of the criminal ventures, the world market can be destabilized, leaving some countries vulnerable to persuasion and interference by corrupt organization.



## **ROLE OF BANKS & FINANCIAL INSTITUTIONS IN PREVENTING MONEY LAUNDERING**

Taking a cue from the law, the RBI has issued a series of circulars guiding the banks functioning in India. In line with this, SEBI and IDRA have also issued similar guidelines. According to the RBI guidelines, KYC procedure should be a key principle for identification of an individual/corporate opening an account. The objectives of the KYC framework should be twofold:

- i) To ensure appropriate customer identification
- ii) To monitor transactions of the suspicious nature.

The KYC procedures are expected to be applied even to the existing customers and the due diligence practices should be in place. The working group set up by IBA has also come out with detailed guidelines for the banks in India for strengthening the KYC norms with anti money laundering focus and has also suggested formats for customer profiles account opening procedures, establishing relationship with specific categories of customers as well as illustrative list of suspicious activities.

Customer categorization as low, medium and high risk based on the riskiness from AML point of view, is a very important exercise banks have to do. Under this, salaried class and such other with limited financial transactions in a month are less risky customers compared to business customers. But, point to be noted is that certain low income customers are also vulnerable groups as target groups of money launders worldwide, say, students living with meager scholarships or migrant laborers especially in a foreign country. However, as part of financial inclusion drive, in order to mitigate the constraints of small depositors certain relaxation in KYC norms have been advised by RBI in August 2005. In respect of those person who intend to keep balances not exceeding Rs. 50,000 in all their accounts taken together and while the total credit in all accounts takes together is not expected to exceed Rs.1 lakh, simplified documentation has been prescribed for account opening, by way of introduction by another existing account holder of the bank, or any other evidence.

With regard the monitoring of cash transactions, the banks are required to keep a close watch of cash withdrawals or deposits of Rs.10 lakh and above in deposit, cash credit or overdraft accounts and keep record of the details of these large cash transactions in separate registers. These records are to be kept for a period of 10

years. Banks are required to issue a travelers' cheque, demand draft money transfers, telegraph transfers for Rs. 50000 and above only by debit to the customer's account and not against cash.

Thus, the requirements for furnishing PAN now stands uniformly to transactions of Rs. 50,000 and above. Branches of banks are required to report all cash deposits and withdrawal of Rs.10 lakh and above as well as transactions of suspicious nature with full details in fortnightly statements to the controlling office, who in turn will report to the FIU on a monthly basis. Bank should have adequate internal control system or audit and inspection mechanism in place as part of its risk management system and specifically adhere to the Foreign Contribution Regulation Act (FCRA, 1976). Each bank has to appoint an exclusive Principal Officer with a specific responsibility for compliance of the KYC norms and undertake training of the staff members. Guidelines have been issued specifically to be careful about the correspondent banks. Accounts of the Politically Exposed Persons (PEP) residents outside India have to be carefully handled.

Financial sector has to play a proactive and responsible role to curb money laundering and terrorist financing. It is a million dollar question for the banks, who are basically commercial entities to keep a distinction between genuine transactions and suspicious transactions without losing a customer. It poses a threat to the bank by way of adverse publicity if it is found to be lacking in procedures and systems relating to customer identification or record keeping and in the process getting to be involved with any money laundering transactions. When the regulator imposes a fine for the lapse, it leads to severe reputational risks. The bank's task is therefore very delicate and it has to handle the same very cautiously.

The crux of the issue is identifying suspicious transactions which could be in respect of any of the bank portfolios, namely, cash, credit, investment related etc. There is hardly any activity of the bank which is free from suspicion especially after the e-Banking services wherein face to face contact is completely over.

FIU has defined suspicious transaction as "a transaction whether or not made in cash to a person acting in good faith, which:

- a) Give rise to a reasonable ground of suspicion that it may involve the proceeds of crime or
- b) Appear to be made in circumstances of unusual and unjustified complexity or
- c) Appear to have no economic rationale or bona fide purpose.

