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THE WORLD BANK



**Asia/Pacific Group  
on Money Laundering**

ASIA/PACIFIC GROUP ON MONEY  
LAUNDERING

PAKISTAN ME2

# Mutual Evaluation Report

## Anti-Money Laundering and Combating the Financing of Terrorism

# Pakistan

9 July 2009

Pakistan is a member of the Asia/Pacific Group on Money Laundering. This evaluation was conducted by the World Bank and was then discussed and adopted by the Plenary of the Asia/Pacific Group on Money Laundering adopted as a 2nd mutual evaluation on 9 July 2009.

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## ACRONYMS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
ANF	Anti Narcotics Force
BL	Banking Law
BCP	Basel Core Principles
CC	Criminal Code
CDD	Customer Due Diligence
CPC	Criminal Procedure Code
CSP	Company Service Provider
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FSRB	FATF-style Regional Body
FT	Financing of terrorism
IAIS	International Association of Insurance Supervisors
KYC	Know your customer/client
LEG	Legal Department of the IMF
MEF	Ministry of Economy and Finance
MFA	Ministry of Foreign Affairs
MFD	Monetary and Financial Systems Department of the IMF
MOU	Memorandum of Understanding
ML	Money laundering
MLA	Mutual legal assistance
NPO	Nonprofit organization
PEP	Politically-exposed person
ROSC	Report on Observance of Standards and Codes
SBP	State Bank of Pakistan
SECP	Securities Exchange Commission of Pakistan
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution

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## **PREFACE**

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Pakistan is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in February 2008. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from January 26<sup>th</sup> to February 8<sup>th</sup>, 2009, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the World Bank (WB) and expert(s) acting under the supervision of the WB. The evaluation team consisted of: Jean Pesme (team leader); Ms Heba Shamseldin (World Bank), Emiko Todoroki (World Bank), MM. David Murray (World Bank consultant), Gregor Allan (World Bank consultant), Martin Comley (World Bank consultant). Mr. David Shannon from the APG Secretariat participated as an observer during the assessment visit by prior agreement with the authorities. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Pakistan at the time of the mission or shortly thereafter (no later than March 26<sup>th</sup>, 2009). It describes and analyzes those measures, sets out Pakistan levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the WB as part of the Financial Sector Assessment Program (FSAP) of Pakistan. It was also presented to the APG and endorsed by this organization on its plenary meeting of 9 July 2009.

The assessors would like to express their gratitude to the Pakistan authorities for their strong commitment to the assessment and their full availability and engagement throughout the assessment mission and process.





## **EXECUTIVE SUMMARY**

1. Pakistan faces significant risks of money laundering and even more significant risks of terrorism financing. Aware of the prevalence of corruption, narcotics trafficking and terrorism, the authorities have focused on tackling these predicates. Pakistan has however not yet sufficiently taken into account money laundering and terrorism financing associated with these and other predicate crimes.
2. There is evidence that criminals laundering funds in Pakistan are purchasing real estate, abusing corporate entities to access the financial sector, laundering money through trade and abusing informal channels in Pakistan. Funds for terrorism came from proceeds of crime (including bank robbery, kidnap for ransom, and proceeds of drugs flowing from Afghanistan), with cases of cash couriers and misuse of charities facilitating terrorist financing.
3. Despite some good results in forfeiting assets directly linked to corruption and narcotics trafficking, the authorities still lack systematic focus on the concept of 'follow the money' to tackle profit driven crime and terrorism. The authorities need to recognize the substantive difference between money laundering and the predicate crimes. The authorities have little information on the volume and techniques of laundering the proceeds of crime, or on the volume and channels of terrorism financing.

### **Key Findings**

4. Pakistan has criminalized money laundering (ML) and terrorism financing (TF). Law enforcement authorities still find it difficult to gather evidence for the ML offence without conviction for the predicate offence. Some key predicate offences are missing. A wide range of terrorism financing acts is criminalized. There is no criminalization of the financing of individual terrorists or terrorist organizations, other than proscribed ones. Pakistan can freeze terrorist assets under UNSCR 1267. To implement UNSCR 1373, Pakistan uses a domestic proscription mechanism under the Anti-Terrorism Act 1997 (ATA). Associated freezing mechanisms do not extend to all types of asset. Domestic proscription is limited to certain types of organizations. Law enforcement and prosecution authorities have powers to prosecute ML and TF. They are currently not using these tools.
5. Pakistan set up its Financial Intelligence Unit (FMU) in December 2007. Pakistan has taken steps to make the FMU operational, but to perform its core functions effectively, the FMU requires more resources and a much higher inflow of STRs.
6. Pakistan has required its financial sector to adopt anti-money laundering/combating the financing of terrorism (AML/CFT) preventive measures for several years. The preventive measures have recently been expanded in scope (activities and obligations) by SBP, and eventually by SECP in April 2009, outside the review period. More stringent examination and enforcement is needed. Some progress on transparency has been achieved, but access to beneficial ownership of natural and legal persons is not ensured. Steps to implement effective measures to protect NPOs from abuse for terrorism financing purposes need to be further deepened.
7. Capacity to engage in mutual legal assistance and administrative cooperation is severely impaired for legal and procedural reasons.
8. The results achieved by the AML/CFT regime are not commensurate with the risks and threats facing Pakistan. To ensure efficient deployment of resources, both in the public and private sectors, and effectiveness, Pakistan should prepare as soon as possible a ML/TF risk-analysis, adopt at the highest level a national AML/CFT strategy and consolidate its institutional framework.

## Legal Systems and Related Institutional Measures

9. **Pakistan has criminalized money laundering through the Anti-Money Laundering Ordinance (AMLO), enacted as an executive order in September 2007, which was validated by subsequent constitutional amendment and Supreme Court decision.** The assessment team is satisfied that AMLO is a valid and stable law.

10. **The ML offence defined by the AMLO provides a broad definition of the physical element, but the range of predicate offences remains too narrow.** A recent executive order enlarged the scope of the predicate offences substantially. Some categories, relevant in Pakistan, are still missing. The law does not contain any requirements that mandate prior conviction for a predicate offence. Investigative authorities do not yet perceive this autonomous prosecution of ML as possible evidentially. The assessors welcome the authorities' intention to address this weakness through legislative action. They recommend training of prosecutors and judges on the autonomy of the ML offence.

11. **The AMLO equates the criminal liability of legal persons to the liability of the natural person that act on its behalf.** The definition of person under AMLO includes both legal and natural persons but the act goes on to provide that the liability of the legal person consists of the strict liability of the officers of the legal entity itself. There is no established practice of prosecuting legal persons directly for the offences committed on their behalf. Administrative sanctions are not applied when the officers of a legal person are found criminally liable.

12. **Pakistan partially criminalized terrorism financing in the Anti-Terrorism Act, 1997 (ATA), but has not yet ratified the UN Convention on the Suppression of Terrorism Financing.** The provision of funds for the purposes of terrorism is sufficiently covered by criminalization. The acts of collection are less clearly covered in full. In the absence of case law to clarify the provisions, the assessors are not satisfied that 1) terrorism extends to acts against foreign governments or populations; and 2) that the financing of individual terrorists and un-proscribed terrorist organizations is criminalized. Terrorism financing is a predicate offence for money laundering under AMLO.

13. **AMLO provides a conviction-based proceeds of crime recovery regime.** This is supplemented by recovery provisions relating specifically to narcotics proceeds (contained in the Control of Narcotics Substances Act 1997 [CNSA]) and corruption (contained in the National Accountability Ordinance 1999 [NAO]). The assessors recommend a review of the drafting of AMLO's forfeiture regime to resolve inconsistencies that create excessive avenues for legal challenge.

14. **The results achieved by the AML/CFT criminalization and forfeiture regime are not commensurate with the ML and TF risks facing Pakistan.** Although AMLO is a recent statute, the TF offence and a narcotics-related ML offence have been available to Pakistan for several years. The level of prosecutions and convictions under the earlier offences is not commensurate with the prevalence of those offences. In particular, despite being criminalized since 1997, there has been very limited use of the TF offence and very few TF investigations, despite the large numbers of terrorism offences prosecuted. The adoption of AMLO provides a key opportunity for Pakistan to take more definitive and systematic action against ML and TF. This would also yield benefits in addressing the predicate offences.

15. **Pakistan has the legal basis to implement UNSCR 1267, and has done so in the banking sector.** Freezing pursuant to UNSCR 1267 is enabled by the United Nations (Security Council) Act 1948, which in turn enables the promulgation of Statutory Regulatory Orders (SROs) – a form of subordinate legislation that applies to all persons. To date, these orders have not contained any provisions for sanction in the event of non-compliance. Within the financial sector, dissemination of SROs or domestic proscription orders is undertaken only by SBP, with the result that only banks and exchange companies

receive relevant communications and subsequent compliance monitoring. Pakistan has thus far frozen the equivalent of 10 Million USD pursuant to UNSCR 1267.

16. **Pakistan can partially implement UNSCR 1373, and has taken some actions against domestic entities in the banking sector.** Freezing pursuant to UNSCR 1373 is done using powers under the ATA to “proscribe” entities considered to be “concerned in terrorism.” Proscription is limited to “organizations,” and freezing action pursuant to proscription is limited to the sealing of the offices of the entity, the freezing of its bank accounts and the detention of any cash found in its possession. This is not a comprehensive freeze within the meaning of UNSCR 1373. Pakistan is able to give consideration to requests of other jurisdictions to proscribe entities and freeze accounts under ATA powers, although the assessors have doubts about application of ATA proscription provisions in the absence of acts against Pakistan. Pakistan has proscribed 22 domestic organizations under ATA, including five listed by the UN, and has frozen the equivalent of approximately USD 150,000. No guidance has been provided to financial sector entities concerning implementation of the freezing obligations.

17. **Pakistan set up a financial intelligence unit, through AMLO, in December 2007; it currently remains constrained to effectively fulfill its mission.** The Financial Monitoring Unit is mandated to receive, analyze and disseminate STRs. Its operational independence is currently not sufficiently guaranteed, notably on staffing, on budget and on international sharing of information. The tools and staffing resources made available to the FMU to undertake the analysis of STRs are inadequate. Despite the low number of STRs, there is a significant backlog. All these factors hamper its ability to effectively analyze STRs and provide useful disseminations to law enforcement. The conditions and procedures for FMU to participate in international cooperation are too restrictive.

18. **The agencies designated by AMLO and ATA to investigate ML and TF have the necessary powers.** AMLO designates three federal investigative agencies (Federal Investigation Agency (FIA), Anti-Narcotics Force and National Accountability Bureau) to investigate the ML offence. Similarly, the provincial police and the FIA are designated to investigate TF.

19. **The currently highly fragmented institutional arrangements for ML/TF investigation and prosecution give rise to practical difficulties in implementation.** Where ML is apparent but the predicate offence is unknown, it is unclear which agency will be responsible for investigation and prosecution. In addition, where the predicate offences span the mandate of more than one agency, it is unclear how issues of overlapping jurisdictions will be resolved for day to day operations. Finally, responsibilities for investigation of the bulk of profit-driven crime are with the provincial police forces, which do not have a mandate to investigate ML. The assessors are not satisfied that the informal coordination mechanisms, including the lead agency approach, described by the authorities are sufficient to address the structural fragmentation of the institutional arrangements.

20. **The investigative and prosecution agencies have not effectively pursued ML and TF, even if the key tools are available to do so.** The assessors recommend more efforts to assess the typology of ML and TF in Pakistan, a stronger mobilization to investigate and prosecute ML and TF, and a clearer public policy on the prosecution of ML and TF, which should stem from a national AML/CFT strategy with high-level, centralized leadership.

21. **Pakistan has not yet implemented an effective regime to cover cross-border transportation of currency and bearer negotiable instruments.** Pakistan’s porous borders create a significant challenge for enforcement authorities. Pakistan largely relies on its foreign exchange legislation, enforced by Customs and SBP, to address cash-couriers. This legislation places no restrictions on the inbound flow of foreign currency. Pakistan has a partial declaration system to the extent that regulations require those seeking to export more than \$10,000 in foreign currency to declare their intention and obtain

the SBP's prior approval. Neither SBP nor Customs shares information with the FMU on such approvals or declarations.

### **Preventive Measures—Financial Institutions**

22. **Implementation of AML/CFT preventive obligations relies exclusively on the prudential powers of the financial sector regulators for regulation and enforcement.** This has enabled the supervisors to implement CDD and record keeping obligations well prior to the promulgation of AMLO. The legal power to issue such regulations has not been challenged to date. Some entities undertaking financial activities as defined by FATF are not covered by the preventive measures (notably the Pakistan Post Savings Bank and the Central Directorate of National Savings).

23. **AMLO also creates rule-making powers for the FMU to implement the requirements under AMLO.** The FMU's powers are mainly related to the suspicious and currency transaction reporting obligations. The assessors recommend that Pakistan avoids a fragmentation of rule-making for the preventive measures by using the ongoing revision of the Banking Company Ordinance and the SECP Act to expressly confer these powers on the prudential supervisors, with proper coordination with the FMU. The assessors also recommend more coordination and harmonization of the requirements to avoid the risks of regulatory arbitrage. They welcome the recently set up coordination mechanism between SBP and SECP.

24. **SBP has issued prudential regulations covering, inter alia, CDD requirements for banks (including Islamic banks), exchange companies and microfinance banks. The CDD requirements cover the key building blocks of the preventive measures.** A significant revision of these regulations took place in March 2009, and addressed most of the key shortcomings identified by the assessors. Financial institutions covered by SBP cannot hold anonymous accounts, but some concerns remain about the reliability of the identification documentation. This situation is largely being addressed with the renewed mandatory update of customer identification with the new Computerized National Identity Card (CNIC). The requirement to complete identification of the customer before opening the business relationship is in place.

