

ADDITIONAL LITERATURE FOR AML REQUIRMENTS

As per the requirements of SEBI, implementation of Anti Money Laundering (AML)/ Combating Financing of Terrorism requires trading members as intermediaries to demand certain information from investors which may be of personal nature or has hitherto never been called for. Such information can include documents evidencing source of funds/income tax returns/bank records etc. This can sometimes lead to raising of questions with regard to the motive and purpose of collecting such information. To sensitize about these requirements as the ones emanating from AML and CFT framework, General FAQs as published by The Financial Action Task Force (FATF), an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing is reproduced herewith. Kindly feel free to visit the websites of <http://www.fatf-gafi.org/> and <http://fiuindia.gov.in> for more information on the subject

What is Money Laundering?

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source.

Illegal arms sales, smuggling, and the activities of organised crime, including for example drug trafficking and prostitution rings, can generate huge amounts of proceeds. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimise” the ill-gotten gains through money laundering.

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. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.

In response to mounting concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations, 40 in all, which set out the measures national governments should take to implement effective anti-Mpmoney laundering programmes.

How much money is laundered per year?

By its very nature, money laundering is an illegal activity carried out by criminals which occurs outside of the normal range of economic and financial statistics. Along with some other aspects of underground economic activity, rough estimates have been put forward to give some sense of the scale of the problem. The International Monetary Fund, for example, has stated in 1996 that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world’s gross domestic product. Using 1996 statistics, these percentages would indicate that money laundering ranged between US Dollar USD) 590 billion and USD 1.5 trillion. The lower figure is roughly equivalent to the value of the total output of an economy the size of Spain.

However it must be said that overall it is absolutely impossible to produce a reliable

estimate of the amount of money laundered and therefore the FATF does not publish any figures in this regard.

How is money laundered?

In the initial - or placement - stage of money laundering, the launderer introduces his illegal profits into the financial system. This might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.

After the funds have entered the financial system, the second – or layering – stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channelled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not co-operate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.

Having successfully processed his criminal profits through the first two phases the launderer then moves them to the third stage – integration – in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

Where does money laundering occur?

As money laundering is a consequence of almost all profit generating crime, it can occur practically anywhere in the world. Generally, money launderers tend to seek out countries or sectors in which there is a low risk of detection due to weak or ineffective anti-money laundering programmes. Because the objective of money laundering is to get the illegal funds back to the individual who generated them, launderers usually prefer to move funds through stable financial systems.

Money laundering activity may also be concentrated geographically according to the stage the laundered funds have reached. At the placement stage, for example, the funds are usually processed relatively close to the under-lying activity; often, but not in every case, in the country where the funds originate.

With the layering phase, the launderer might choose an offshore financial centre, a large regional business centre, or a world banking centre – any location that provides an adequate financial or business infrastructure. At this stage, the laundered funds may also only transit bank accounts at various locations where this can be done without leaving traces of their source or ultimate destination.

Finally, at the integration phase, launderers might choose to invest laundered funds in still other locations if they were generated in unstable economies or locations offering limited investment opportunities.

How does money laundering affect business?

The integrity of the banking and financial services marketplace 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.

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.

As for the potential negative macroeconomic consequences of unchecked money laundering, one can cite inexplicable changes in money demand, prudential risks to bank soundness, contamination effects on legal financial transactions, and increased volatility of international capital flows and exchange rates due to unanticipated cross-border asset transfers. Also, as it rewards corruption and crime, successful money laundering damages the integrity of the entire society and undermines democracy and the rule of the law.

What influence does money laundering have on economic development?

Launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centres, but inadequate controls are particularly vulnerable as established financial centre countries implement comprehensive anti-money laundering regimes.

Differences between national anti-money laundering systems will be exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective countermeasures.

Some might argue that developing economies cannot afford to be too selective about the sources of capital they attract. But postponing action is dangerous. The more it is deferred, the more entrenched organised crime can become.

As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organised crime. Fighting money laundering and terrorist financing is therefore a part of creating a business friendly environment which is a precondition for lasting economic development.

What is the connection with society at large?

The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organised crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments.

The economic and political influence of criminal organisations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society. In countries transitioning to democratic systems, this criminal influence can undermine the transition. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.

How does fighting money laundering help fight crime?

Money laundering is a threat to the good functioning of a financial system; however, it can also be the Achilles heel of criminal activity.

In law enforcement investigations into organised criminal activity, it is often the connections made through financial transaction records that allow hidden assets to be located and that establish the identity of the criminals and the criminal organisation responsible.

When criminal funds are derived from robbery, extortion, embezzlement or fraud, a money laundering investigation is frequently the only way to locate the stolen funds and restore them to the victims. Most importantly, however, targeting the money laundering aspect of criminal activity and depriving the criminal of his ill-gotten gains means hitting him where he is vulnerable. Without a usable profit, the criminal activity will not continue.

What should individual governments be doing about it?

A great deal can be done to fight money laundering, and, indeed, many governments have already established comprehensive anti-money laundering regimes. These regimes aim to increase awareness of the phenomenon – both within the government and the private business sector – and then to provide the necessary legal or regulatory tools to the authorities charged with combating the problem.

Some of these tools include making the act of money laundering a crime; giving investigative agencies the authority to trace, seize and ultimately confiscate criminally derived assets; and building the necessary framework for permitting the agencies involved to exchange information among themselves and with counterparts in other countries.

It is critically important that governments include all relevant voices in developing a national anti-money laundering programme. They should, for example, bring law enforcement and financial regulatory authorities together with the private sector to enable financial institutions to play a role in dealing with the problem. This means, among other things, involving the relevant authorities in establishing financial transaction reporting systems, customer identification, record keeping standards and a means for verifying compliance.

Should governments with measures in place still be concerned?

Money launderers have shown themselves through time to be extremely imaginative in creating new schemes to circumvent a particular government's countermeasures. A national system must be flexible enough to be able to detect and respond to new money laundering schemes.

Anti-money laundering measures often force launderers to move to parts of the economy with weak or ineffective measures to deal with the problem. Again, a national system must be flexible enough to be able to extend countermeasures to new areas of its own economy. Finally, national governments need to work with other jurisdictions to ensure that launderers are not able to continue to operate merely by moving to another location in which money laundering is tolerated.

What about multilateral initiatives?

Large-scale money laundering schemes invariably contain cross-border elements. Since money laundering is an international problem, international co-operation is a critical necessity in the fight against it. A number of initiatives have been established for dealing with the problem at the international level. International organisations, such as the United Nations or the Bank for International Settlements, took some initial steps at the end of the 1980s to address the problem. Following the creation of the FATF in 1989, regional groupings – the European Union, Council of Europe, Organisation of American States, to name just a few – established anti-money laundering standards for their member countries. The Caribbean, Asia, Europe and southern Africa have created regional anti-money laundering task force-like organisations, and similar groupings are planned for western Africa and Latin America in the coming years.