

POSITION PAPER

National Anti-Money Laundering and Counter Financing of Terrorism Authority



CENTRE for GOVERNANCE RESEARCH
PAKISTAN

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Position Paper

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Introduction

Global terrorism has posed unprecedented challenges to nations around the world, and financing these terror activities remains a key issue. Terror funding is not just a legal issue, it is a complex geopolitical issue that affects international relations, economics, and national security.

Recently, Pakistan established a National Anti-Money Laundering and Counter Financing of Terrorism Authority (National AML/CFT Authority). This position paper discusses the Act's rationale and effectiveness.

Historical Perspective

Following 9/11 episode, the United States approached the United Nations Security Council to combat terror financing and boost national approaches worldwide. In 2001, the FATF expanded its mandate from money laundering to terrorism financing. Currently Terror funding has been highlighted as the vital spark of terrorism (Vlcek, 2015), and consequently the UN Security Council has reinforced counter-terror financing measures at the state level.

Pakistan was placed on the FATF grey list for the first time in 2008, then 2012 to 2015 for failing to take adequate measures to counter

anti-money laundering and terror financing and again in 2018 because of strategic counter-terrorist financing-related deficiencies. It got off the grey list in 2022 (Shah et al, 2023) after it met the FATF 27 conditionalities.

But then placement did have a negative influence on the international financial system of the country, affected imports/exports, weakened the currency, depleted foreign exchange reserves, and impacted adversely on foreign aid (Ahmed et al., 2022) beside it harmed the opinions of foreign investors, Pakistan Stock Exchange index dropped (Hussain, 2019).

Weaknesses Identified

The FATF report of 2021 revealed weaknesses in the evaluation of risks in AML/CFT, for instance:

- i. There was variation in the implementation of a risk-based strategy to terror financing by various authorities. In situations involving money laundering and terrorist funding, certain government agencies were proactive while others were reactive.
- ii. The analysis noted a lack of clarity in law enforcement authorities' investigation of ML/TF cases, resulting in very low conviction rates with no suitable system in place for the SECP-referred cases to enable concurrent investigations.
- iii. The research also outlined shortcomings in counterparties' ability to communicate information while handling ML/TF cases and that the country's information transfer and inter-departmental coordination were inadequate.

State Response

As Pakistan was placed on the grey list, the Financial Monitoring Unit (FMU), Ministry of Foreign Affairs (MOFA) took the lead, along with other stakeholders. Further, the National Coordination Committee led by the Minister and National FATF Cell formed through PM Secretariat Notification coordinated and steered the efforts of all agencies.

According to the Basel AML Index (Public Edition), Pakistan presently has an overall ML/TF risk score of 6.16. Compared to other global jurisdictions, Pakistan falls within the medium-risk category. The existing steps to combat terror funding have proven effective by meeting all FATF requirements, resulting in the country's removal from the grey list.

Prevailing Global Practices.

Prior to 11th September, FATF was tasked of enhancing the techniques for curbing transnational illicit financial transactions. In aftermath, the United Nations Security Council adopted a resolution on 28th September to combat terrorism and the funding of terrorism (Clunan, 2006).

- i. United States: A Financial Operations Group (FINO) was established by the CIA, a Terrorist Financing Operations Section was established by the FBI, and a Terror Financing Tracking Program (TFTP) was created by the Department of Treasury after 9/11 (Lormel, 2008). To implement efficient preventative measures, these departments gather information on terrorist funding. In addition, US counterterrorism funding measures are aggressively implemented across agency lines through identification and investigation. (FATF, 2016).