Some of the suspicious activities which the banks can keep an eye on are listed as follows:

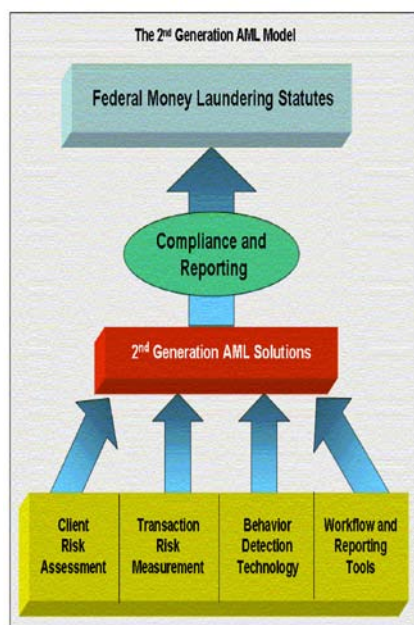
1. Customer who provides insufficient/suspicious information for account opening and a customer/company who is reluctant to provide sufficient identification information/financial statements, complete information regarding the purpose of the business.
2. Customer who is reluctant to provide information needed for a mandatory report or to proceed with a transaction after being informed that the report must be filed. Any individual or group that coerces/induces or attempts to coerce/induce a bank employee to not file any reports or any other forms
3. Activity not consistent with the customer's business
4. Transactions which have no apparent purpose and which make no obvious economic sense.
5. Unnecessary routing of funds through third party accounts.
6. An account where there are several cash deposits/withdrawals below a specified threshold level to avoid filing of report by intentionally splitting the transaction into smaller amounts for the purpose of avoiding the threshold limit.
7. Multiple accounts under the same name
8. Unusual investment transactions without apparently discernible profitable motive.

Banker's role in combating money laundering would be very crucial and it revolves around board level policy, KYC/AML norms, detailed anti money laundering manual and internal control procedures, appointment of Principal Officer for compliance, continuous monitoring down the line, and training of all the staff members and getting them sensitized for the task. The banks have to, in short, identify the customer, know their customer, monitor their account through due diligence practices keeping records and report suspicious transactions. With this type of concerted efforts from all concerned, it is hoped that money laundering would be curbed to a large extent.

## ROLE OF INFORMATION TECHNOLOGY IN ANTI MONEY LAUNDERING

In an effort to detect potential money laundering schemes, financial institutions have deployed anti-money laundering (AML) detection solutions and enterprise-wide procedural programs. These solutions worked by establishing fixed rules-based monetary thresholds and detecting specific money laundering patterns and user scenarios that breached those thresholds. As new schemes developed, many of these “first generation” solutions were unable to uncover them, providing criminals with new avenues to circumvent detection and the law.

Currently, there is a perceived need on the part of financial institutions to take these capabilities to a higher level in order to address the shortcomings inherent with first generation solutions. As a result, a “second” generation of AML technologies has emerged with the ability to monitor every single transaction, discover various types of unusual behaviors, and alert officials to the activities that represent true risk to the financial enterprise. These intelligent enterprise systems are able to learn and adapt, comprehending new money laundering schemes as they arise. With their enterprise-wide approach, they are able to analyze both the client profile and all of the transactions that are undertaken by them, helping the financial institution prevent money laundering schemes in a much more effective and efficient manner.



### How New Technologies Assist in the AML Process:

The value of any AML solution has to be based on its ability to uncover suspicious financial activities by identifying the specific individuals or organizations that may be involved. A second ability to monitor every single financial transaction, discovering all unusual behavior, and separating out those transactions that are determined to represent a true risk for the financial enterprise. These “intelligent enterprise systems” are able to learn and adapt, comprehending new money laundering schemes as they arise. They take an enterprise-wide approach, determining every transaction that is unusual as opposed to looking for a specific patterns or behavior while analyzing both the client profile and the transactions undertaken by the financial firm.

**Client Risk Assessment:** Central to the process of uncovering a money laundering scheme is the ability to access a wide variety of

detailed information relating to the customer's account, typically collected at the time that the account is opened. Second generation AML systems differ from their predecessors by providing a single view of the customer profile incorporating all of the various financial relationships that the account has an affiliation with. The types of analytical activities that are part of second generation client profiling processes include, but are not limited to:

- Watch List Name Screening
- Country Alerting
- Channels
- Business Relationships
- Political Affiliation

**Transaction Risk Measurement:** Another critical element of second generation AML systems is their ability to identify transactions that pose the greatest risk for potential money laundering activities. Transactions determined to be of a higher and type of business. For example, the risks associated with transactions from a bank would be different from those associated with an insurance agency or a securities firm. These transactions fall into one of three categories:

- Fund Related Behaviors
- Transaction Related Behaviors
- Miscellaneous Behaviors



**Behavior Detection Technology:** Behavior detection technology is another important aspect of a second generation AML system. This function manages the complex behavior that is commonly associated with money laundering schemes. This technology allows financial firms to detect wrongdoing by finding suspicious patterns of behavior that may be hidden behind large volumes of financial data.