25. **SBP has recently introduced a requirement to take reasonable measures to identify and verify the identity of beneficial owners.** The requirement to identify beneficial ownership should be systematic. SBP Regulations impose on-going monitoring of the business relationships and require banks to adopt enhanced due diligence for high-risk customers – the definition of “high-risk” has been tailored to the local context. However, there is no definition of the minimum content of enhanced due diligence measures. The new provisions for simplified due diligence need to be clarified (conditions and scope). Institutions supervised by SBP are prohibited from opening or continuing the business relationship in case of failure to undertake or update CDD – these situations are part of the red flags for STR issued by SBP.

26. **SBP established enhanced due diligence requirements for foreign Politically Exposed Persons in March 2009.** The coverage is not complete (family members and associates are not covered), and there is no requirement for enhanced on-going monitoring. SBP has defined satisfactory general obligations on cross-border correspondent banking relationships and non face-to-face business relationships are deemed high-risk with overall acceptable additional diligence.

27. **SBP indicates it does not permit reliance on intermediaries and introduced business.** The assessors consider that the relationship between exchange companies and banks do not present the characteristics of introduced business as defined by Recommendation 9.

28. **SBP requirements for exchange companies are much more basic and focus on core identification.** There is no concept of beneficial ownership, high-risk customers or politically exposed persons.

29. **The SECP issues separate CDD regulations for each category of institution it covers, and those in force at the time of the assessment are not extensive enough.** The financial institutions supervised by SECP cannot have anonymous accounts; however, they have not all been required to update identification of existing customers using the new CNIC. For the securities sector, the CDD requirements focus on account opening, and do not extend to on-going monitoring. For the insurance sector, CDD requirements are basic and do not cover the beneficiaries of life insurance contracts. For non-bank financial companies, the identification is limited to a standardized form that the industry must use, but has not yet adopted outside Modarabas.

30. **SECP CDD requirements are limited and do not cover fundamental CDD requirements.** These gaps include the verification of identity of the customer, identification and verification of the identity of beneficial owners, on-going monitoring of the business relationship, information on the purpose and intended nature of the business relationship, definition of high-risk customer and related enhanced due diligence, or conduct in case of failure to conduct satisfactory CDD.

31. **SECP has not imposed enhanced due diligence for Politically Exposed Persons.** It has not defined due diligence requirements for relations similar to correspondent banking relationships, in particular in the securities sector. SECP has not set out requirements to address specific risks associated with non face-to-face business relationships. SECP has not adopted requirements relative to third parties and introduced business, but has indicated that insurance brokers' licenses preclude them to engage in life insurance.

32. **SECP issued in April 2009 (outside the scope of the assessment) a CDD/KYC circular for NBFCs which addresses most of the pitfalls identified above.** This circular almost entirely mirrors the March 2009 SBP regulation. It is therefore a significant step forward, even if it only covers NBFCs and not the other entities regulated and supervised by the SECP. Going forward, the main challenge is enforcement of these more demanding requirements.

**Financial institution secrecy is not an impediment to the effective implementation of the AML/CFT regime.**

33. **Both SBP and SECP have defined satisfactory record-keeping requirements,** in particular allowing for the reconstruction of individual transactions.

34. **The current CDD requirements represent an improvement in the prevention of ML and TF, in particular in the banking sector following their recent revision.** Increased mobilization of financial institutions, improvements in identification documentation and enforcement action by SBP have led to more effective prevention. However, this progress needs to be deepened and broadened, particularly with exchange companies and all institutions supervised by the SECP. To be sustained, progress in customer identification now needs to be fostered by efforts to strengthen the understanding by financial institutions of the ML/FT risks they face.

35. **Banks are required to obtain and maintain full originator information for both domestic and cross-border wire transfers regardless of the amount.** The same applies to exchange companies for cross-border wire transfers. The exchange companies are not permitted to undertake domestic wire transfers. For banks, it is required that the full originator information accompany transfers throughout the payment chain. This is not clearly stipulated in the case of exchange companies. SBP has just set out

requirements for banks with regards to incoming wire transfers that are not accompanied by full originator information. In practice, both banks and exchange companies did not process such transfers before missing information is obtained, failing which the transfer requests are rejected. Exchange companies are required to use banks if cross-border transfers exceed US\$3,000.

36. **AMLO makes *implicit* reference to paying attention to unusual transactions only when reporting STRs, and the only specific requirements regarding unusual transactions are found in SBP and SECP regulations.** More detailed examples are provided in Money Laundering Regulations 2008 but again focusing on the reporting requirement.

37. **Pakistan does not have a framework to require financial institutions to pay specific attention to business relationships and transactions with counterparts from or in countries not sufficiently applying the FATF Recommendations.** SBP defined these situations as high risk in its March 2009 revised CDD requirements, and SECP in its April 2009 Circular for NBFCs. Pakistan does not have the legal basis to apply counter-measures.

38. **AMLO creates obligation to report STRs for money laundering to the FMU.** There is also a requirement to report to a police officer suspicion of an ATA offence, including TF that is “formed in the course of a trade, profession, business or employment”. No competent authority or private sector representative has indicated any awareness of this ATA requirement. SBP regulations impose an obligation to report TF STRs to the FMU. The scope of the STR reporting obligation under AMLO is limited by the still narrow range of predicate offences. What constitutes a suspicion is defined in AMLO in a satisfactory way. The assessors however note that banks seem to adopt a “confirmed suspicion” approach – which could, in part, explain the very low level of STRs.

39. **AMLO provides for satisfactory safe harbor and tipping-off provisions.** Safe harbor does not extend to the reporting of TF related STRs under the SBP Regulations.

40. **Pakistan issued guidelines for reporting, and examples of “red flags” for suspicion.** A standard STR and CTR reporting form was issued in January 2009. These were circulated by SBP and SECP to all regulated institutions. The Regulation did not contain any guidance on completing the STR form. To ensure quality STR reporting, it will be necessary to issue consistent industry-specific guidance developed in coordination between FMU, SBP and SECP.

41. **The level of STR reporting under AMLO by financial institutions is very low.** Only a handful of banks are reporting. This is consistent with reporting under previous requirements. Several factors appear to explain the very low level of reporting. The reporting entities have an overall poor understanding of the ML and TF risks facing Pakistan; authorities have not provided sufficient guidance on ML and TF typologies specific to Pakistan; and supervisors have not sufficiently emphasized compliance with the reporting obligations. Overall, few financial institutions have implemented automated systems to detect unusual and suspicious transactions; those that have adopted automated systems have done so recently.

42. **Both SBP and SECP have defined satisfactory requirements for financial institutions on internal controls and audit.** Banks/DFI supervised by the SBP must appoint compliance officers. The compliance officers’ duties must encompass AML/CFT requirements and related risk-management. Internal controls and audit for exchange companies is weak. SBP highlighted the need to first strengthen the compliance culture of exchange companies as a whole and, second, to foster compliance with their CDD and reporting requirements before stepping-up its enforcement on internal controls. SBP acknowledges that further progress by banks on the compliance with internal controls is needed. SBP

notes a significant improvement in the compliance culture. Similar rules have been enacted for NBFCs by the SECP.

43. **Monitoring, supervision and enforcement of compliance with AML/CFT requirements is undertaken by SBP and SECP.** For securities, the stock exchanges in Karachi, Lahore and Islamabad are the front-line supervisors, under the apex of SECP, which can also undertake direct supervision and enforcement.

44. **SBP has taken the lead in defining and enforcing AML/CFT preventive measures.** SBP's early mobilization has played an important role in establishing a minimum level of ML/FT prevention in the institutions under its ambit. SBP has so far focused its compliance monitoring and enforcement on the identification requirements.

45. **The SBP Act and the Banking Company Ordinance provide the SBP with a wide range of powers to undertake effective supervision and enforcement.** It has the authority to conduct off-site and on-site inspections and to review and access policies, books and records. It can compel the production of or access to all relevant records, documents and information without a court order. SBP issues licenses for the financial institutions under its purview and enforces comprehensive fit and proper reviews, both on the promoters and the senior management of the concerned financial institutions. SBP indicates that it aims to satisfy itself that the natural person ultimately exercising control of financial institutions are fit and proper.

46. **SBP can impose sanctions on financial institutions as well as their directors and senior management.** Criminal sanctions can also be imposed on senior management. SBP can also impose a range of administrative sanctions, from penalties to restriction, suspension or removal of licenses. Whilst individual monetary penalties available to SBP seem low, satisfactory evidence has been provided to demonstrate that SBP aggregates fines for individual breaches which increase on a daily basis to achieve fines that are significant. When the failure is systemic, the assessors doubt that SBP could relate it to multiple breaches and apply the aggregating approach. Only in such limited cases are the assessors not satisfied that sanctions would not be proportionate, dissuasive and effective.

47. **SBP has taken steps to bring informal remittance services (hawala/hundi) under a regulatory framework and strengthened its oversight of money changers through creation of exchange companies.** As a result, formal remittances have increased dramatically over the past several years. However, informal markets still exist, especially in the provinces where SBP oversight is weak. Bringing the informal sector into regulated channels remains a challenging task for the authorities.

48. **SECP supervisory powers provide the key tools for effective supervision.** It can conduct off-site and on-site inspections and has the power to access and compel the access to records, documents and information. SECP issues licenses for financial institutions, with appropriate fit and proper tests, including on sponsors, but not comprehensively on agents in the securities market. SECP does not extend the fit and proper test to beneficial owners of financial institutions as "sponsors" do not cover all beneficial owners as defined by FATF.

49. **SECP can impose sanctions over legal entities and their directors and senior management, including criminal sanctions.** A range of administrative and civil sanctions is also available to SECP, including penalties and suspension or removal of licenses. The maximum amount of the pecuniary sanctions available to SECP has recently been increased and appears proportionate, dissuasive and effective. However, to date, SECP has not demonstrated that it has imposed sanctions related to non-compliance with the AML/CFT requirements. SECP does not have to-date a system to identify AML/CFT related sanctions.



50. **Supervision undertaken by the Stock Exchanges is not effective.** The level of development of the three stock exchanges is very uneven. It is the assessors' understanding that most of the on-site supervision of the market participants is undertaken by the stock exchanges, with the support of external auditors, which conduct "systems audits" with on-site visits. System audits have a very narrow focus in monitoring CDD compliance. These audits constitute the basis for follow-up action by the stock exchanges and are shared with the SECP. SECP indicated that on several occasions, it had to instruct the stock exchanges to take further action through sanctions.

51. **Both SECP and SBP have staff of quality and integrity, with expertise on AML/CFT.** The two institutions have demonstrated commitment to foster a more rigorous enforcement culture, with SBP clearly taking the lead. The two institutions need to be better staffed to undertake their AML/CFT mandate, and the staff needs more operational training, tailored to the specific ML/TF challenges of Pakistan.

52. **Progress has been made in recent years to foster the implementation of preventive measures, notably in the institutions supervised by the SBP.** The regulations issued by the SBP and SECP, notably the most recent ones, provide a good basis to improve the protection of the financial sector against ML/TF abuses. Enforcement action has been taken by SBP. It is the assessors' view that more needs to be done to ensure the effectiveness of the control mechanisms in terms of scope of the obligations and implementation. The assessors are particularly concerned by the common perception that customer identification measures are a sufficient protection.

#### **Preventive Measures—Designated Non-Financial Businesses and Professions**

53. **Pakistan has not yet incorporated the Designated Non-Financial Businesses and Professions (DNFBPs) in its AML/CFT regime.** Casinos are not authorized in Pakistan. The other DNFBPs identified by FATF are present in Pakistan, and generally undertake the activities considered in the standard. Given the high risk of ML in the real estate sector, Pakistan should move forward in this sector as a priority. There will be a need for a carefully designed approach to include DNFBP under the AML/CFT regime, given the lack of capacity of regulators and self regulatory organizations covering these sectors.

#### **Legal Persons and Arrangements & Non-Profit Organizations**

54. **Pakistan's legal framework for corporate entities requires the registration of all forms of legal persons, but the registration data available with the Registrar is limited to formal ownership and does not require beneficial ownership information to be included.** Information held with the corporate entities and provided to the Registrar is verified by the SECP, with a reasonable level of compliance. This information is available to law enforcement as needed. However, its value to law enforcement is undermined by the absence of beneficial ownership information.

55. **The information required to be included in the trust agreement on trustees, settlors and beneficiaries does not cover the concept of beneficial ownership.** Pakistan recognizes trusts through the Trust Act of 1882. Pakistan has adopted a system of registration of trusts; however the requirement to register a trust deed is limited to those relating to immovable property. Registration of trust information is not centralized and remains a system of manual records controlled by local and city governments. This information is theoretically available to law enforcement as needed, but is very hard to access in practice.

56. **Important steps have been taken to reduce the exposure of NPOs to abuse for TF but more efforts are needed to ensure effective oversight.** NPOs play a vital social and economic role in Pakistan, however segments of the NPO sector are at significant risk of abuse for TF. With external

assistance, Pakistan has undertaken a significant review of the legal framework governing non-governmental organizations. The regulatory framework covering NPOs is heavily fragmented. Regulatory powers to cover the sector are generally broad, with the notable exception of societies. Pakistan is taking encouraging steps to raise awareness amongst NPOs and supervisory authorities. Levels of compliance by NPOs to provide information on their management, operation and finances remains very low, particularly amongst societies. Progress is being made to centralize available regulatory information across the sector and to reach out to NPOs regarding better regulation and risks of criminal abuse. Further work remains to be done and the authorities acknowledge the need to further deepen these efforts. NPO regulators have taken some steps to cooperate and coordinate with other law enforcement authorities on the detection and prevention of TF.