- ii. United Kingdom: Terrorist organizations are restricted from accessing money by monitoring, seizing cash, and freezing accounts under the UK Anti-Terrorism, Crime and Security Act of 2001 (Harding, 2002). Among Her Majesty's Treasury's counterterrorism and sanctions units, the Office of Financial Sanctions Implementations (OFSI) focuses on financing for terrorism. The Counter-Terrorism Financing (CTF) program in the United Kingdom focuses on three areas: lowering terror funding, limiting foreign terror funding movement, and reducing fund raising. (Normark and Ranstorp, 2015).
- iii. India: Several laws have been passed to reduce terror financing, including the Unlawful Activities (Prevention) Act of 1967, as amended after 9/11, and the Prevention of Money Laundering Act of 2003. The Ministry of Home Affairs is responsible for eradicating terror finance, while the Ministry of Economic Affairs, Central Bureau of Investigation, and Research and Analysis Wing are responsible for gathering intelligence on terror finance (Saini, 2008). The responsibility of identifying and looking into financing for terrorism falls within the purview of the Central Bureau of Investigation.
- iv. Bangladesh: In 2002, the Bangladesh government passed the Money Laundering Prevention Act (MLPA). The law covers all types of money laundering, including financing terrorism. Bangladesh Bank is responsible for finding illegal transactions in the country (Anand, 2009). It was not until 2018 that the government established distinct courts to examine terror financing and terrorism until a new Anti-Terrorism Ordinance was implemented.
- v. Pakistan: SBP and SECP are responsible for supervising financial institutions and controlling illicit flows of funds through formal channels. There are other LEAs which investigate ML and TF cases like NAB, FBR, ANF, provincial CTDs (Mukhtar, 2018). NACTA prepares reports on the collation and analysis of data to assist LEAs in conducting these investigations and prosecutions. Subsequently 70 outlawed assets of designated/proscribed organizations and individuals have been frozen by concerned implementing agencies (Shah et al., 2023).

Salient Features of Financial Crimes Authority

Led by Minister of Foreign Affairs Hina Rabbani Khar, a legislative step had been taken with the introduction of the “National Anti-Money Laundering and Counter Financing of Terrorism Authority Bill.” (Guramani in 2023).

This legislation introduces several new facets, the foremost being the creation of a dedicated and enduring body entrusted with the coordination and monitoring of AML/CFT activities across all relevant agencies operating within Pakistan.

It aims to serve as a focal point for matters concerning the Financial Action Task Force (FATF). Beyond this, it is mandated to orchestrate the National Strategy designed to combat Money Laundering and Terror Financing.

National AML/CFT Authority will not be responsible for imposition of Targeted Financial Sanctions against entities or individuals subjected to bans. Rather all operational tasks will continue to be performed by respective LEAs and provincial departments. It may formulate national action plans and coordination mechanisms.

Moreover, the Authority holds the capacity to evaluate policies, offer governmental advisories, establish its own regulatory frameworks, engage in agreements and Memorandums of Understanding, and address other pertinent concerns related to its domain.

One of the most substantial outcomes of the establishment of this Authority is its permanent and effective replacement of the previously administratively constituted National FATF Coordination Committee, which was led by a minister, and the National FATF Cell, established through Prime Minister Secretariat Notifications in 2019.

It's notable that the previously existing employees of these rescinded entities will continue their service under the umbrella of this newly established authority, as outlined in Section 22 of the Act.

The composition of the Authority includes the Chairman and Director-General of the Authority, as well as high-ranking officials like the Secretaries of Finance, Foreign Affairs, and Interior. Moreover, the Governor of the State Bank of Pakistan (SBP), the Chairman of the Securities and Exchange Commission of Pakistan (SECP), and the Director-General of the Federal Investigation Agency (FIA) are part of this structure.

Likewise, the presence of the National

Coordinator NACTA, the Chairman of the Federal Board of Revenue (FBR), and the Director-General of the Financial Monitoring Unit (FMU) adds to its stature. This collaborative effort extends to Provincial Chief Secretaries, as well as Chief Secretaries of AJK and GB

Presently, the former staff of the now-defunct FATF Cell are managing the operational aspects of the newly established Authority at a foundational level.

This legislative step presents a comprehensive and interconnected framework to tackle the pressing issues of money laundering and terrorism financing. It replaces administrative structures with a permanent and empowered Authority, likely to be well-equipped to lead Pakistan's efforts in alignment with international standards and obligations set by entities such as FATF.