The key to behavior detection technology is its ability to identify suspicious events and entities that build over time, thereby separating them from normal every day events and transactions in order to target the offending behavior. The technical terminologies relating to the components that are contained within the Behavior Detection section of a second generation AML solution include:

- Scenarios
- Thresholds
- Alerts
- Look Back Period and its Frequency
- Source Systems
- Behavior Detection Platform
- Alert Analysis Tools

**Workflow and Reporting Tools:** As we have already established, complying with external rules and regulations is now an essential component for any financial institution. Those that remain fully compliant have an advantage by shielding themselves from any negative legal or public relations exposure. Since customers prefer to work with companies that fall in line with the regulations, financial institutions that remain compliant are in a position to gain greater customer visibility and loyalty.

However, it is not unimaginable that in spite of the best checks and balances that may be already in place, financial entities may inadvertently fail to comply with a minute provision or a sub-regulation. In such a case, the existence of an effective compliance system that is able to provide verification would satisfy federal regulators and could prove to be a mitigating factor in preventing any subsequent liability or violation.

Second generation AML solutions provide financial institutions with several tools that aid in the workflow and reporting process, which are essential in regulatory compliance. These tools include:

- Case Management
- Record Keeping
- Reporting



## **REGULATION OF MONEY LAUNDERING: INDIA**

With growing financial strength, India is becoming more vulnerable to money laundering activities, despite its strict foreign exchange laws, which make it difficult for criminals to launder money. International Narcotics Control Strategy Report by Bureau for International Narcotics and Law Enforcement Affairs stresses on India's Vulnerability to money-laundering in following words: "India's emerging status as a regional financial center, its large system of informal cross-border money flows, and its widely perceived tax avoidance problems all contribute to the country's vulnerability to money laundering activities. Some common sources of illegal proceeds in India are narcotics trafficking, illegal trade in endangered wildlife, trade in illegal gems (particularly diamonds), smuggling, trafficking in persons, corruption, and income tax evasion. Historically, because of its location between the heroin-producing countries of the Golden Triangle and Golden Crescent, India continues to be a drug-transit country."

Money-laundering in India can be viewed through two different perspectives, i.e., Money laundering on international forum and Money-laundering within the country. As far as the cross-border money-laundering is concerned India's historically strict foreign – exchange laws and reporting norms have contributed to a great extent to control money laundering on the international forum. However, there has been a threat from informal transactions like 'Hawala'.

According to Indian observers, funds transferred through the hawala market are equal to between 30 - 40% of the formal market. Due to the large number of expatriate Indians in North America and the Middle East, India continues to retain its position as the leading recipient of remittances in the world, followed by China and Mexico.

Money-laundering was an effective way to launder the black money so as to make it white. The international initiatives as discussed above to obviate the threat not only to financial systems but also to the integrity and sovereignty of the nations and the recent Hawala episode in India triggered the need for an anti money-laundering law. In view of the urgent need for the enactment of a comprehensive legislation inter alia for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money-laundering etc.,



India joined the FATF in June 2010 as its 34th member and has undertaken a number of efforts to improve its anti money laundering (AML) regime. Within the context of the Asia/Pacific Group on Money Laundering (APG) meeting in July 2011, the then Finance Minister Pranab Mukherjee emphasized India's commitment to counter money laundering and the financing of terrorism. Mr. Mukherjee said that numerous measures have been taken to improve the AML/CTF regime had been put in place, in tune with the FATF standards. India has recently tripled the manpower of the Directorate of Enforcement, which spearheads the money laundering investigations in the country. India has also established a Financial Intelligence Unit, which includes a system of reporting suspicious financial transactions. However, the country continues to face a number of challenges. These are set out here and put in the context of the current AML regime and other efforts undertaken in support of the existing structure.

### **A mountain to climb – corruption, money laundering and terrorism:**

India, which is often praised for being one of the oldest and largest democracies of the world, has, since early 2011, suffered major criticism in the international and local media in relation to widespread corruption, which has impregnated all levels of society, government and business. According to Transparency International's Global Corruption Barometer 2010, India is listed third highest in the Asia Pacific region after Cambodia and Afghanistan.