### **National and International Co-operation**

57. **Despite having a legal basis, domestic coordination on AML/CFT remains hampered by strong institutional fragmentation.** AMLO institutionalizes domestic cooperation at the policy level via the creation, at the ministerial-level, of a National Executive Committee (NEC), supported by a secretary-level General Committee. However, this welcome step has not yet yielded the needed results. So far the NEC has not defined a clear strategy, based on a risk-assessment, to prioritize the implementation of the AML regime. There is no impediment to domestic cooperation and coordination at the operational level, but the overall fragmentation of the institutional framework has so far made it difficult to achieve measurable results in that respect. The assessors were not informed of a clear mechanism to coordinate and cooperate to develop and implement an effective policy to combat TF.

58. **Pakistan has no overarching mutual legal assistance (MLA) regime.** Enabling legislation is found in offence-specific legislation such as AMLO, the NAO and the CNSA. Of these, only the CNSA provides an effective MLA mechanism. Cooperation pursuant to AMLO is dependent upon the conclusion of multiple, bilateral agreements covering merely the offence of ML. No such agreements have been concluded. The effort required to conclude such agreements would be equivalent to that required to conclude MLA agreements covering a comprehensive range of predicates. The need for a comprehensive MLA regime in Pakistan is pressing. Resources should be deployed toward that end instead.

59. **Money laundering was made an extraditable offence on March 17, 2009.** Prior to this, it was only extraditable where the predicate offence was narcotics-related.

60. **Pakistan's capacity to provide other forms of international cooperation is excessively hampered, either by law or unnecessary procedure.** In particular, even outside of MLA, memoranda of understanding must be concluded under the aegis of the Ministry of Foreign Affairs before cooperation can occur – SBP and SECP indicate not being covered by this obligation. Although Pakistan has participated successfully in international action against narcotics trafficking, law enforcement agencies do not appear to engage in the widest range of international cooperation. SECP has applied to the IOSCO MMOU but is not yet party. The SBP has limited legal basis to engage into international cooperation, even though it indicates that it has done so in some instances. The conditions on the FMU to undertake international cooperation do not meet the Egmont requirements.

61. **Pakistan has not been proactive in seeking all forms of international cooperation at the operational level.** Outreach is required to better inform all authorities of the scope of assistance available and the utility of international cooperation.

## Other Issues

62. **The main institutions and agencies in charge of implementing the AML/CFT regime are confronted with important resources issues, which add to the need for training.** There is no framework for data collection and analysis, and institutional fragmentation hinders the review of the effectiveness of the regime.

63. **Pakistan presents several features that constitute both a ML/TF risk and important challenges in the design and implementation of an effective AML/CFT regime, notably the importance of the informal sector and the cash-based nature of the economy.** The significance of hundi / hawala and of informal money changers in Pakistan are two telling examples. While addressing the challenges of informality goes well beyond AML/CFT, the assessors recommend that the authorities pay high attention to the incentives structures, so as to properly balance the need for formalization with the risk of overregulation benefiting to the informal sector.

64. **Pakistan is facing pervasive corruption.** In addition to constituting a significant ML risk, this situation creates structural weaknesses which may impede the effectiveness of the AML/CFT regime. As the authorities review their anti-corruption framework, the assessors strongly recommend that Pakistan maintains an effective criminalization of corruption and bribery, supports related international cooperation and ensures effective investigative and prosecutorial capacity. They further recommend that the investigation methodologies and expertise acquired so far continue to be fully mobilized to pursue financial crime.

65. Based on its assessment of risks and its review of the AML/CFT regime, the assessment team suggests to Pakistan the following essential priority action over the next 18 months:

- Engage as soon as possible a ML/TF risk-assessment in Pakistan, involving all Pakistani stakeholders. This would include any typology identified in ML/TF cases in Pakistan. This risk-assessment should also seek inputs from Pakistan's main international partners to integrate Pakistan-related typologies that they may have developed;
- Prepare a national AML/CFT strategy, defining the main objectives and priorities of stakeholders and setting out a national policy on ML/TF. This strategy should be driven by a high-level, centralized leadership and should clarify the roles and responsibilities of the main actors, in particular in law enforcement and prosecution agencies;
- Expand the scope of the on-going revision process of AMLO, of the Banking Company Ordinance, of the SECP Act and of key regulatory provisions, in particular to: further extend the list of predicate offences; ensure the autonomy of the ML offence; clarify the ambiguities surrounding the scope of the TF offence and the forfeiture regime; lift the impediments to international cooperation (mutual legal assistance and other forms of international cooperation); and confer AML/CFT rule-making powers to the prudential supervisors, broaden the CDD requirements for financial institutions;
- Deepen the engagement of financial institutions, with a mix of awareness raising, provision of tailored guidance on the ML/FT risks and typology in Pakistan and more focused enforcement action – notably on the suspicious transaction reporting.

66. Recognizing the important capacity issues facing Pakistan, the assessors have also tried to identify short-term actions that would already significantly improve the Pakistani AML/CFT regime. Some of them have already been implemented by the authorities in the course of the assessment, as indicated below, and in the body of the assessment report. These top priority reforms are:

- a. Set up an inter-agency working group at the technical level, involving all relevant agencies, to prepare a national ML/FT risk and vulnerability assessment. This overall assessment could be usefully complemented by targeted assessment for specific sectors, such as NPOs. Deadline for submission to the GC, and then the NEC, could be end of December 2009.
- b. Further expand the list of predicate offences for ML under AMLO.
- c. Clarify the ambiguity regarding the extension of TF offences to the financing of acts of terrorism committed overseas against foreign governments or foreign people.
- d. Establish the autonomy of the ML offence from the predicate offence. Successful prosecution for ML should not be contingent on prior conviction for the predicate offence.
- e. Revise implementation of the existing regime for freezing pursuant to UNSCR1267 with a view to ensuring that SROs are unambiguous in their commencement, comprehensive in scope, promptly complied with and appropriately enforceable.
- f. Further amend the AML/CFT regulatory framework of banks and exchange companies
- g. Further amend the AML/CFT regulatory framework for all NBFIs supervised by the SECP
- h. Amend regulations or circulars for ECs relating to wire transfer
- i. FMU should issue guidance to all reporting institutions identifying the basis to report suspicion, clarifying that that the reporting institution is not required to have 'evidence' of that suspicion and explaining how the STR form should be completed.



## 1. GENERAL

### 1.1. General Information on Pakistan

67. The Islamic Republic of Pakistan was formed in 1947 and shares borders with Iran, Afghanistan, China and India. The capital is Islamabad and the financial centre of the country is Karachi. The local currency is called the Rupee (the exchange rate used in the assessment is 80 Rs = 1 \$). The National Language of Pakistan is Urdu but Urdu and English both are used for official purposes. There is also a variety of local languages.

68. Pakistan is located in South Asia, and with population of 160.9 million.<sup>1</sup> It is the 6th most populous country in the world. Most of the populations (over 95 percent) are Muslims. At the moment, the population growth rate is 1.8 percent.<sup>2 3</sup> The working age (defined by Pakistan as 10 years & above) population is estimated to be around 70 percent.

69. Pakistan consists of four semi-autonomous provinces and FATA (federally administered and tribal area), with total area of 796,096 square kilometers. In terms of area, Baluchistan is the largest province whereas Punjab is largest province on population basis.

70. Despite movements of people from rural to urban centers, the country remains predominantly rural. Almost two thirds of the population lives in rural areas. The literacy rate in Pakistan was estimated at 55 percent (67 percent male and 42 percent female) during 2006-2007.<sup>4</sup>

#### *The Political and Legal System*

71. The Political System of Pakistan is based on democracy but it has been under the influence of the military since it was founded. The federal legislature consists of the Senate (upper house) and National Assembly (lower house). According to the Constitution, the National Assembly, the Senate and the President together make up a body known as the Majlis-i-Shoora (Council of Advisers).

72. Pakistan is a federal country, and significant powers relevant to the AML/CFT regimes are devolved to the local government. The level of autonomy of these varies. Recently, the Federal Government and the local authorities have not been in a position to exercise their constitutional powers in some areas, particularly close to the frontiers with Afghanistan. The most recent developments, which took place during the review period, involved agreements between the Federal Government and the Talibans in the North West Frontier Province (NWFP) including the Swat valley, leading to even more autonomy being transferred to the tribal institutions.

73. As the assessment was on-going, the political situation in Pakistan further deteriorated, with political tensions between the key parties, increased pressure from the Taliban, daily terrorist acts and tensions around the re-instatement of the former head of the Supreme Court (eventually re-instated in March 2009). Tensions remain extremely high in areas along the Afghan border.

74. The legal system in Pakistan is based on written laws and the principles of English Common law adapted to local circumstances, special laws, case law and local customary law. Among the written laws

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1. Source: mid June 2008 report of Population Census Organization.

2. Average annual growth for 2000-06, Source: World Development Report 2008

3. Source: Planning and Development Division.

4. According to Pakistan Social and Living Measurement (PSLM) survey 2006-07.

is the Constitution of Pakistan, legislation enacted by the Parliament and Provincial Assemblies, and delegated or subsidiary legislation made by bodies under the powers conferred on them by Acts of Parliament or Provincial Assemblies. If any provision of an Act of a Provincial Assembly is contrary to any provision of an Act of Parliament which the Parliament is competent to enact, or to any provision of any existing law with respect to any of the matters enumerated in the Concurrent Legislative List, then the Act of Parliament, whether passed before or after the Act of the Provincial Assembly, or, as the case may be, the existing law, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void (Article 143 of the Constitution).

### *The Economy*

75. Pakistan has been one of the fast growing economies in the world, with an average of 7 percent real GDP growth rate during the last five years (2004-2008). During the last five years, *Per Capita Income* has increased by over 13 percent per annum and was \$1085 in 2007-08.

76. At the time of its independence in 1947, agriculture was the dominant sector of the country and contributed over 50 percent of the gross domestic product (GDP). Its share in the GDP has fallen considerably since then, while the share of manufacturing, construction and services has risen. Employment wise, agriculture is still the leading sector on which half of the labor force depends directly or indirectly. The services sector over the years has emerged as the main driver of economic growth with sectoral share of almost 53 percent. In 2007-08 economy grew at the rate of 5.8 percent with major contribution from services sector (Table 1).

**Table 1: Economic Indicators**

		<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>
<b>1</b>	<b>GDP Growth (percent)</b>	4.7	7.5	9.0	5.8	6.8	5.8
<b>2</b>	<b>Per capita Income \$</b>	586	669	733	836	926	1,085
<b>3</b>	<b>Exchange rate (Rs/US\$)-end-June</b>	57.8	58.2	59.7	60.2	60.4	68.3
<b>4</b>	<b>Workers' Remittances (mn US\$)</b>	4,236.8	3,871.6	4,168.8	4,600.1	5,493.6	6,450.8

77. The government, over the years, has carried out important reforms, which have contributed to improving the trade performance of Pakistan's economy. In particular, the tariff structure and rules governing foreign direct investment (FDI) have been significantly liberalized. Furthermore, government has liberalized a number of sectors such oil exploration, telecommunication and the financial sector which has attracted considerable foreign investment in recent years.

78. Worker's remittances recorded another strong growth of 17.4 percent in FY08 in comparison to previous year's 19.4 percent. The total remittances were recorded at \$6.45 billion in FY08. Pakistan has become world's 12<sup>th</sup> largest remittances recipient country during 2007 from 17<sup>th</sup> in 2005.

### *Principles of Transparency and Good Governance and Anti-Corruption efforts*

79. Pakistan indicates that it is pursuing the “Development Framework (2005-2010)” program launched by the Government in July 2005. The framework presented the Vision of a “developed, industrialized, just and prosperous Pakistan through rapid and sustainable development, in a resource constrained economy by developing knowledge inputs”. One of the key thrusts is to strengthen the institutional and implementation capacity which addresses issues such as corruption, good governance, business ethics and efficiency of the public service delivery system.

80. Pakistan has taken steps to address corruption and pursuing integrity and transparency as a national priority. Pakistan signed the United Nations Convention against Corruption (UNCAC) in 2003 and has now become a State Party to the Convention after its ratification in August 2007.

81. At the time of the on-site mission, Pakistan had a comprehensive legal framework and well resourced specialist investigation and prosecution agency i.e. National Accountability Bureau (NAB), to proactively combat corruption across Pakistan. Provisions of the Penal Code and the Prevention of Corruption Act 1947 criminalized corruption by public servants and also made them answerable for assets beyond known sources of income.

82. In addition the National Accountability Ordinance (NAO) 1999 not only criminalizes all forms of corruption including bribery, embezzlement, misappropriation or other diversions of property by a public office holder *but also* criminalizes fraudulent practices, corruption and embezzlement in the private sector. All the corruption offences under the NAO are predicate offences for money laundering under the Anti Money Laundering Ordinance 2007 (AMLO).

83. The assessment team was informed that Pakistan has launched a review of its anti-corruption framework, with is expected to entail a revision of the legal framework as well as of the institutional one (which could translate into a suppression of the NAB). The authorities indicated that this revision stemmed inter alia from concerns that the current framework had been abused for political reasons, and therefore had, in their judgment, lost part of its credibility. This revision was not completed at the end of the assessment period.

84. Despite the efforts described by the authorities, all the information gathered by the assessment team points to continued significant challenges in the fight against corruption – which is viewed by the team as a source of significant proceeds for money laundering. For instance, Pakistan ranks 134 (out of 180) in the Transparency International Corruption Perception Index. The WBI Governance and Anti-corruption Indicators also describe a very weak anti-corruption situation, with only very limited progress on anti-corruption controls over the period 2004/2008, and a deterioration of the effectiveness of government indicators.

### *The Efficiency of the Court System*

85. The Constitution provides for the independence of the judiciary and the separation of executive and judicial function. The superior courts of Pakistan comprise the Supreme Court and the provincial High Courts. Inferior courts include the Courts of Sessions and Magistrates’ Courts. Additionally, there are specialist federal courts. Of most significance are the Accountability Courts, which deal with corruption related cases, Drug Courts for narcotics-related offences and Anti-Terrorism Courts. Trials are conducted without a jury.



