

September 10, 2007

Anti-Money Laundering Bill, 2005

Current Status of the Bill

The Bill was introduced by Mr. Omar Ayub Khan, Minister of State for Finance in the National Assembly on **September 22, 2005**. The Bill was referred to the National Assembly Standing Committee on Finance. A sub-committee was later constituted specifically to examine the bill and submit its report for consideration of full committee before being forwarded to the full house. According to the National Assembly Rules of Procedure and Conduct of Business, a standing committee is required to submit its report to the house within 30 days. As of the date of this brief, the bill is pending with the Committee.

About Legislative Brief

This Brief is a part of PILDAT's Legislative Development Programme and is primarily authored by **Mr. Ahmer Bilal Soofi** at the request of PILDAT with input from PILDAT. The objective of the Brief is to assist parliamentarians to understand the context, objective and issues relating to the legislation and to enable them to participate in a more informed debate and take well-considered position on the subject. The Brief is also intended to enhance awareness of the Citizens and Media in general so that they may also participate in the process as informed stakeholders and communicate their views to the public representatives. A broader objective is to make the legislative process open and participatory.

1. Mr. Soofi as a Pakistani delegate negotiated UN Convention on Corruption in the UN General Assembly that contained money laundering provisions. He was one of the 14 experts that supervised drafting of the UN Guidelines for Implementing the Convention. He also participated in the Asia Pacific Group on Money Laundering (APG) country evaluation of Pakistan. Mr. Soofi is an advocate of the Supreme Court of Pakistan and President of the Research Society of International Law (RSIL) Pakistan.

Highlights of the Bill

The Bill, spread over 26 pages consisting of 49 Sections, a Schedule and the Statement of Objects and Reasons, is aimed at addressing the issue of Money Laundering.

- The bill defines that a person who acquires, converts, possesses, transfers or uses property, knowing or having reason to believe that such property is proceeds of crime; or renders assistance to another person for the acquisition, conversion, procession, transfer or use of, or for concealing or disguising the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime; shall be guilty of offence of Money Laundering. (Section 3)
- Money Laundering be punishable with 4 to 10 years rigorous imprisonment, with fines up to Rs. 1 Million and possible forfeiture of property involved in the Money Laundering. (Section 4)
- A number of institutions and bodies are proposed to be constituted under the bill, including:
 - A **National Executive Committee (NEC)** which shall develop, coordinate and publish annual national strategy to fight Money Laundering and a **Financial Monitoring Unit (FMU)** housed in SBP and charged with the responsibility of analyzing the Suspicious Transaction Reports. (Sections 5 & 6)
- The bill provides for the filing of a '**Suspicious Transaction Report**' by every financial institution to the FMU within 7 days after forming the suspicion. Failure to comply with this requirement may lead to imprisonment up to 5 years or with fine up to Rs. 100,000 or both.
- The Financial Institutions convicted of this offence may have their license revoked. (Sections 7, 38 & 39)
- The Federal Government is empowered to establish Special Courts. (Section 22) NAB, FIA, ANF or any other law enforcement agency notified by the Federal Government will act as the '**investigating or prosecuting agency**' under the bill.
- The Investigation Officer is authorized under the bill to enter and search a building or a place for evidence relating to an offence. (Sections 14, 15 & 37)
- The Federal Government has the power to amend the schedule of offences and to make rules in consultation with the NEC to implement the bill (Sections 46 & 47)
- If any difficulty arises in giving effect to this act, the Federal Government may make such provisions as may appear to be necessary for removing the difficulty. (Section 49)

Executive Summary

Pakistan is under an international obligation to enact a legislation to prevent Money Laundering. The bill pending before the Parliament since September 2005 is a response to these obligations. The Bill creates a mechanism to coordinate and focus various efforts to combat money laundering and prescribes punishment for the crime. The executive has the arbitrary power to add any offence to the schedules of predicate offences listed in the schedule attached to the bill. This power needs to be subjected to legislative review. It is recommended that legislators especially the members of the National Assembly Standing Committee on Finance should take necessary steps to wind-up their consideration of the bill expeditiously especially before the Assembly completes its term in two months. Delay in the passage of the bill may not be in the interest of Pakistan as it may create unnecessary doubts in the mind of international community regarding the resolve of Government of Pakistan to combat and prevent Money Laundering. The bill, when it becomes the law, shall pose several challenges in respect of implementation. Extensive capacity building will, therefore, be required.

Anti-Money Laundering Bill, 2005**Significance and Background of the Bill**

The United Nations (UN) in its special session of the General Assembly held on June 8 to 10, 1998 adopted a political declaration which calls upon member states to undertake special efforts against laundering of money linked to drug trafficking and, in that context, emphasizes the importance of strengthening international, regional and sub-regional cooperation. The UN has recommended that states that have not yet done so may adopt by the year 2003 national anti-money laundering legislation. Recommendations of the Financial Action Task Force (FATF) require all the states to enact such legislation. Further, Pakistan has been supporting all anti-money laundering initiatives during the negotiations of the United Nations Convention Against Transnational Organized Crime (UNTOC) and United Nations Convention Against Corruption (UNCAC). Therefore, with all these instruments creating clear binding obligations on Pakistan to enact the statute, Pakistan shall be viewed as a non-compliant state if it does not enact this statute.