As a result of the corruption scandals, money laundering has become a political issue in India, with the opposition accusing the government of not doing enough to bring back illegal funds, which had been transferred abroad. Mauritius is reportedly one of India's largest foreign investors. This is alarming given that the funds being invested in India from Mauritius are largely thought to be laundered funds. Further, India plans comprehensive reforms both in direct and indirect tax regulations. Of particular interest is that the new tax regime plans to include all passive income earned by residents from substantial shareholdings retained in companies incorporated in low tax jurisdictions in order to curb money laundering activities. There is a widespread feeling that the new regime is unlikely to be introduced soon due to the rift between the federal government and the opposition ruled states.

The FATF's Mutual Evaluation Report of India stated that the main sources of money laundering in India results from a series of illegal

activities committed within and outside the country mainly drug trafficking, fraud, counterfeiting of Indian currency, transnational organized crime, human trafficking and corruption. India's money laundering threat also comes from its bordering regions and therefore should also be viewed in this context. According to a statement published by the FATF in June 2011, Sri Lanka is listed among jurisdictions with significant AML/CTF deficiencies. These countries have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies. Furthermore, Nepal and Pakistan were also listed by the FATF as countries whose improvement of AML/CTF compliance is an on-going process.

### **India's Anti Money Laundering Regime:**

India's AML/CTF regime is relatively young. Since 2005, the Prevention of Money Laundering Act (PMLA) has been enforced and was most recently amended in 2011. The unlawful Activities (Prevention) Act, (UAPA) which criminalizes terrorist financing, has been enforced since 1967. It was most recently updated in 2008 to bring the legislation more in line with the requirements of the UN Convention for the Suppression of the Financing of Terrorism. India has been praised for its increased focus on money laundering and its serious commitment to combating terrorism. But on the other hand, it has also been criticized for the lack of convictions for money laundering or terrorist activities and the lack of effective, dissuasive or proportionate sanctions for AML/CTF deficiencies.

In India, before the enactment of the Prevention of Money Laundering Act 2002 (PMLA-02), the following statutes addressed scantily the issue in question:

- The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- The Income Tax Act, 1961
- The Benami Transactions (Prohibition) Act, 1988
- The Indian Penal Code and Code of Criminal Procedure, 1973
- The Narcotic Drugs and Psychotropic Substances Act, 1985
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

Regulators and the concerned ministries are definitely taking charge, with amendments currently in progress on the Prevention of Money Laundering Act, 2002 and Unlawful Activities (Prevention) Act, 1967 to make them more effective in dealing with money laundering and terror funding. With the act having been amended thrice in 2005, 2009 and 2011, it plans to bridge

the gap between the FATF recommendations and the Indian regulatory requirements with respect to enacting of strong and effective anti money laundering laws and to remove operational difficulties for the regulators and government agencies implementing these regulations. This would eventually make the existing PMLA in tune with the practice being followed world over.

**Apart from Prevention of Money Laundering Act, various other bodies also work hand-in-hand to keep a check on Money Laundering; some of them are discussed below:**

**Financial Intelligence Unit - India (FIU-IND):**

Financial Intelligence Unit – India (FIU-IND) was set up by the Government of India as the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

**Reserve Bank of India:** The regulatory purview of the Reserve Bank extends to a large segment of financial institutions, including commercial banks, co-operative banks, non-banking financial institutions and various financial markets. The Board for Financial Supervision (BFS) continued to exercise its supervisory role over those segments of the financial institutions that are under the purview of the Reserve Bank.

RBI has issued a series of master circulars to the banks, about the precautions to be exercised in handling their customers' transactions. Important amongst these is a guidance note issued about treatment of customer and key to knowing the customer. The identity, background and standing of the customer should be verified not only at the time of commencement of relationship, but also be updated from time to time, to reflect the changes in circumstances and the nature of operations of the account.

**Securities Exchange Board of India:** Vulnerability of securities market to money-laundering activities has been discussed in the earlier part of this paper. Indian securities market is also prone to money-laundering activities. Intermediaries registered under the SEBI are under reporting obligation of PMLA.

FIU-IND has also issued certain guidelines relating to KYC to be followed by these intermediaries. The main source of money-laundering would be the Participatory Notes Transaction and Overseas Direct Investment Routes. The findings in the UBS Securities Case have highlighted serious regulatory concerns in that the PN/ODI route and its cover of anonymity is being used by certain entities without there being any real time check, control and due diligence on their credentials. Such a lapse has very grim portents as far as the market integrity and interest of investors are concerned. The mechanism of opening up the Indian securities market through PN /ODI route to entities outside India imposes a commensurate onus on the registered intermediaries (FIIs) of maintaining high standards of regulatory compliance, exercise of high due diligence and independent professional judgment and therefore any gaps in measuring up to the onus may be fraught with critical repercussions in the market.