86. Even if recent history illustrates the strength and power of the court system in Pakistan – notably at the highest level, the assessors were also provided very numerous anecdotal evidence of the overall inefficiency of the courts. The Assessment Team was advised that in the provinces of Sindh and Punjab, delays in the order of 10 years are common. The Evaluation Team was further advised that, on any given court sitting day, a provincial judge or magistrate might have a daily “cause list” of some 70-80 cases and that, given the impossibility of discharging such a workload in a single day, adjournments are willingly granted.

87. Further, the capacity of the judiciary to deny applications for adjournment is often highly compromised due to an inverse power relationship with the bar. Bar Associations appear to be strong. The Assessment Team was advised that, in the past, barristers have successfully boycotted particular judges. Power imbalances are maintained by the fact that, in the lower courts, the legal acumen of counsel is frequently greater than that of the presiding judicial officer due to significant differences in remuneration.

88. The Supreme Court is also subject to extraordinary caseload pressure. Appeals to the Supreme Court lie as of right to persons sentenced to death or to life imprisonment – and from determinations from the special tribunals. Although leave is required in other cases and questions of law must be identified (as opposed to mere questions of fact), an extraordinarily high percentage of matters end up in the Supreme Court. In civil matters, the damages threshold is set at a mere 50,000 Pakistan rupees. Recommendations of the Law & Justice Commission of Pakistan to place more workable limits upon access to the Supreme Court have not been followed. As at 1 July 2005, in excess of 30,000 cases were pending in the Supreme Court. Notwithstanding an annual intake of approximately 12,000 to 15,000 new cases per year, as a result of concerted effort this pendency had reduced by March 2007 to 10,000. Recent upheavals within the membership of the Supreme Court have, however, stymied this progress. The Court’s pendency currently sits at approximately 17,000 cases.

89. In order to address the inefficiencies, Pakistan has resorted to the establishment of special courts. The main reason given for this development is the need to achieve more expeditious dispensation of criminal justice. A number of special criminal courts have been established the jurisdictions of which are defined by reference to subject matter, such as the type of crime being prosecuted. The three main criminal Special Courts are the Accountability Courts, the Anti Terrorism Courts and the Drug Courts.<sup>5</sup> Appeals from these Courts lie with the relevant High Court.

90. This fragmenting the judicial function across multiple classes of charge – as Pakistan does across its Anti Terrorism, Drugs, Accountability and general courts – presents challenges when indictments or charge sheets contain multiple counts that sit across the special classes of offence. It has implications for the efficient prosecution of money laundering and terrorism financing cases.

*The ethical and professional requirements for police officers, prosecutors, judges, etc.*

91. The authorities indicated that professional standards and conduct of various law enforcement agencies are set out in respective enabling legislation or standard operating procedures. The Police Order 2002 (repealed Police Act 1861) provides for the duties and powers of police officers. Conduct of law enforcement officers is also governed by internal codes of conduct. For example, the NAB’s internal code of ethics promotes integrity and positive values. While acknowledging these efforts, the assessment team

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5. Other Special Courts include: Special Courts for Trial of Offences in Banks; Special Courts for Recovery of Bank Loans; Special courts under the Customs Act; Special Traffic Courts; Courts of Special Judges Anti-Corruption; Commercial Courts; Labor Courts; Insurance Appellate Tribunal; Income Tax Appellate Tribunal; and Services Tribunals.

received anecdotal information that raises concerns at possible corruption in the judicial system, in particular in low level courts.

## **1.2. General Situation of Money Laundering and Financing of Terrorism**

92. Pakistan faces significant risks of money laundering from a wide range of predicate offences. Particular risks for proceeds of crime in Pakistan include corruption, narcotics (from Afghanistan and other countries), fraud, smuggling, vice, weapons trafficking, illegal gambling, and robbery.

93. Pakistan authorities highlight particular ML risks from its significant undocumented economy and informal sectors as well as its geographical position. There is evidence that the real estate sector, abuses of corporate entities, misuse of the financial sector, trade-based money laundering and use of informal channels are privileged methods of money laundering in Pakistan. Authorities recognize that the Pakistani rupee is in circulation in parts of Afghanistan and is used in some cases to launder narcotics proceeds.

94. The risks posed by the predicate crimes of corruption, the narcotics trade and terrorism are well known to the Pakistani authorities each having had specific legislation and dedicated units (NAB, Anti-Narcotics Force [ANF] and Federal Investigation Agency[FIA]) to combat these crimes since the late 1990's. The authorities also identify Pakistan's geographical position as making it susceptible to being used as a transit point for narcotics trafficking, arms smuggling, smuggling of general items as well as the smuggling of funds used for and derived from these crimes. Pakistan has however not yet sufficiently taken into account money laundering associated with these and other predicate crimes.

95. Assets of narcotic traffickers and corrupt officials have been investigated by the NAB and ANF respectively. Related proceeds have for part been frozen and a more limited share of those assets ultimately confiscated. However, the ratio of freezing to confiscation is very low. ML and asset confiscation cases have focused on self laundering, but the assessors were not provided with examples of authorities pursuing 3<sup>rd</sup> parties involved in laundering proceeds of crime, such as bankers, real estate agents and other professionals, despite the identified risks.

96. Pakistan faces very significant risks of terrorism financing. Authorities identify terrorism, both domestic and international, as a very serious threat to Pakistan. The FIA, Police, military forces and others agencies have been deployed to combat the ever growing threat posed to Pakistan by terrorism, however, the very significant risks posed by terrorist financing are not as systematically pursued, prioritized or resourced.

97. Authorities recognize that the Pakistan's economy is abused to support terrorist financing and that a significant source of terrorist funds is proceeds of crime, including bank robbery, kidnap for ransom, and proceeds of drugs flowing from Afghanistan. Authorities identified cash couriers and misuse of charities as facilitating terrorist financing, including disbursement of international funds. Actions taken by the Pakistan government against particular NPOs highlight the abuse of charities, including religious parties. Authorities also highlight risks for the Pakistan economy, in particular along border provinces, to be abused for TF in neighboring regions of Afghanistan. Recognition of the TF risks in these channels is not consistent across Pakistan authorities and no risk assessment or estimation of the size and scope of the TF problem has been undertaken, despite the massive counter terrorism effort being deployed by the Pakistan government.

98. The primary agency for the investigation of TF in most cases is the FIA which is under-resourced to carry out TF investigations. The primary agency for the investigation of the terrorist act is the Provincial Police, unless the matter involves more than one province. Investigations of specific terrorist incidents have not sought to 'follow the money' that supports terror groups or terror attacks. An example

of a recent terrorist incident highlights this gap. The terror attack involved a car bomb. Investigations identified that the cars, bomb materials and logistics were paid in cash, by the main terrorist group. Financial investigations were not conducted to examine the source of funding arrangements or disbursements of funds by the concerned group.

99. Pakistani authorities, pursuant to UNSCR 1267 and domestic circulations resulting from the proscription of persons or organizations in relation to terrorism, do freeze the known bank accounts of those listed individuals or organizations. Lesser effort, resulting from very limited resources within the FIA and police, are placed on any follow-up financial investigation.

100. Statistics show Pakistan is seeing a general rise in profit driven crime in recent years. An area of particular note is duty fraud (smuggling). There is also some evidence of a more systematic or organized criminal enterprises emerging in areas of profit driven crime. This is particularly prevalent in the areas of vehicle crime where high-value cars are targeted, the notable growth in the vice trade and human trafficking as well as the smuggling of general consumer goods – causing substantial loss of revenue to the government. Despite these trends, it is the assessors' conclusion that Pakistan has not yet approached these crimes through the lenses of the wider ML risks posed by these other predicate crimes.

101. The assessors consider that there is an insufficient perception of risks associated with ML and TF which permeates down to into the financial sector. There appears to be a view that preventive measures in the financial sector are robust enough and that ML happens elsewhere. This conclusion appears to the assessors at odds with specific cases presented which do highlight the use of main-stream financial institutions.

102. Some success has been seen in measures to promote adoptions of formal remittance channels over the hawala / hundi sector and closure of illegal operations. Recent cases highlight a priority on the closure of the 'illegal' operations, rather than any investigation of sources of any proceeds of crime laundered or terrorist funds moved through hawala/hundi.

103. Other areas of the financial sector and the Non-Financial Businesses and Professions (NFBP) have not been prioritized in relation to their ML and TF risks. As an example real estate, where many case examples were given regarding laundering of proceeds of crime.

104. While non-profit organizations (NPOs) play a very important role in Pakistan society, parts of the NPO pose very significant TF risks, in particular in border regions with high levels of terrorist activity. There has not been subjected to any systematic review of the ML/TF risks posed within the NPO sector. While very significant strides have been taken to improve transparency and support better regulation of the sector, NPOs regulated under the Societies Regulation Act 1860, which represent one of the largest segments of all NPOs in Pakistan, are subject to very little regulatory oversight or transparency and include some high-risk categories of NPOs.

105. Whilst it is acknowledged that Pakistan has large and porous borders with its neighbors little effort or priority is given to cash smuggling at either the 'official' crossing points or from targeted intelligence at 'unofficial' crossing points. The assessors conclude that priority is given to enforce foreign exchange controls rather than AML/CFT measures.

106. The assessors consider that the concept of risk associated with ML and TF is generally not well understood. The concept of 'follow the money' or conducting asset-based investigations, ML or TF investigations should go beyond the current limited application of freezing/seizing assets associated with the main offender.

### 1.3. Overview of the Financial Sector

107. Pakistan has a progressive and dynamic financial sector, which has grown rapidly particularly during the last five years. While it is predominantly bank-based, in performing its basic function of financial intermediation, it also includes a wide range of non-bank financial institutions such as Non-Bank Finance Companies (NBFCs), Insurance companies, Microfinance banks, Islamic banks and the Central Directorate of National Savings (CDNS), in addition to swiftly evolving financial markets.

108. Banking sector assets constitute 72.6 percent of total financial sector assets (Table 2). While NBFCs have increased their market share due to the strong performance of mutual funds in recent years, the share of CDNS instruments in total assets continues to decline. On the other hand, the insurance sector continues to constitute a small share of total financial sector assets, with a marginal improvement in CY06.

109. One important feature of the banking sector in Pakistan is its dual nature, with rather sophisticated banking practices and products offered in Karachi and other main cities and an overall more traditional banking sector in rural areas, with important issues of access to finance and outreach to remote areas and populations. A recent World Bank study has estimated at 14 percent of the population the level of access to formal financial services, and at most 40 percent access to formal *and* informal financial services. This said, the outreach of the financial sector continues to gain ground with the expanding network of commercial banks, microfinance institutions and Islamic banks in all parts of the country.

110. Pakistan's economy remains cash-based to a significant extent with a large informal and partially undocumented sector. As part of financial sector reforms, the Government is taking aggressive measures to reduce the informal financial sector and document the economy completely through various measures, including increased automation across the economy, improved banking and financial systems, improved record keeping, better identification of citizens (NADRA etc) and incentives to move more of the population into formal banking channels.

**Table 2: Asset Composition of Financial Sector**

	CY01	CY02	CY03	CY04	CY05	CY06	CY07
Asset (bln Rupees)	3044.6	3420.7	3948.2	4523.9	5223.6	5968.0	7126.8
As percent of Total Assets							
MFIs	0.1	0.1	0.1	0.1	0.2	0.2	0.2
NBFCs	6.7	6.3	6.7	7.2	8.0	7.9	8.1
Insurance	3.7	3.8	3.8	3.8	3.9	4.1	4.5
CDNS	25.7	24.8	25.0	21.6	18.0	16.0	14.6
Banks	63.8	65.0	64.4	67.3	70.1	71.8	72.6
As Percent of GDP							
MFIs <sup>1</sup>	0.0	0.1	0.1	0.1	0.1	0.1	0.1
NBFCs <sup>2</sup>	4.7	4.6	5.0	5.3	5.9	5.8	6.0
Insurance <sup>3</sup>	2.6	2.8	2.9	2.8	2.9	3.0	3.4
CDNS	18.1	18.2	18.8	16.1	13.3	11.7	10.8
Banks <sup>4</sup>	44.8	47.7	48.3	50.1	51.8	52.4	53.9
Overall	70.3	73.3	75.1	74.5	74.0	73.0	74.2

<sup>1</sup> MFIs consist of Microfinance Banks supervised by the State Bank of Pakistan.

<sup>2</sup> NBFCs include Development Finance Institutions (DFIs), Leasing Companies, Investment Banks, Mortgage Housing Finance Companies, Discount Houses, Venture Capital Companies, and Mutual Funds.

<sup>3</sup> Insurance sector include life and non-life insurance companies, and the re-insurance sector.

<sup>4</sup> Banks include all scheduled banks operating in the country

Source: SBP Calculations

111. The reform process, and in particular the on-going mergers and acquisitions, have exerted a profound impact on the ownership structure of the financial sector. The financial sector is now led by the private sector, comprising of both domestic and foreign financial institutions, controlling 62.5 percent of overall assets. Foreign direct investment (FDI) in the banking sector is on the rise, with some significant transactions having been consummated during CY07-CY08. Another contributing factor in this trend is the growing interest of foreign banks in the Islamic Banking industry.

112. Institution-wise ownership structure of the financial sector indicates that private sector banks (holding 77.5 percent of banking sector assets) and private sector NBFIs (with market share of 78.8 percent in total NBFIs assets) are the major players in their respective segments. However, in terms of asset holdings, the insurance sector is still dominated by public sector entities.

### **Banking Sector**

113. The Banking sector of Pakistan comprises of commercial banks and specialized banks (Table 3). Within commercial banks, there are public sector commercial banks (PSCBs), local private banks (LPBs) and foreign banks (FBs). Table 4 shows that asset share of LPBs was approximately 75 percent of over assets. The Development Finance Institutions (DFIs) were set up to provide long-term financial and technical assistance to economic sectors of the country. The DFIs need to play triple role of catalytic financier, knowledge broker and development partner in order to get the resources from both the public and private sectors, as well as to build partnerships with the public and private sectors.