Expectations from New Initiative

- i. Serve as a unifying platform for federal and provincial anti-money laundering and counter-terrorism entities, including NACTA and the Financial Monitoring Unit (Asad, 2023).
- ii. Coordinate efforts against money laundering, terrorism financing, and targeted financial sanctions.
- iii. Propose changes aligning policies, laws, and regulations with international standards to mitigate money laundering and terror financing risks.
- iv. Address FATF-identified deficiencies across legal, financial, regulatory, investigative, prosecutorial, judicial, and non-government sectors (2018) related to countering money

laundering and terror financing.

- v. Ensure continuous advancement to prevent potential re-listing on FATF's grey list.
- vi. Advance collaboration among NACTA, FIA, and SBP, addressing challenges like corruption, political interference, and accountability gaps.
- vii. Direct resources to an independent authority, minimizing political intervention for increased efficiency.
- viii. Unite diverse departments under one umbrella, adopting a successful multi-agency strategy model like one in USA.
- ix. Establish a coherent strategy to combat terror funding and money laundering, addressing limitations of previous institutions.

Comparative Analysis: AML Act of 2010 vs FCA Act of 2023

- i. Focal Point for Coordination:
 - a. 2010 AML Act: Designates FMU as focal point for domestic and international coordination.
 - b. 2023 FCA Act: Establishes a central point for national and international coordination and is an added layer.
- ii. Reporting and Oversight:
 - a. 2010 AML Act: The National Executive Committee (NEC) had oversight roles and could request reports but lacked a structured system for coordinating with international agencies.
 - b. 2023 FCA Act: Takes on similar

reporting and oversight duties, but with a well-organized system for coordinating and collaborating with international agencies.

- iii. National Plan for Sanctions:
 - a. 2010 AML Act: No specific mention of overseeing a national plan for enforcing sanctions.
 - b. 2023 FCA Act: Is tasked with overseeing and coordinating the national plan.
- iv. Regulatory Power:
 - a. 2010 AML Act: NEC suggested regulations to the federal government.
 - b. 2023 FCA Act: Has the power to establish rules for its effective operation.
- v. Comprehensive vs Effective Measures:
 - a. 2010 AML Act: More comprehensive and extensive in terms of content.
 - b. 2023 FCA Act: Focuses on ensuring the sustainability of effective measures.
- vi. Supervisory Role:
 - a. 2010 AML Act: NEC had supervisory roles but lacked extensive powers.
 - b. 2023 FCA Act: Operates as a regulator with supervisory functions, and its resemblance to NEC underscores its authority over other bodies dealing with AML/CFT matters.
- vii. Political Engagement and Reporting:
 - a. 2010 AML Act: National organizations reported to the federal government.
 - b. 2023 FCA Act: Will assess findings from various institutions, aiming for reduced political engagement and increased objectivity.

Conclusion

In Pakistan's context, the significance of financial support in terrorist activities has led to repercussions such as terrorist attacks and inclusion on the FATF grey list due to insufficient commitment to counter terror financing. Collaborative endeavors by NACTA, FIA, provincial CTDs and the State Bank of Pakistan have been pivotal in advancing Pakistan's removal from the FATF's grey list.

However, the Anti-Money Laundering Act of 2010, while comprehensive, lacks a robust monitoring mechanism for these critical institutions and clarity on international collaboration and was more of makeshift arrangement. The National Anti-Money Laundering and Counter Financing of Terrorism Authority Act of 2023 introduction proposes a central body to integrate entities

governed by the AML Act of 2010.

There is merit in the new authority, assuming it operates free from political interference, secures resources, selects members through rigorous filtration processes, builds capacity persistently, and ensures flawless coordination.

But instead of hastily passing the act, a process of open deliberation would have garnered greater acceptance and diminished suspicions. For in the realm of universal truths, one often finds the resounding perception that the credibility of any act gracefully rests upon the pillars of fairness, inclusivity, and transparency. To make any laws effective, it is essential to balance urgency with comprehensive planning.

Bottom line: Rather fail with honour than succeed by fraud.

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He has been the Chief of Operations in Mozambique, Planning Coordinator in Liberia, and UN Police Commissioner in Darfur, Sudan. His service was honored with three UN peace medals, the Quaid Azam Police Medal, the President's Police Medal, and the Sitara Imtiaz and Tamagha-i-Imtiaz.

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