SEBI has almost taken a full circle on the issue of Participatory Notes. SEBI has taken certain important measures in favor of the Foreign Institutional Investors (FII) as well as the unregistered foreign investors who intend to invest in the Indian Securities market. Looking at the lacklustre performance of the capital markets and in order to encourage inflow of foreign capital into India, SEBI has decided to remove the restrictions on issuance of Offshore Derivative Instruments (ODIs), popularly known as Participatory Notes (PNs).

### **Problems faced in having a proper AML:**

Anti-money laundering efforts of India are commendable on paper, but there are various hindrances in having an effective AML regime. There are several factors contributing to these problems and there is a need to concentrate the efforts in one direction that is aimed at the crux of the problem. Some of the key problem areas are as given hereunder.

1. **Lethargy of Enforcement Mechanism:** India started its anti-money laundering exercise in the year 1998, a good start, but not properly handled. When the AMLA 02 with amendments in 2005 came into force, it was inherent with many loopholes as there were several developments in those seven years, which the Act failed to address. Then, as was obvious, a need was felt to have further amendments, the most recent being in 2011.
2. **Growth of Technology:** The growth of technology not only helped the common man but has proved to be a boon for these money-launderers and India is not an exception to

this. Cyber finance is the growing concept in this developing economy and the pace at which the technology is growing is not matched up with the enforcement agencies.

3. **Unawareness about the Problem:** Unawareness about the problem of money-laundering among the common people is an impediment in having proper AML regime. People in India, especially among the poor and illiterate, do not trust banks and prefer to avoid the lengthy paperwork required to complete a money transfer through a financial institution. The hawala system offers them same remittance service as bank with little or no documentation and at lower rates and provides anonymity and security. This is because many don't treat this to be a crime and are not aware about the harmful effects of the crime.
4. **KYC Norms – Do they serve the purpose:** Now India has KYC Norms in place in both money market and capital markets. But these norms have failed to control Hawala transactions, as RBI cannot regulate them. Further, KYC Norms become less effective because of indifference shown by the implementing authorities. . Increased competition in the market requires and gives motivation to the banks to lower their guard on this score.
5. **Smuggling – a rampant activity:** India has illegal black market channels for selling goods. Smuggled goods such as food items, computer parts, cellular phones, gold, and a wide range of imported consumer goods are routinely sold through the black market. By dealing in cash transactions and avoiding customs duties and taxes, black market merchants offer better prices than those offered by regulated merchants. This problem though has lessened due to liberalization policy of the government.
6. **Absence of comprehensive enforcement agency:** As seen earlier, money-laundering has now become hybrid and is not only related to NDPS cases but many areas of operation. Separate wings of the law enforcement agencies are dealing with digital crimes, money laundering, economic offences and terrorist crimes. The agencies do not have the convergence among themselves but the criminals have. Criminals are working in a borderless world but the police in one State are still grappling with procedures on how to arrest a person residing in another State.

## REGULATION OF MONEY LAUNDERING: GLOBAL PERSPECTIVE

Money laundering is a global phenomenon and with integration of the world's financial system. Technology improvements and barriers to the free movement of capital have been reduced. This has meant that money launderers can make use of this system to hide their ill-gotten gains. They are successful in quickly moving their illegitimate gains between national jurisdictions, complicating the task of tracing and confiscating these assets. The International dimension of money laundering was evident in a study of Canadian money laundering police files. They revealed that more than 80% of all laundering schemes had an international dimension. Only a few industrialized western nations had systems in place by the end of the 1980s. Because of this, it has been recognized by many governments that close international co-operation was needed to counter money laundering, and a number of agreements have been reached internationally in order to counter this menace. Today there are an increasing number of States that are passing laws and regulations but UNDCP estimates that about 70% of the governments do not yet have effective legislation in place. Action at the international level to combat money laundering began in 1988 with two important initiatives: The Basel Committee on Banking Regulations and Supervisory Practices and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

### **Basle Committee on Banking Regulations and Supervisory Practices**

The Basle Statement of Principles on the prevention of criminal use of the banking system was a significant breakthrough on the financial front to have some controlling mechanism for money-laundering on global level. The Statement of Principles does not restrict itself to drug-related money laundering but extends to all aspects of laundering through the banking system, i.e. the deposit, transfer and/or concealment of money derived from illicit activities whether robbery, terrorism, fraud or drugs. It seeks to deny the banking system to those involved in money laundering by the application of the four basic principles:

1. **Know Your Customer (KYC)** - This mandates the bank to take reasonable efforts to determine their customer's true identity, and have effective procedures for verifying the bonafide of a new customer.