Table 3: Balance Sheet of the Banking Sector		Billion Rupees	
	CY05	CY06	CY07
Cash & Balances With Treasury Banks	325.5	416.5	469.3
Balances With Other Banks	142.2	179.7	147.4
Lending To Financial Institutions	211.9	214.0	190.6
Investments – Net	800.2	833.4	1275.3
Advances – Net	1990.6	2427.7	2689.0
Other Assets	111.6	180.4	211.6
Operating Fixed Assets	69.2	89.2	168.5
Deferred Tax Assets	8.4	12.1	19.6
TOTAL ASSETS	3659.6	4352.9	5171.4
LIABILITIES	0.0	0.0	0.0
Bills Payable	43.0	60.2	82.1
Borrowings From Financial Institution	338.4	438.5	452.1
Deposits And Other Accounts	2831.9	3255.0	3854.7
Subordinated Loans	24.0	29.3	30.1
Liabilities Against Assets Subject To Finance Lease	0.6	0.9	0.9
Other Liabilities	121.1	157.7	189.8
Deferred Tax Liabilities	8.3	8.9	17.1
TOTAL LIABILITIES	3367.2	3950.5	4626.8
EQUITY	292.4	402.4	544.6

**Table 4: The Banking System Assets**

billion Rupees

	<b>CY02</b>	<b>CY03</b>	<b>CY04</b>	<b>CY05</b>	<b>CY06</b>	<b>CY07</b>
1. Public Sector Commercial Banks (PSCB)	877.6	959.4	653.0	724.5	836.2	1035.9
2. Local Private Banks (LPBs)	967.5	1211.6	1980.3	2482.9	3174.0	3835.7
3. Foreign Banks (FBs)	279.6	271.5	303.9	339.4	223.8	172.7
A. Commercial Banks (1+3+4)	2124.6	2442.6	2937.2	3546.7	4234.0	5044.3
B. Specialized Banks (SBs)	98.5	99.7	105.8	112.9	119.0	127.1
All (A+B)	2223.1	2542.3	3043.0	3659.6	4352.9	5171.4

**Non Banking Finance Companies (NBFCs)**

114. Non-banking finance sector includes Mutual Funds, Private Equity & Venture Capital Funds, Modarabas, Pension Funds, Real Estate Investment Trusts as well as companies engaged in the business of Leasing, Investment Banking, House Financing and Investment Advisory Services. The concept of NBFC regime was introduced jointly by SBP and the Commission through amendments in the Companies Ordinance 1984, pursuant to which regulatory oversight over NBFCs was transferred from the SBP to the Commission in 2002.

115. As at June 30, 2008, there were 63 registered NBFCs having the following classification of multiple licenses:

<b>Type of Business</b>	<b>No of Licenses</b>
Investment Banking Services	12
Leasing	16
Housing Finance Services	5
Investment Advisory and Asset Management Services	35
Venture Capital	4
<b>Total</b>	<b>72</b>

116. Some key statistics of NBFCs sector, as at June 30, 2008 are given below in Table 5:

**Table 5: Key Statistics NBFCs (Figures in Billions)**

<b>Sector</b>	<b>Total Assets</b>	<b>Total Deposits</b>
Mutual Funds	339.718	—
Leasing Companies	65.920	11.035
Investment banks	58.017	14.411
Modarabas	29.703	3.719
Venture Capital	3.760	—
Housing Finance	0.149	0.005
<b>Total</b>	<b>497.267</b>	

117. In terms of assets size, mutual funds constitute 68 percent of the entire NBFCs sector. During last several years, mutual funds have shown the highest growth in terms of numbers and assets. Total number of mutual funds increased from 67 as of 30-06-2007 to 87 as of 30-06-2008, while their net assets increased from Rs.295 billion to Rs. 326.822 billion during the period, depicting a growth of 10percent.

118. Modaraba is a concept of Islamic finance through which one partner (or more) participate with the funds and another with his skill and efforts in some trade, business and industry permitted by Islam. In Pakistan, the Modarabas are established and regulated according to the Modaraba Companies and Modaraba (Floatation & Control) Ordinance which was promulgated in 1980. Major statistics of Modaraba sector as on June 30, 2008 are given in Table 6:

**Table 6: Statistics of Modaraba Sector**

<b>Description</b>	
Number of Modaraba companies	41
Number of Modarabas	27
Number of Modarabas under winding up	09
Number of Modarabas under floatation	03
Total paid-up fund of Modarabas (Rupees in Billion)	7.880
Total Assets of Modarabas (Rupees in Billion)	29.703

119. The performance of NBFCs and Modarabas has been showing improvement with the passage of time. In particular, the mutual funds have shown an impressive growth. However, growth in the housing finance sector remained stagnant. It is also pertinent to note the development of venture capital companies remains in an infant stage. It is expected that the introduction of framework for Private Equity and Venture Capital activity should give boost to this particular sector.

#### ***Insurance sector:***

120. Since the time of Pakistan's creation, the insurance industry has never received the attention it deserved from each successive government. As on June 30, 2008, composition of insurance sector was as given in Table 7:

**Table 7: Composition of Insurance Sector**

	<b>Conventional</b>		<b>Takaful</b>		<b>Total</b>
	<b>Public</b>	<b>Private</b>	<b>Public</b>	<b>Private</b>	
Life	1	4	-	2	7
Non-Life	1	35	-	3	39
Re-insurance	1	-	-	-	1
<b>Total</b>					<b>47</b>

121. The insurance industry in Pakistan is under-developed relative to its potential with insurance penetration at just 0.75 percent. Major reasons for this situation are the lack of awareness, low literacy rate; the lack of importance that the individuals give to insurance and the belief amongst large portion of

the population that insurance is un-Islamic. However the industry has got potential and over the past few years it has shown substantial growth in premiums, as given in Table 8.

**Table 8: Growth in Premiums of Insurance Sector**

	<b>2005</b>		<b>2006</b>		<b>2007</b>	
	<b>Rs. (Million)</b>	<b>% Growth over last year</b>	<b>Rs. (Million)</b>	<b>% Growth over last year</b>	<b>Rs. (Million)</b>	<b>% Growth over last year</b>
Life	18,552	27.2	22,574	21.7	27,694	22.7
Non-Life	27,733	25.6	33,615	21.2	37,830	12.5
<b>Combined</b>	<b>46,285</b>	<b>26.2</b>	<b>56,189</b>	<b>21.4</b>	<b>65,524</b>	<b>16.6</b>

### ***Capital Market***

122. The capital market in Pakistan consists of three stock exchanges located in Karachi, Lahore and Islamabad. The principal securities traded on these exchanges are ordinary shares. However, other securities such as mutual fund certificates, modaraba certificates, government and corporate bonds and Term Finance Certificates are also being traded. The Karachi Stock Exchange (KSE) is the largest exchange in Pakistan. Key statistics of KSE for last five years are given in Table 9.



**Table 9: Statistics of Karachi Stock Exchange**

(In millions except companies, index and bonds data)

	<b>Up to 31-12-2004</b>	<b>Up to 30-12-2005</b>	<b>Up to 29-12-2006</b>	<b>Up to 31-12-2007</b>	<b>Up to 23-09-2008</b>
Total No. of Listed Companies	661	661	652	654	657
Total Listed Capital - Rs.	405,646.32	470,427.47	519,270.17	671,255.82	721,722.36
Total Market Capitalization - Rs.	1,723,454.36	2,746,558.97	2,771,113.94	4,329,909.79	2,852,174.54
New Companies Listed during the year	17	19	9	14	10
Listed Capital of New Companies - Rs.	66,837.0	30,090.28	14,789.76	57,239.92	15,312.12
New Debt Instruments Listed during the year	5	8	3	3	6
Listed Capital of New Debt Instruments - Rs.	4,775.0	10,900.00	3,400.00	6,500.00	21,000.00
Average Daily Turnover - Shares in million	343.70	365.64	260.69	268.23	187.06

***Remittance and alternative remittance services***

123. As part of its financial sector reforms, Pakistan has reformed the remittance business arrangements and has sought to crack down on unregulated money changers and hawala through the licensing of exchange companies. This has involved the removal of money changers licenses and the conglomeration of such businesses into exchange companies, which are subject to licensing, regulation & supervision by the SBP. The exchange companies also need to register with SECP under the Companies Ordinance Act. Since the changes, which, according to the authorities, have resulted in cheaper and more efficient formal remittance systems, the authorities consider that there has been marked decrease in the use of the ARS system and an increase in the use of formal remittance channels. There has been a marked increase in inward remittances which have increased by 67 percent during the past four years from \$3.87 Billion in 2003-04 to \$6.45 Billion in 2007-08. This is due to the fact that moneys sent by overseas Pakistanis to families are being increasingly channeled through the documented banking system and exchange companies.

124. However, recent enforcement action by the SBP and law enforcement illustrates that the improvements recently brought to the remittance market will still need intense supervision and compliance monitoring by the supervisor to achieve the results sought. In addition, SBP indicates that the implementation and full roll-out of the new legislative and regulatory framework faces two significant challenges – one is the overall incentive framework and its impact on the formalization of the market;

another is the overall weak capacity in the sector, which calls for a phased and progressive tightening and implementation of stricter regulatory requirements.

125. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of “financial institutions” in the FATF 40+9 (Table 10).

**Table 10: Types of Financial Institutions That Are Authorized To Perform Financial Activity in Pakistan**

Regulator	SBP	SECP	Others (under respective Ministry)
Financial Activity	Which of the Institutions are authorized to undertake this activity		
Acceptance of deposits and other repayable funds from the public	Banks, DFIs	Insurance Companies, Asset Management Companies and Investment Advisories, Investment Banks	CDNS and Pakistan Post Savings Bank
Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks, DFIs,	Housing Finance Companies, Leasing Companies and Investment Banks.	
Financial leasing	Banks	Leasing Companies	
The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance))	Banks, Exchange Companies		Pakistan Post Savings Bank.
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveler's cheques, money orders and bankers' drafts, electronic money)	Banks		Pakistan Post Office.
Financial guarantees and commitments	Banks and DFIs		
Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.) (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	Banks, Exchange Companies		
Participation in securities issues and the provision of financial services related to such issues.	Banks	NBFCs.	
Individual and collective portfolio management (covers mgt. of collective investment schemes such as unit trusts, mutual funds, pension funds)		REITs, Pension Funds, Asset Management companies and Investment Advisories	
Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks	Investment Banks	
Otherwise investing, administering or managing funds or money on behalf of other persons.	Banks (only through the establishment	Asset Management Companies, Investment Advisories, Pension Funds, Insurance Funds, REITs,	

<b>Regulator</b>	<b>SBP</b>	<b>SECP</b>	<b>Others (under respective Ministry)</b>
	of a fund management subsidiary)	Private Equity Modarabas	
Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and insurance intermediaries (agents and brokers))		Insurance Companies.	
Money and currency changing	Banks and Exchange Companies		

## **1.2. Overview of the DNFBP Sector**

### ***Licensed Casino***

126. As gambling is prohibited, there are no casinos in Pakistan.

### ***Real Estate Agents***

127. There is no central law for registration of real estate agents. In the province of Punjab, real estate agents are required to be registered under “Punjab Real Estate Agents and Motor Vehicle Dealers (Regulation & Business) Ordinance, 1980. Similarly, “Islamabad Real Estate Agents and Motor Vehicle Dealers (Regulation & Business) Ordinance, 1984” requires registration of real estate agents in Islamabad. In NWFP “The North West Frontier Province Real Estate Agent and Motor Vehicle Dealer (Regulation & Business) Ordinance, 1983” requires real estate agents to register. Besides, real estate companies are required to register with SECP.

### ***Jewelers, Dealers in Precious Metals and Precious Stones***

128. In terms of SRO 391(I)/2001 dated 18 June 2001, all jewelers having turnover above a specified threshold are required to register with the Collector of Sales Tax having jurisdiction for registration under section 14 of the Sales Tax Act, 1990.

129. In terms of SRO 266(I)/2001 dated 7<sup>th</sup> May 2001, the exporters of jewelry and gemstones are required to register under the Registration (Importers and Exporters) Order, 1993. In addition they are also required to be registered with the Export Promotion Bureau (EPB) and to become member of one of the recognized Association such as “All Pakistan Gem Merchants and Jewelers’ Association, Karachi” or “All Pakistan Commercial Exporters of Rough and Unpolished Precious and Semi-precious Stones Association, Peshawar” or any other association recognized by the Ministry of Commerce under the Trade Organizations Ordinance, 1961.

130. The exporters of jewelry and gemstones are required to maintain “Jewelry Pass Book” duly authenticated by the EPB. All export and import transaction, as well as import entitlements and actual imports are entered in the Jewelry Pass Book and authenticated by the EPB.

### ***Lawyers***

131. There are 94000 licensed lawyers in Pakistan, 1800 of which are permitted to appear before the Supreme Court. Lawyers in Pakistan are called “advocates.” The Legal Practitioners and Bar Council Act 1973 governs the profession and a lawyer is only allowed to practice if he/she is properly qualified in accordance with this Act.

#### ***Notaries***

132. The notary function is performed by lawyers who meet the qualifications requirement under the Notaries Ordinance 1961.

#### ***Accountants***

133. The accounting profession is dominated by the chartered accountants licensed by the Institute of Chartered Accountants of Pakistan (ICAP). Outside the membership of the institute there is another accounting sector that focuses on conducting audits. On June 30, 2008 the total membership of ICAP was 4441 chartered accountants.

#### ***Trust and Company Service Providers***

134. In Pakistan “Trust and Company Service Providers” is not recognized as a discrete business sector.

135. However, information received by the assessors indicates that beyond lawyers and accountants, other professionals do provide services which are covered by the FATF definition of Trust and Company Services Providers.