Analysis of the Bill

A number of countries in the world have already enacted similar Anti-Money Laundering Laws. In South Asia, India and Bangladesh had promulgated Prevention of Money Laundering laws in 2002. The United Nations and the Commonwealth have developed Model Anti-Money Laundering legislations which are meant to encourage states to develop and promulgate legislations in their jurisdiction. A number of international organizations such as the Financial Actions Task Force (FATF), International Bar Association's Anti-Money Laundering Forum, Asia-Pacific Group on Money Laundering (APG) and the UN International Ant-Money Laundering Network (MOLIN/AMLID) monitor the introduction and implementation of Anti-Money Laundering laws in the world.

The key points of the analysis of the Anti-Money Laundering Bill are as follows:

Definition of Money Laundering:

In general, the definition is in line with the language of article 6 of the UNTOC. The ideal way to formulate the definition would have been to follow the formulation in the said UN Convention wherein the elements of liability of crime for the main offender are different from that of the accomplice.

Special Courts:

The provisions creating special courts are included in the bill. It is suggested that there should not be any special courts or a parallel legal structure since neither the FATF Recommendations nor any other international convention demands it. India had set up such courts but the experiment seems to have failed as hardly any prosecutions are initiated

simply because the prosecutors insist on filing the cases in the courts where the predicate offence is being tried. If the provisions relating to the special courts are excluded that will mean that, the charge of committing money laundering shall be framed in the very court where the prosecution of the predicate offence is being carried out. This would make the prosecution of money laundering a lot easier.

List of predicate offences:

The bill contains a schedule that enlists offences that are termed as predicate offences. They are listed with reference to the sections of the relevant laws. The schedule, though a part of the bill, can be amended through executive order instead of a legislative measure. It is proposed that the schedule, like the rest of the bill, should also be amended through legislative measures.

Money Laundering be made triable as a stand-alone offence:

It appears that money laundering as an offence is not triable on a stand-alone basis. Money laundering as an offence should be triable in its own right irrespective of the fact that the predicate offence is tried or not. Therefore, changes need to be made to relevant provisions such as Section 9 (3) (a) and Section 23.

Power of FMU:

Under the bill, there are three kinds of powers (a) analysis of STRs (b) power to call for information (c) and power of investigation in order to file the case. It is suggested that the power of investigation given to the FMU should be curtailed since this shall constitute a duplication of the powers of the investigation agency.

Anti-Money Laundering Bill, 2005**Recommendations to the Media**

1. The Media can play a crucial role in raising general awareness about the impact the bill is going to have on the citizens, financial institutions and on the country as a whole.
2. The Media can also discuss why the bill has been pending with the National Assembly for the last 2 years.
3. The media should also highlight the background and significance of the bill for our economy and business.
4. The Electronic Media can organize talk shows involving experts, legislators and government representatives to discuss above and other aspects of the bill. The print media can publish research-based stories on the subject and provide guidelines to legislators.

Recommendations to the Legislators

1. The Bill is of critical importance to demonstrate that Pakistan is committed to its legal obligations and to combat the menace of Money Laundering. It is therefore important that the legislators should expeditiously complete the consideration of the bill, amend where necessary and pass at the earliest.
2. It is a good practice to estimate the financial impact which implementation of a legislature will have on the tax payers and present the estimate to the legislature at the time of the consideration of a bill so that legislators are in a position to fully comprehend the cost-benefit ratio of any legislative action. It may be a good idea for legislators to demand a statement of financial impact from the Government or a private mover of the bill as a requirement of moving any new legislation. This recommendation, however, applies to all future legislations and not to this bill alone.
3. The power to amend the Schedule of offences at the end of the bill should not rest with the Federal Government. Section 46, therefore, should be amended.
4. The Standing Committee on Finance should invite legal and financial transactions experts to assess the impact of various provisions of the bill on the economy of Pakistan before compiling its report.

Recommendations to the Citizens and Citizens' Groups

1. The bill has a direct bearing on day-to-day financial transactions and Citizens and their groups should seek greater awareness of the law.
2. All those citizens who are associated with a financial institution or other entities such as real estate dealers will be directly affected by the law and therefore should be fully aware of its impact.
3. Since the international standing of the country may be affected by undue delay in passing the bill and this may even be construed as dragging feet on our international obligations, the citizens may ask their elected representatives to expedite passing the bill, with amendments where necessary, to safeguard the national interest.
4. The professionals' organizations like the Institute of Chartered Accountants of Pakistan (ICAP) should get involved in reviewing the bill and providing input to the National Assembly Standing Committee on Finance.

Anti-Money Laundering Bill, 2005**About PILDAT**

Pakistan Institute of Legislative Development And Transparency - PILDAT is an independent research and training institute committed to strengthening democracy and democratic institutions in Pakistan. PILDAT is a dedicated organisation working towards legislative and democratic strengthening while it leads a non-partisan political research initiative to make crucial political issues part of the political and public discourse in the country. Major PILDAT programmes include Political Research, Public Legislative Forums, Legislative Strengthening and Dialogues for Broader Consensus. PILDAT has also facilitated formulation of issue-based caucuses across parties in Pakistan's Parliament on themes such as Youth, Women's Issues and Inter-Faith Relations, etc. PILDAT also facilitates non-Parliamentary groups of leading intellectuals and thinkers for dialogue on issues such as Civil-Military Relations, Free and Fair Elections & Electoral Process, Youth and Politics, and Dialogue between the Muslim World and the West, etc.

PILDAT came into being in October 2001 and was subsequently registered as a Society under the Societies Registration Act XXI of 1860.

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