2. **Compliance with Laws** – Bank management should ensure high ethical standards in complying with laws and regulation and keep a vigil to not provide services when any money-laundering activity is suspected.
3. **Cooperation with Law Enforcement Agencies** – Banks should adhere to the regulations formulated by the law enforcement agencies and thus work hand in hand to tackle the menace of money laundering.
4. **Adherence to the Statement** – This directs the Bank management to be in line with statement of principles to check the prospective money laundering activity.

**UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:** This UN Convention was one of the historic conventions in as much as the parties to the Convention recognized the links between illicit drug traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of nations and that illicit drug trafficking is an international criminal activity that generates large profits and wealth, enabling transnational, criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial businesses and society at all levels. The treaty required the signatories to criminalize the laundering of drug money, and to confiscate it whenever found. All countries ratifying agree to introduce a comprehensive criminal law against laundering the proceeds of drug trafficking and to introduce measures to identify, trace, and freeze or seize the proceeds of drug trafficking. Based on the convention many countries have framed their national legislations. Council of Europe Convention on Laundering is motivated by this convention as well as this convention gave a framework for FATF to work. Expand FATF.

**Global Programme against Money Laundering (GPML):** The Global Programme against Money Laundering was established in 1997 in response to the mandate given to UNODC by the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. GPML mandate was strengthened in 1998 by the United Nations General Assembly Special Session (UNGASS) Political Declaration and Action Plan against Money Laundering which broadened its remit beyond drug offences to all serious crime.



Three further Conventions have adopted / specify provisions for AML/CFT related crimes:

- International Convention for the Suppression of the Financing of Terrorism (1999),
- UN Convention against Transnational Organized Crime (2000)
- UN Convention against Corruption (2003)

**The Financial Action Task Force (FATF):** The Financial Action Task Force (FATF) is an inter-governmental body founded by G7 Countries (Canada, France, Germany, Italy, Japan, United Kingdom), created in 1989, whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. It has established Forty Recommendations on Money Laundering which has been established as the international standard for effective antimoney laundering measures. FATF regularly reviews its members to check their compliance with the above said recommendation and also suggest areas for improvement. It does this through annual self-assessment exercises and periodic mutual evaluations of its members. The FATF also identifies emerging trends in methods used to launder money and suggests measures to combat them. In addition to the existing 40 recommendations FATF has come up with 9 special recommendations on terrorist financing. As per the recommendations of the task force, all countries have to ensure that offences such as financing of terrorism, terrorist acts and terrorist organizations are designated as 'money laundering predicate offences.' The 40 Recommendations provide a complete set of counter-measures against money laundering (ML) covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation. They have a set of principles for action and allow countries a measure of flexibility in implementing these principles according to their particular circumstances and constitutional frameworks. Though not a binding international convention, many countries in the world have made a political commitment to combat money laundering by implementing the 40 Recommendations. Moreover, FATF's recommendations have UN Support. Initially developed in 1990, the Recommendations were revised for the first time in 1996 to take into account changes in money laundering trends and to anticipate potential future threats. Further, the FATF has completed a thorough review and update of the 40 Recommendations (2003).

**Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime:** Popularly known as Strasbourg convention it was

aimed at extending the provisions of international cooperation against the activities of international organized criminality in general beyond the area of drug trafficking. Further, the EC Directive on Prevention of the use of the Financial System for the Purpose of Money Laundering in 1991 is a legal regulation of mandatory force requiring member states to incorporate the rules contained therein in their own legal systems by a certain date. Other initiatives of European Union to deal with the situation are Council common position on combating terrorism, Council common position on the application of specific measures to combat terrorism, Warsaw convention – Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

**Other Organization and Initiatives against Anti-Money-Laundering (AML):** Money laundering is an increasingly ramified, complex phenomenon that must be tackled in an integrated and interdisciplinary fashion. Towards this there are many organizations throughout the world working coordinately. Some of the prominent ones are discussed below:

1. **International Money Laundering Information Network (IMoLIN):** IMoLIN is an Internet-based network assisting governments, organizations and individuals in the fight against money laundering and the financing of terrorism. IMoLIN, administered by UN office on Drugs and Crime has been developed with the co-operation of the world's leading anti-money laundering organizations. It provides with an international database called Anti-Money Laundering International Database (AMLID) that analyses jurisdictions' national anti-money laundering legislation. It is intended as a tool for practitioners to assist them in their international cooperation and exchange of information efforts.
2. **Wolfsberg AML Principles:** This gives eleven principles as an important step in the fight against money laundering, corruption and other related serious crimes. The importance of these principles is due to the fact that it comes from initiative by private sector. Normally, most initiatives to date have been public sector led by governments and their regulatory and law enforcement agencies, or by government representatives acting through international forums such as the Financial Action Task Force (FATF) and the Basel Committee of Bank Supervisors. The Wolfsberg Principles are a non-binding set of best practice guidelines governing the establishment and

maintenance of relationships between private bankers and clients.

3. **Egmont Group of Financial Intelligence**

**Units:** The Egmont Group is the coordinating body for the international group of Financial Intelligence Units (FIUs) formed in 1995 to promote and enhance international cooperation in anti-money laundering and counter-terrorist financing. The Egmont Group consists of 108 financial intelligence units (FIUs) from across the world. Financial intelligence units are responsible for following the money trail, to counter money laundering and terrorism financing. FIUs ability to transform data into financial intelligence is a key element in the fight against money laundering and the financing of terrorism.

4. **Asia-Pacific Group on Money Laundering**

**(APG):** The Asia/Pacific Group on Money Laundering (APG) is an international organization consisting of 38 member countries/jurisdictions and a number of international and regional observers including the United Nations, IMF and World Bank. The APG is closely affiliated with the FATF based in the OECD Headquarters at Paris, France. All APG members commit to effectively implement the FATF's international standards for anti-money laundering and combating financing of terrorism referred to as the 40+9 Recommendations.

Thus one can see the plethora of efforts taken by the international community to fight the menace of money-laundering. As the financial systems of the world grow interconnected, international cooperation has been, and must continue to be, fundamental in curtailing the growing influence on national economies, the effect of serious transnational organized crime, and the laundering of proceeds of such crimes. The international effort to develop and implement effective anti-money laundering controls has been marked by the persistent, ever present need to balance, on the one hand, the interests of government in access to financial records and even affirmative disclosure of suspicious activity, and on the other hand, the interests of financial institutions in being free from unduly burdensome regulation, along with the interests of their customers in maintaining an appropriate degree of financial privacy. On the one hand the international community is responding: trans-governmental groups - made up of financial, regulatory and judiciary specialists -- are working in a variety of ways to share information and expertise to fight money laundering and other crimes while on the other hand, the crime of money laundering, and the fight against it, are both relatively recent phenomena, and much work remains to be done.

## CONCLUSIONS

Money laundering is an activity, which is established in the whole world. It is a serious threat to financial system of all. Therefore, financial institutions must be compelled to report suspicious transactions. Furthermore, financial institutions should train employees to spot potentially suspicious activity. In order to establish comprehensive anti money laundering legislation, India must limit the scope of the right to financial privacy. If banks are to comply with strict governmental regulation, they must be able to do so without the fear of future actions against them for breach of contract or defamation. Public awareness is necessary as masses do not understand the problem itself. Banks and other financial institutions can protect themselves against Money Laundering by implementing an effective KYC Policy, knowing their customers, checking the source of funds.

The process in itself is very dynamic because the people who launder money are continuously seeking new ways to achieve their illegal ends. Moreover, it has become evident to the FATF through its regular typologies exercises that as its members have strengthened their systems to combat money laundering the criminals have sought to exploit weaknesses in other jurisdictions to continue their laundering activities.

Many important financial centers have now adopted legislation to curb drug-related money laundering. However, too many priority financial centers have still not adopted needed legislation or ratified the convention. There is also a substantial question of whether the drug trafficking-oriented money laundering laws that many governments adopted in the earlier part of this decade are adequate, given recent development in money-laundering practices and new technologies used in banking. Organized crime groups are increasingly a factor in major money-laundering schemes – and the multiple sources of their proceeds compounds the difficulty of linking the monetary transaction to a unique predicate offence like drug trafficking. Moreover, criminal organizations have distinct patterns of operations.