### **1.3. Overview of commercial laws and mechanisms governing legal persons and arrangements**

136. The AMLO and other Pakistani law define ‘person’ to include an individual, a firm, an entity, an association or a body of individuals, whether incorporated or not, a company and every other juridical person’ to include a body of persons, corporate and unincorporated.

137. Besides natural persons, the definition broadly covers the following forms of persons:

- Sole Proprietorship
- Partnership
- Statutory Corporation
- Legal Arrangements (NPOs, NGOs, trusts etc.)
- Companies

#### ***Sole Proprietor***

138. A “sole proprietorship” is just an informal way of doing business by an individual. To start a business as a “sole proprietorship” no prior registration of it is required with any government department or authority, if the nature of business does not require prior registration under a law or a license from a regulator e.g. banking business requires license and can only be conducted by a company.

#### ***Partnership***

139. A partnership is also not a distinct legal person, but is made of the persons composing it. Creation of Partnership is purely a matter of agreement between the parties such an agreement need not even be in writing.

140. Legal regime for establishment and regulation of partnerships in Pakistan is stated in the Partnership Act, 1932 which defines a partnership "*as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.*" The registration of partnerships is not compulsory by law. It is optional and there is no penalty for non-registration except that unregistered firm may not sue or be sued in its own name. [Section 69 of the Partnership Act]

### ***Statutory Corporation***

141. Statutory corporations or bodies are creation of a statute. They are formed by the Central Government or a Provincial Government through a Central statute or a Provincial statute, as the case may be. Administration of such statutory corporations is usually vested in a governing body, chairman etc. as envisaged under the enabling statute.

### ***Legal Arrangements***

142. Pakistan adopts a common law system whereby legal arrangement can be formed by way of trust, NGO/NPO (Non Government Organization / Non Profit Organization). Trust may be registered under the Registration Act, 1908. Further any company, society or other entity duly formed under the relevant law may also act as trustee and can run a trust.

### ***Companies***

143. In Pakistan, companies are recognized as legal entities / persons separate from its owners, sponsors or directors etc. The Companies Ordinance, 1984 and the Companies (General Provisions and Forms) Rules, 1985 provide the basic regulatory framework for registration and post-incorporation requirements for companies. A company comes into being through registration of documents with the concerned registrar, being the in-charge of one of the Company Registration Offices (CROs) of SECP. The basic two types of company remain as follows:

144. **Private Limited Company** - Any one or more persons may by subscribing to a memorandum of association for a lawful purpose may form a private company.

145. **Public Limited Company** - Any three or more persons may form a public limited company in the same manner and purpose.

146. Other two types of the companies are unlimited companies or companies limited by guarantees.

### ***Natural Persons***

147. All Pakistani citizens and permanent residents who are 18 years or older are required register with National Database Registration Authority (NADRA) and have Computerized National Identity Card (CNIC) that is to be used as a formal identification document, including opening of accounts in financial institutions, dealings with government departments, entering into contractual relationship, etc. The NADRA database also contains information on family members of registered citizens including minors who are also required to be notified while registering with NADRA. In Pakistan, currently, the incidences of birth are separately registered with the local / district governments.

148. In Pakistan, as elsewhere in most developing countries, the role of the non-profit sector has been growing and has evolved over the years from the limited sphere of charitable and philanthropic organizations to the wider public welfare-oriented and development roles to complement the state's effort.

### ***The Non-Profit Sector***

149. Nonprofit organizations are governed by the law through which they are registered and the internal governance is controlled by their own constitution, memorandum, rules or bye laws submitted for registration or as amended and approved thereafter. While a body of laws governing various types of non-profit organizations exist through which these organizations are registered or are recognized, what needs to be recognized is that the fundamental right of an individual to associate with others in order to pursue common goals is recognized by Article 17 of the Constitution of Pakistan. The NPOs are mainly registered under the following laws:

- The Societies Registration Act, 1860.
- The Trusts Act 1882.
- The Charitable Endowments Act, 1890.
- Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961
- Local Government Ordinance 2001
- The Companies Ordinance (Section 42) 1984

150. A total number of 45,121 NPOs have been registered under the aforesaid laws as detailed in Table 11.

**Table 11: Size of NPO Sector**

<b>Law of Registration</b>	<b>Number of NGOs</b>	<b>% age</b>
Societies Registration Act 1860	20,189	44.74
Trusts Act 1882	93	0.22
Voluntary Social Welfare Agencies 1961	21,364	47.36
Companies Ordinance 1984	341	0.81
Charitable Endowments Act 1890	26	0.06
Local Government Ordinance 2001	3,010	6.81
<b>Total</b>	<b>45,121</b>	<b>100</b>

151. There is however a very large informal and undocumented NPO sector in Pakistan, the estimated size of which is over 100,000 NPOs. The authorities indicated that all NPOs of significant size are registered and that non registered NPOs in aggregate do not form a significant percentage of the NPO sector in terms of funding or scope of operation.

### **1.4. Overview of strategy to prevent money laundering and terrorist financing**

#### ***AML/CFT Strategies and Priorities***

152. Pakistan authorities state that they recognizes the national and global threats from money laundering and terrorist financing and are taking coordinated steps to progressively implement a comprehensive national AML/CFT system. Pakistan had adopted AML measures prior to the AMLO coming into force. Since late 1990s, Pakistan has put in place elements of an AML/CFT regime through various existing statutes and regulatory measures. The National Accountability Ordinance 1999 [NAO], Control of Narcotics Substances Act 1997 [CNSA] and Penal Code contain provisions that criminalize some elements of the process of money laundering. The Anti Terrorism Act 1997 [ATA] provides powers for authorities to take actions against acts of terrorism, including elements of support for such acts including funding of terrorism. SBP proactively issued the Guidelines on Money Laundering and ‘Know

Your Customer' Policy to financial institutions under its supervisory control, before the enactment of the AMLO. Before the enactment of AML Ordinance, the CNSA required reporting of narcotics related suspicious transactions to the Anti Narcotics Force (ANF). The NAO also required financial institutions to report suspicious transactions to the National Accountability Bureau (NAB). Similarly, Prudential Regulation M-5, issued by State Bank of Pakistan (SBP) also required banks to report suspicious transactions to SBP.

153. Pakistan is a State party to 10 out of 13 UN Conventions relating to terrorism. An inter Ministerial Committee is considering accession to the UN Convention on the Suppression of Financing of Terrorism (*Terrorist Financing Convention*) and ratification of the UN Convention against Transnational Organized Crime. Accession to the two Conventions has been submitted to Cabinet for its consideration. To enable Pakistan to accede to the UN Terrorist Financing Convention new legislative provisions are required to be incorporated. Pakistan recently made ML and TF extraditable, by their inclusion in the schedule to the Extradition Act 1972.

154. Pakistan has signed and ratified SAARC Regional Convention on Suppression of Terrorism and its additional protocol. Pakistan has also signed the OIC Convention on Combating International Terrorism, 1999.

155. Pakistan stresses that it remains committed to fighting the menace of terrorism to bring security to its own people. It emphasizes its commitment and actions to fulfill its international obligations with responsibility and to fight terrorism in all its forms and manifestations. Pakistan stresses that it recognizes the importance of improvements in relations with India for mutual betterment. The Mumbai terrorist acts in 2008 have clearly put the relationship with India under very significant stress, and drastically increased the international pressure on Pakistan as far as fight against terrorism and terrorism financing is concerned (as well as related engagement in international cooperation).

156. As a frontline state, Pakistan considers that it is extending full support and active cooperation to the international fight against terrorism. 112,000 Pakistani troops are engaged on the border with Afghanistan and 822 border posts have been set up to interdict Al-Qaida/Taliban members. The efforts have resulted in apprehending more than 700 Al-Qaida operatives and affiliates including some of its top leaders like Abu Zubaydah, Ramzi bin Al-Shibh, Khalid Shaikh Mohammad and Abu Farraj Al Libbi. As evidence of these efforts, the authorities emphasize that a large number of country's own security personnel have also been martyred or injured in these operations.

157. Very significant benefits would be derived from a undertaking a risk assessment that looks into: the value of proceeds generated by predicate crime; funds necessary to sustain terrorism or where those funds actually come from; how those proceeds are 'directly' enjoyed by the criminal (e.g. purchase of luxury items, cars, real estate); how they are used to 're-invest' in ongoing criminality or the financing of terrorism; who and how they are assisted by in disguising or dispersing those proceeds to avoid detection and seizure; and what financial sector and non-financial sector industries and products are susceptible to and used by criminal and terrorists. The lack of such a risk assessment severely hampers the effective implementation of the various Anti-Money Laundering provisions as well as the effective deployment of the limited resources within the various agencies. The authorities indicate that the preparation of such an AML/CFT strategy has been launched, that will be submitted to the National Executive Committee (NEC) in due time. According to the authorities, it will include a risk assessment. The authorities hope that the on-going Asia Development Bank assistance, and in particular its typology component, will provide useful inputs to this endeavor.

### ***The Institutional Framework for Combating Money Laundering and Terrorist Financing***

158. Pakistan has set up by law a collaborative, multi-agency approach in implementing its AML/CFT regime under the AMLO, as described in details below:

#### ***The National Executive Committee (NEC)***

159. In order to effectively enforce the provisions of the AMLO, an Apex body i.e. National Executive Committee (NEC) has been established under the Chairmanship of Minister for Finance. Section 5 of the AMLO empowers the Federal Government to nominate any other member on the committee. The NEC consists of the following: Ministry for Finance or Advisor to the Prime Minister on Finance, Senior Advisor to the Prime Minister on Foreign Affairs, Law, Justice and Human Rights, Minister for Law and Justice, Minister for Interior, Governor SBP, Chairman SECP, Director General Financial Monitoring Unit (FMU), Chairman National accountability Bureau (NAB)

160. The mandate of the NEC is to develop, coordinate and frame an annual national policy / strategy to fight money laundering; determine offences existing in Pakistan that may be considered to be predicate offences; provide guidance and sanction in framing of rules and regulations; make recommendations to the Federal Government for effective implementation of AMLO; issue necessary directions to the agencies involved in the implementation and administration of the Ordinance and undertake and perform such other functions as assigned to it by the Federal Government, relating to money laundering.

#### ***The General Committee (GC)***

161. In order to assist the NEC, a General Committee (GC) has also been formed comprising Secretary Finance, Interior, Foreign Affairs, Law, Governor SBP, Chairman SECP and Director General FMU. Later, the Director General, Financial Crimes Investigation Wing, NAB has been notified as a member of the GC under Section 5(4) (h).

162. The main objectives of the GC are to take measures as necessary for the development and review of the performance of investigating agencies, FMU and the financial institutions and non-financial businesses and professions, relating to anti-money laundering; review training programs for Government, financial institutions, non-financial businesses and professions and other persons relating to anti money laundering; provide necessary assistance to the NEC in carrying out its functions and duties under the Ordinance; discuss any other issue of national importance relating to money laundering.

163. The Director FMU acts as Secretary to the NEC and GC. Each NEC member is responsible for implementation of NEC decisions within its purview.

#### ***Financial Monitoring Unit (FMU)***

164. The Financial Monitoring Unit (FMU) was established immediately after the promulgation of the AMLO and is housed in State Bank of Pakistan to receive, analyze and disseminate STRs received from reporting institutions. The purpose of the FMU is to facilitate the implementation and enforcement of the AMLO nationwide and to co-operate with other countries in the global fight against money laundering, terrorist financing and serious crime.

#### ***The Relevant Ministries:***

165. **The Ministry of Finance (MoF):** The Minister of Finance is the Chairman of the NEC which is the approving authority for regulations under the AMLO in addition to the mandate as detailed above. The Secretary MOF chairs the GC.



166. **The Ministry of Foreign Affairs (MOFA):** The MOFA is responsible, among other things, for the transmission and receipt of mutual legal assistance requests and plays a vital role in the development of treaty relationships relating to extradition, mutual legal assistance and terrorism financing. The MOFA has representation on the NEC and GC. The MOFA also makes recommendations to the Government for Pakistan's accession and ratification of the relevant UN instruments. One of functions of MOFA is to meet Pakistan's obligations under SCR 1267 by issuing Statutory Regulatory Orders specifying the entities and individuals whose property is to be frozen in accordance with the Resolution. This power is exercised under the United Nations (Security Council) Act, 1948.

167. **The Ministry of Interior (MOI):** The MOI is the leading agency in maintaining national sovereignty and security. The primary responsibility of Interior Division is to ensure internal security. Besides, the Interior Division deals inter alia with:

- National registration of population and issuance of identity cards.
- Nationality, citizenship and naturalization.
- Immigration, passports, regulation of entry and exit of foreigners.
- Control and administration of Federal Investigation Agency (FIA), Civil Armed Forces i.e. Frontier Corps, Frontier Constabulary, Pakistan Rangers and Coast Guards, Capital Development Authority and Islamabad Capital Territory.
- Coordination of Policy matters relating to Police, Police reforms and training of Police officers through National Police Academy (NPA).
- Anti-smuggling measures and enforcement of anti-corruption laws.

168. **The Ministry of Law, Justice & Human Rights (MOLJHR):** MOLJHR tenders advice to all the Federal Government on legal and constitutional questions as well as the provincial Government on legal and legislative matters. It also deals with drafting, scrutiny and examination of bills, all legal instruments, international agreements, adoption of existing laws to bring them in conformity with the Constitution, legal proceedings and litigation through Pakistan concerning the federal government and other several subjects.

169. **The Ministry of Social Welfare MOSW:** Pakistan is making concerted efforts to pursue a consolidated framework for the regulation of charities and NPOs through the MOSW. However, a number of provincial and Federal agencies also play various roles in regulating NPOs. The Central Board of Revenue (CBR) regulates some charities from the perspective of granting tax-free status, but the Ministry of Social Welfare and the Provinces have the lead role.

### ***Regulatory and Supervisory Authorities***

170. **The State Bank of Pakistan (SBP):** SBP is established under the State Bank of Pakistan Act 1956 and is an autonomous institution of the Federal Government. SBP is responsible for supervising and regulating financial institutions under the Banking Companies Ordinance (BCO), 1962. The institutions regulated and supervised by SBP are Commercial and Islamic Banks, Micro Finance Banks, Development Finance Institutions and Exchange Companies.

171. **The Securities and Exchange Commission of Pakistan (SECP):** The SECP is a statutory body with supervisory and enforcement powers established under the Securities and Exchange Commission of Pakistan Act 1997 which regulates matters pertaining to the incorporation of companies and business registration and to promote ethical conducts amongst those involved in the management of a company or business. The SECP reports to the Ministry of Finance.

172. **The Stock Exchanges:** In addition to the enforcement / compliance checking for securities intermediaries powers of the Commission, the supervision of these is primarily undertaken by the Stock Exchanges, which are by law and de facto the front-line supervisors. The level of development and the capacities of the three Stock Exchanges are far from similar, and the Karachi Stock Exchange is clearly both better equipped and faced with more acute supervision challenges and tasks.

### ***Law Enforcement Agencies***

173. **Pakistan Police:** The Pakistan Police is the primary law enforcement agency in Pakistan which covers a wide spectrum of law enforcement responsibilities. The general powers of the Police are provided under the Police Order 2002 (which amended *Police Act 1861*) and the Criminal Procedure Code (CrPC). The Police has been provided with wide powers of arrest and detention, entry, search and seizure and interception of communications.

174. **The National Accountability Bureau (NAB):** The NAB is a federal agency entrusted to eradicate corruption and abuse of power and is governed by National Accountability Ordinance 1999 (NAO). It has Headquarter in Islamabad and five Regional Offices at Karachi, Lahore, Rawalpindi, Peshawar and Quetta. There are four Divisions dealing with Operations, Prosecution, Awareness / Prevention and Human Resource / Finance. Under these Divisions, wings perform their specialized functions of Investigation Monitoring, Special Operations, Financial Crimes Investigations and Prosecution. The Overseas Wing dealing with international cooperation in corruption cases reports directly to the Chairman. Similarly, at the regional level, specialized Wings with dedicated staff perform their functions under a Director General.

175. The NAO provides statutory protection of tenure to the Chairman NAB and the Prosecutor General Accountability. The Chairman of the Bureau cannot be removed from office until completion of the statutory period of 4 years. This statutory protection provided to Chairman NAB and the Prosecutor General Accountability is similar to that provided to a Judge of the Supreme Court of Pakistan.

176. **Federal Investigation Agency (FIA):** The FIA was established under FIA Act, 1974. The charter of FIA includes inter-alia, the following functions:

- Keep check on violations of Passport Act and Emigration Ordinance.
- Investigate economic crime.
- Carry out any other investigation of white collar crime having inter-provincial and international ramifications, entrusted by the Federal Government.

177. Headed by a Director General (DG), the FIA has the following wings:

- Crime Wing: Deals the cases of corruption, embezzlement, cheating, forgery and fraud.
- National Central Bureau (NCB): Interpol in Pakistan was originally set up in 1957. It is presently a bureau of FIA located in Islamabad. DG FIA is the head of NCB, under the International Criminal Police Organization, Ministry of Interior, HQ General Secretariat. NCB is a base of operation for all cases relating to international Police Cooperation, fighting against crimes and criminals and all criminal subjected to surveillance, identification search, arrest, interrogation and extradition.
- FIA Academy: FIA has its own Training Academy to impart pre-service and in-service training to its officers.

- Immigration Wing: Administers 18 immigration check posts (land and sea and air routes) and takes cognizance of offences under Passport Act, Emigration Ordinance and Human Trafficking.

178. The FIA has established the Special Investigation Group (SIG) to investigate cases of terrorism and terrorist financing. SIG's duties include the identification of terrorists, creation of a National Database of terrorists, identifying and arrest "most wanted terrorists" and coordinating with Provincial Governments in the National counterterrorism effort. SIG has multi-disciplinary teams investigating terrorism and terrorist financing. SIG is taking steps to develop its financial investigations capacity to investigate terrorist financing cases. The SIG indicates that it is conducting numerous inquiries into complaints or cases of suspected terrorist financing received through Interpol or Foreign missions in Pakistan.

179. **Anti Narcotics Force (ANF):** ANF was established under the Anti Narcotics Force Act 1997 and is active in pursuing the assets of organized crime involved in narcotic trafficking and investigating narcotics related crime.

180. **Directorate General of Intelligence & Investigation–Federal Board of Revenue (DG I&I – FBR):** The DG I&I-FBR was originally created as Directorate of Customs Intelligence and Investigation as an attached department of Revenue Division in 1957. In 1995, the Directorate was assigned the role to carry out detailed audit of cases of Sales Tax fraud. In 2005 the Directorate was assigned the additional responsibilities of integrity management. Consequent upon restructuring under reform process, the Directorate was re-designated as Directorate General of Intelligence & Investigation – FBR, Islamabad with the responsibility of both Direct and Indirect Taxes.

181. Customs is vested with responsibility for monitoring cross-border currency movements under the exchange control mechanism.

### ***Self-Regulatory Organizations***

182. **The Institute of Chartered Accountants of Pakistan (ICAP):** The ICAP, which is established pursuant to the *Accountants Act 1967* as the country's national accountancy body, is the only accountancy body empowered by law to regulate the accountancy profession in Pakistan. A chartered or licensed accountant who wishes to engage in public practice services must register with the ICAP and possesses a valid practicing certificate issued by the ICAP.

183. **The Pakistan Bar Council (PBC):** PBC is a statutory organization responsible for safeguarding the rights, interests and privileges of practicing lawyers, regulating their conduct and helping in the administration of justice. Its composition, powers and functions are described in detail by the Legal Practitioners and Bar Councils Act, 1973. An important role assigned to the Bar Council has been the promotion of legal education and provision of free legal aid to deserving citizens. The Bar Council may also help in the promotion of knowledge about legal issues/problems through holding lectures, seminars and conferences.

184. Apart from PBC, there are bars at each province at high court level which are also governed by the Legal Practitioners and Bar Councils Act, 1973.

### ***Other Relevant Agencies***

185. **National Database Registration Authority (NADRA):** In March, 1998, it was decided to set up a national database organization to undertake the function of handling the data being collected through National Data Forms during the Population Census 1998. A new ordinance titled as National Database and Registration Authority, 2000 (VIII of 2000) was promulgated on March 10, 2000 which empowered

NADRA to establish and maintain different multi-purpose database warehouse, networking facilities, interfacing between database, and develop and implement Registration System for all persons including citizens, foreigners, emigrants and any other persons or things as may be prescribed by the Federal Government to means of issuance different cards as under:

- National Identity Card (NIC)
- National Identity Card for Overseas Pakistanis (NICOP)
- Overseas Identity Card (OID)/Pakistan Card Abroad (PCA)
- Alien Registration Card (ARC)

186. The NADRA has developed a sophisticated database management system at national level for use by authorized Government agencies thus computerizing major functions of Federal and Provincial Governments.

187. **National Alien Registration Authority (NARA):** Established under the Ministry of Interior, NARA is primarily concerned with the registration, and supervision as well as the maintenance of records pertaining to registered foreigners. NARA performs the following functions:

- Register all the foreigners in Pakistan who immediately before the commencement of the Foreigners (Amendment) Ordinance, 2000 (promulgated on July 10, 2000) who had no permission to stay in Pakistan.
- Issue Work Permits to those aliens seeking employment or running own business.
- It was provided that aliens who get themselves registered with the Authority during the amnesty period announced by the Government shall not be proceeded against under the Foreigners Act, 1946, during the unauthorized stay. Minor children of the registered alien will be registered with their parents, and on reaching adulthood will seek their registration in their own right.

188. **Department of Immigration & Passport:** The Department of Immigration & Passport is under the Ministry of Interior. It deals with issuance of passports, visa, Pakistan citizenship, dual nationality, renunciation of Pakistan citizenship, registration of birth of children of Pakistan citizens born abroad and annual registration of citizens of Pakistan residing abroad.

### ***Approach Concerning Risk***

189. Pakistan states that it has adopted an inclusive approach to the scope of the anti-money laundering obligations in the financial sector, and has not sought to exclude any of the activities on a risk-based approach. The authorities are aware that government borrowings from the general public in the form of National Saving Schemes operated by CDNS and Pakistan Post Savings Bank are however not a subject of AMLO as yet. However, with their plans to adopt an activity-based definition of financial institution, they consider that this area will also come then under the ambit of AMLO.

190. The preparation of an AML/CFT Strategy – which is likely to require some sort of AML/CFT assessment – is an explicit task for the GC and NEC. At the time of the on-site mission, no such risk assessment has been undertaken – therefore there is no solid basis at this time for the authorities to embark onto a risk-based approach to the efforts against ML and FT.

191. However, some analysis has been undertaken and documented / formalized by NAB of money laundering typologies for corruption (as defined by NAO, which is a very extensive definition of corruption).

192. Two such recent examples of such studies are in the areas of Prize Bonds and Housing Societies (real estate sector) – which include recommendations by NAB that reforms be undertaken to address the described loopholes.

#### **Progress since the last Mutual Evaluation**

193. Pakistan has made significant progress since its last APG mutual evaluation, both in terms of legislation, regulation and implementation. These are not described in details under this section, as the detailed assessment report is in itself a description of these efforts. The adoption of the AML Ordinance (AMLO), the AML Statute, which was a key recommendation of the previous assessment, deserves to be recognized.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### 2.1. Criminalization of Money Laundering (R.1 & 2)

##### 2.1.1. Description and Analysis<sup>6</sup>

194. Legal Framework: Money laundering is criminalized under s. 3 of the Anti-Money Laundering Ordinance 2007 (AMLO) and under s. 12 of the Control of Narcotics Substance Act 1997 (CNSA) and ss.11I and 11K of the Anti-Terrorism Act 1997 (ATA).

195. **The Constitutionality of AMLO:** AMLO was issued as a presidential ordinance in exercise of the extraordinary powers assumed by the president pursuant to the Proclamation of Emergency of 3<sup>rd</sup> November 2007. According to Article 89 of the Constitution of Pakistan, all ordinances must be introduced in the National Assembly as a bill and are automatically repealed at the expiration of a period of four months from their promulgation. This raised concern regarding the validity of AMLO and any rules made pursuant to it.

196. However, by virtue of the Constitution (Amendment) Order (2007), the President amended the Constitution and Article 270AAA was introduced. This amendment validated all the ordinances issued under the Proclamation of Emergency notwithstanding anything contained in the Constitution. It also provided that such ordinances shall continue in force until altered or repealed or amended by the competent authority. The Constitutionality of The Constitution (Amendment) Order was challenged and the Supreme Court in C.P.No.87/07 upheld the constitutionality of the Order including Article 270AAA. Accordingly, the assessment team was satisfied that AMLO is a valid law under the Pakistani constitutional framework.

197. **The acts of Laundering and the meaning of proceeds (c.1.1-1.2):** The Pakistani law has in force three offences of money laundering. (1) A general offence of money laundering defined in s.3 of AMLO, which extends to a range of predicate offences; (2) a specific offence of laundering the proceeds of narcotic offences as defined in s. 12 of the CNSA; and (3) two specific offences of laundering “terrorist property” in ss. 11J and 11K.

198. Section 12 of AMLO reads: “A person shall be guilty of offence of money laundering, if the person: (a) acquires, converts, possesses or transfers property, knowing or having reason to believe that such property is proceeds of crime; or (b) renders assistance to another person for the acquisition, conversion, possession or transfer 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.”

199. This general offence of money laundering, which will form the basis for the assessment in this section, extends clearly to acquiring, converting, possessing, or transferring the proceeds of crime (s. 3a). S.3b criminalizes “rendering assistance to another person for concealing or disguising the true nature, origin, location, disposition, movement, or ownership of the proceeds.” S. 3b criminalizes the acts of

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6. For all recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

concealing or disguising as described under the Vienna and Palermo conventions. It is not clear whether the words “rendering assistance” in s. 3b impose additional elements that the prosecution will be required to prove to secure conviction under this provision. It is also not clear whether these words narrow the scope of criminalization in some way.

200. Discussions with FIA officers responsible for investigating offences under the AMLO confirmed that there is no clear understanding of what “rendering assistance” would mean in investigating a case. It is worth noting that the proposed amendments of AMLO that have been recently approved by cabinet will clarify this point by removing the words “rendering assistance” from the wording of s.3b.

201. Worth noting here that s. 12 of the CNSA suffers from certain limitations. It criminalizes broadly the acts of “possession, acquisition, use, convert, assign, or transfer” under s. 12a. But when it comes to concealing or disguising, s. 12c is very restrictive because it restricts those acts to concealment or disguise “by making false declaration in relation to [the assets].”

202. Table 12 below compares the acts of money laundering proscribed under the three applicable legislations:

**Table 12: Comparison of Money-Laundering Offences**

AMLO	CNSA	ATA
<ul style="list-style-type: none"> <li>• Acquisition</li> <li>• Conversion</li> <li>• Possession</li> <li>• Transfer</li> <li>• “Rendering assistance” for concealing or disguising the true nature, origin, location, disposition, movement, or ownership of the proceeds.</li> </ul>	<ul style="list-style-type: none"> <li>• Possession</li> <li>• Acquisition</li> <li>• Use</li> <li>• Conversion</li> <li>• Assigning</li> <li>• Transfer</li> <li>• Holding or possessing on behalf of another</li> <li>• Concealing or disguising the true nature, source, location, disposition, movement, title, or ownership of the proceeds by making false declaration in relation to the proceeds.</li> </ul>	<ul style="list-style-type: none"> <li>• Entering into or being concerned with any arrangement which facilitates retention or control by or on behalf another of terrorist property: by concealment, by removal from the jurisdiction, by transfer to nominees, or in any other way.</li> </ul>

203. Money laundering occurs when the criminal act occurs in relation to property that constitutes “proceeds”. The Ordinance defines “property” in s. 1(s) very broadly fully adopting the definition of the Glossary to the Methodology. The term “proceed” is also defined in s.1(r) consistently with Recommendation 1 to include property *directly or indirectly derived or obtained* from the commission of a predicate offence.