Thus it can be concluded that Money Laundering is global problem and must attract global attention. Without international cooperation money laundering cannot be controlled. The criminals outsmart the enforcing agencies and deploy a team of experts having specific domain knowledge to disguise their illicit money and masquerade it as legitimate income. The nexus between white-collared criminals, politicians, enforcing agencies and mafias cannot be ruled out. Bankers play the most prominent role and

without their ignorance or connivance the operation cannot be carried out. Development of new high technology coupled with wire transfer of funds has further aggravated the difficulties to detect the movement of slush funds. The international nature of money laundering requires international law enforcement cooperation to successfully investigate and prosecute those that instigate these complex criminal schemes. Money laundering must be combated mainly by penal means and within the frameworks of international cooperation among judicial and law enforcement authorities. Last but not the least it is vitally important to keep in mind that simply enactment of Anti-Money Laundering Laws are not enough, the Law enforcement Community must keep pace with the ever changing dynamics of money Launderers who constantly evolve innovative methods which helps them to stay beyond the reach of law.

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## ASSOCHAM

### THE KNOWLEDGE ARCHITECT OF CORPORATE INDIA

#### Evolution of Value Creator

ASSOCHAM initiated its endeavour of value creation for Indian industry in 1920. Having in its fold more than 400 Chambers and Trade Associations, and serving more than 4,00,000 members from all over India. It has witnessed upswings as well as upheavals of Indian Economy, and contributed significantly by playing a catalytic role in shaping up the Trade, Commerce and Industrial environment of the country.

Today, ASSOCHAM has emerged as the fountainhead of Knowledge for Indian industry, which is all set to redefine the dynamics of growth and development in the technology driven cyber age of 'Knowledge Based Economy'.

ASSOCHAM is seen as a forceful, proactive, forward looking institution equipping itself to meet the aspirations of corporate India in the new world of business. ASSOCHAM is working towards creating a conducive environment of India business to compete globally.

ASSOCHAM derives its strength from its Promoter Chambers and other Industry/Regional Chambers/Associations spread all over the country.

#### Vision

Empower Indian enterprise by inculcating knowledge that will be the catalyst of growth in the barrier-less technology driven global market and help them upscale, align and emerge as formidable player in respective business segments.

#### Mission

As a representative organ of Corporate India, ASSOCHAM articulates the genuine, legitimate needs and interests of its members. Its mission is to impact the policy and legislative environment so as to foster balanced economic, industrial and social development. We believe education, IT, BT, Health, Corporate Social responsibility and environment to be the critical success factors.

#### Members – Our Strength

ASSOCHAM represents the interests of more than 4,00,000 direct and indirect members across the country. Through its heterogeneous membership, ASSOCHAM combines the entrepreneurial spirit and business acumen of owners with management skills and expertise of professionals to set itself apart as a Chamber with a difference.

Currently, ASSOCHAM has more than 100 National Councils covering the entire gamut of economic activities in India. It has been especially acknowledged as a significant voice of Indian industry in the field of Corporate Social Responsibility, Environment & Safety, Corporate Governance, Information Technology, Biotechnology, Telecom, Banking & Finance, Company Law, Corporate Finance, Economic and International Affairs, Tourism, Civil Aviation, Infrastructure, Energy & Power, Education, Legal Reforms, Real Estate and Rural Development to mention a few.

## **Insight into ‘New Business Models’**

ASSOCHAM has been a significant contributory factor in the emergence of new-age Indian Corporates, characterized by a new mindset and global ambition for dominating the international business. The Chamber has addressed itself to the key areas like India as Investment Destination, Achieving International Competitiveness, Promoting International Trade, Corporate Strategies for Enhancing Stakeholders Value, Government Policies in sustaining India’s Development, Infrastructure Development for enhancing India’s Competitiveness, Building Indian MNCs, Role of Financial Sector the Catalyst for India’s Transformation.

ASSOCHAM derives its strengths from the following Promoter Chambers: Bombay Chamber of Commerce & Industry, Mumbai; Cochin Chambers of Commerce & Industry, Cochin; Indian Merchant’s Chamber, Mumbai; The Madras Chamber of Commerce and Industry, Chennai; PHD Chamber of Commerce and Industry, New Delhi and has over 4 Lakh members.

Together, we can make a significant difference to the burden that our nation carries and bring in a bright, new tomorrow for our nation.

## **THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA (ASSOCHAM)**

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