204. **Requisite Conviction of a Predicate Offence (c.1.2.1):** S.3 of the Ordinance does not contain any requirement that a prior conviction for the predicate offence is necessary for the proof of money laundering. In fact, the ANF has previously brought two cases in which the defendant was charged with money laundering under s. 12 of CNSA even though charges with the predicate offence had previously been brought and had failed. The court found the defendants not guilty not for the lack of conviction for the predicate offence but for the weakness of the evidence submitted by the prosecution.

205. The team met with prosecutors and investigators from the Anti-Narcotic Force who confirmed that there is nothing in the law to mandate prior conviction and that the issue is more in relation to how the law is being enforced and what is perceived as possible to prove.

206. There is a general sense amongst prosecutors and lawyers that it is not possible to prove money laundering in the absence of prior conviction for a predicate offence. This is not because of legal difficulties or burdensome evidentiary requirements in the law but rather because of the practical difficulties associated with this sort of factual scenario.

207. **The Scope of the Predicate Offence (c.1.3-1.4):** Section 2(t) of AMLO defines “predicate offence” adopting a list approach that is compounded by a threshold requirement in certain instances. The list is attached as a schedule to the AMLO. With the exception of fiscal offences, that are explicitly excluded from the scope of the predicate offence in the s.2 (t) this schedule could be amended by Federal Government by notification in the Official Gazette. The amendment could add new offences to the schedule of predicate offences, modify an entry in the schedule or delete an entry in the schedule. This approach to the amendment of the schedule gives it flexibility that allows the scope of the predicate offence to be altered when the need arises without a need for legislative amendment. The team, concerned about the constitutionality of this method considering the penal nature of the schedule, asked the authorities and were assured that this approach has been used in other legislations without challenge and that the principle of legality of crimes and penalties is satisfied by the fact that the power of the Federal Government is grounded in a specific statutory provision.

208. After the on-site mission the authorities amended the schedule of offences and expanded it covering a wide range of new categories that were not previously included using the power granted in the Ordinance as described above. The Government issued an SRO to that effect. The SRO was published in the official Gazette on March 21, 2009.

209. The Schedule to AMLO includes within the scope of the predicate offences all offences under the ATA (1997) and under the Securities and Exchange Ordinance (1969). The scope of these two particular categories of schedule offences is further restricted by prescribing that they only include the offences under these two acts for which the minimum punishment is a period of over one year. This threshold is too high. It excludes any offence within these two categories of offences for which there is no minimum punishment or for which the minimum punishment is below one year. The international standard requires that for countries that adopt a threshold approach this threshold should not be more than minimum imprisonment of six months.

210. The Table 13 below shows the list of the predicate offences included in the schedule and the list of designated categories of offences that they correspond to:

**Table 13: Description of Predicate Offences**

Designated Category	Predicate Offences under AMLO
Participation in an organized criminal group	Criminal conspiracy under s. 120B of the PPC.
Terrorism	All offences under the Anti Terrorism Act prescribing a minimum punishment for a period of over one year.
Corruption and Bribery	ss. 161-165A of the Pakistan Penal Code 1860 (PPC). Corruption and Corrupt Practices under s. 9 of the National Accountability Ordinance 1997 (NAO).
Murder	Sections 300 and 316 of PPC
Kidnapping, illegal restraint and hostage taking	Sections 363-366 367-367A, 268-369 and 496 of PPC.



Designated Category	Predicate Offences under AMLO
	On illegal restraint: 337K, 343-348.
Human Trafficking	366B, 369, 370 and 371 of PPC ss.3-5 of the Prevention & Control of Human Trafficking Ordinance 2002. ss. 17-19 and s. 22 of the Emigration Ordinance (1979)
Sexual exploitation including of children	366A, 367A, 371A, 371B,
Theft or Robbery	ss. 379, 380, 381, 381A, 382, 392, 395, and 402 of the PPC.
Extortion	384 and 385 of PPC
Illicit trafficking in stolen goods.	ss. 411-414 of PPC.
Fraud	ss. 417, 421, 422, 423, and 424 of PPC.
Forgery	ss. 465, 467, 468, 471, 472, 473, 474, 475, 476, 477, 477A of PPC.
Counterfeiting of Currency	ss. 489A-E of PPC.
Counterfeiting and Piracy of Products	482, 483, 484, 485, 486, 487 and 488 of PPC ss. 66-70 of the Copy Right Ordinance, 1962. ss.27-29 of the Registered Design Ordinance (2000) ss. 99, 101 and 107 of the Trade Marks Ordinance (2001).
Illicit Trafficking in Narcotic Drugs	ss. 5,9,11,13,15,41 and 42 of the Control of Narcotic Substances Act, 1997.
Illicit arms trafficking	s. 122 of PPC. ss.19 &20 of the Arms Act 1878 s. 13 of The Pakistan Arms Ordinance (1965).

211. By examining the criminalization provisions within each of the above categories, the team was satisfied that the Pakistani law covers a sufficient range of offences within each of these categories. It is important to note that in relation to corruption offences the current range under the provisions of PPC and NAO is sufficient. However, should the National Accountability Ordinance be abolished, as is currently being considered, the range of corruption offences under the PPC will be too limited.

212. Currently, there are a number of designated categories of offences that are not included within the scope of the predicate offence under AMLO. Table 14 shows these uncovered categories and shows the corresponding provision of criminalization under the Pakistani law.

**Table 14: Missing Predicate Offences**

Predicate Offence as per FATF	Relevant Section and Statute
Environmental crime	Sections 11, 13,14, 17, 18 of Pakistan Environmental Protections Act, 1997
Grievous bodily injury	Ss.332-337A-Z of the PPC.
Smuggling	Sections 156 [Items 8,81,82, 89, 93 of the Table], Sections 158 to 192 of the Customs Act, 1969, Prevention of Smuggling Act, 1977 [Sections 3,4,173031,33]
Piracy	There is no offence of piracy under the laws of Pakistan.
Insider trading and market manipulation	s. 17 of the Securities and Exchange Ordinance 1969 on market manipulation. <u>There is no criminal offence of insider trading.</u>

213. While the Schedule to AMLO includes reference to the offences under the Securities and Exchange Ordinance (1969), the threshold approach described above has resulted in excluding from the scope of the predicate offence under AMLO the offence of s.17 of the Securities and Exchange Ordinance (1969), which prohibits a range of fraudulent and manipulative practices. The penalty for s.17 of the Securities and Exchange Ordinance has no minimum and therefore is excluded from the scope of the predicate offence under the AMLO Schedule. It is also important to note that s. 15A and 15B of the Securities and Exchange Ordinance, which prohibit insider trading, have been amended to abolish the penal sanction and instate civil penalties instead. The explanation offered by the authorities was that the offence of insider trading was very difficult to prove and there were no successful prosecutions under that provision during its 15-year life. For that reason, the SECP has opted for an amendment that replaces the penal sanction by a civil one, which can be imposed directly by the SECP. As a result, market manipulation and insider trading are not predicate for money laundering.

214. All smuggling offences are categorically excluded from the scope of the AMLO under s. 2(t), which defines the predicate offence by reference to the Schedule then adds “but does not include fiscal offence.” Because smuggling offences are considered fiscal offences, the smuggling offences could not be added to the Schedule and cannot be added without legislative amendment to the AMLO. Considering the serious risk of smuggling known in Pakistan, which was confirmed by the various investigative and supervisory agencies as well as the customs authorities that the team met with, this omission is considered in this assessment to be serious. . The current draft revision of the AMLO under consideration by the Executive contains a proposal to add smuggling as a predicate to AMLO. Meeting with the authorities revealed that there is general support amongst the relevant agencies for this amendment. Following the on-site mission, the authorities advised the team that the draft amendments have already been approved by the Cabinet.

215. The SRO amended the schedule removing s. 365A of the PPC on Kidnapping or abducting for extorting property. Now these offences are no longer predicate offenses for money laundering even though these crimes are common in the frontier regions and are linked to terrorism financing.

216. **Terrorist Financing as a Predicate Offence:** The Schedule to AMLO extends to all the offences under the ATA that are punishable by a minimum punishment of one year imprisonment. The terrorism financing offence defined in s. 11J of the ATA is punished by a minimum of five years imprisonment, which brings it within the threshold defined by the schedule. So, the offence of terrorism financing is a predicate offence to the money laundering offence under AMLO.

217. The ATA also created an independent offence of laundering terrorist property. S. 11K provides: “A Person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention of control, by or on behalf of another person, of terrorist property: (a) by concealment, (b) by removal from the jurisdiction, (c) by transfer to nominees, or (d) in any other way.” The term “terrorist property” is defined in s. 1(aa) very broadly to include, amongst other things, “proceeds of the commission of acts of terrorism” and “proceeds of acts carried out for the purposes of terrorism.” The term proceeds is also defined broadly to include “any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments of other rewards in connection with the commission.”

218. The approach of the ATA to create an independent offence of laundering terrorist property” has the distinct advantage of bringing the offence of laundering terrorist property within the jurisdiction of the special court under the ATA. This has two advantages: (1) it places the predicate offence and the laundering offence within the jurisdiction of the same court with the attached benefits of consolidation; (2) it gives the offence of laundering the proceeds of terrorism offences the benefits of more expeditious adjudication that is characteristic of the special courts.

219. On basis of the analysis above, the laundering of the proceeds of terrorism is criminalized under Pakistani law both as a predicate offence to the offence of money laundering under AMLO and as a stand-alone offence under ATA.

220. **Foreign Predicate Offences (c.1.5, 1.8):** the offence of ML under AMLO extends explicitly to “foreign serious offences” defined in s. 1(i) as “an offence against the law of a foreign State stated in a certificate issued by, or on behalf of, the government of that foreign State, and which, had it occurred in Pakistan, would have constituted a predicate offence.” The position of the law is clear and the requirement relating to the certification, albeit has not been yet implemented in reality, was described as a simple process with to be performed through the Ministry of Foreign Affairs. The definition of dual criminality seems to be a functional one rather than a formal one. Discussions with the authorities support the conclusion that Pakistan adopts a flexible approach to dual criminality.

221. The scope of the “foreign predicate offence” is affected by the gaps in the definition of the predicate offence identified above. The amendment of the Schedule introduced by the SRO issued in March 21, 2009 expands the scope of the predicate offence substantially and alleviates some of the concern; gaps however still remain as identified above.

222. **Self Laundering (c.1.6):** The money laundering offence under AMLO, as well as under CNSA, extends very clearly to the perpetrator of the predicate offence. This is manifest in the criminalization of acquisition or possession under both acts. Even though the assessors have not seen court decisions convicting for self laundering under CNSA, in a meeting with the anti-narcotic force, they confirmed that convictions of the perpetrators of the predicate narcotic offences for the laundering of the proceeds has previously been achieved. The team has also seen cases in which the courts entertained a case against the perpetrators of the predicate offence but did not convict for lack of proof.

223. **Ancillary Offences (c.1.7):** AMLO does not criminalize any offences ancillary to money laundering. This approach under AMLO is different from the one adopted under CNSA and ATA. The draft amendment to s.3, which has been approved by Cabinet introduces a range of ancillary liability that once passed will address this issue.

224. Under section 21-I of ATA, whoever aids or abets any offence, shall be punishable with the maximum term of imprisonment provided for the offence or the fine provided for such offence or with both.

225. Section 14 of CNSA prohibits participation, association, conspiracy, attempt, aiding, abetting, facilitating, inciting, inducing, and counseling as ancillary offences to the offences punishable under the Act. Section 15 ancillary offences are punishable with the punishment provided for the offence or such lesser punishment as may be awarded by the Court.

226. The PPC contains a range of ancillary offences including abetting (ss.109-119), criminal conspiracy (s.120A, B), and attempt (s.511). In considering whether the ancillary offences under PPC would be applicable to the ML offence under AMLO, it was found that with very few exception, the general provision stipulated in PPC are only applicable to the offences of the Code. This is contained in s. 40 of the PPC, which provides that “the word “offence” denotes a thing made punishable by this code.” Since the ancillary offences defined by the PPC are defined by reference to conspiring to commit an “offence” or attempting to commit an “offence,” that excludes their application to offences punishable under any special law.

227. Section 40 of the PPC includes a list of exceptions to the narrow definition of the word “offence” that extends its meaning to offences punishable under special laws. This exception applies to ss. 109-110

& 112-117 relating to the criminalization of abetment. Abetting money laundering is therefore punishable under the PPC. According to s. 109, whoever abets ML under AMLO shall be punished with the same punishment provided ML offence.

228. Based on the above, the ML offence under AMLO is not supported by a sufficient range of ancillary offences.

229. **Liability of Natural Persons (c. 2.1, 2.2):** S. 3 of AMLO criminalizes the acts of persons, individuals and others according to s.2 (p), who commit the acts proscribed in s.3 “knowing or having reason to believe that such property is proceeds.” S. 12 of CNSA (1997) has a stricter standard in that it requires actual knowledge.

230. The money laundering offence under s. 11K of the ATA goes a step further. The offence of laundering terrorist property is a strict liability offence in that it does not impose on the prosecutor the requirement to prove the mental element. Instead, under s. 11K (2) it grants the accused a defense against conviction for the accused to prove that he “did not know and had no reason to suspect that the arrangement related to terrorist property.”

231. S. 27 of the Qanun-E-Shahadat Order 1984, (hereinafter, Evidence Act) provides for the inference of the mental element from objective factual circumstances. The Act goes as far as to say that the previous commission of the accused of an offence is a relevant fact to the establishment of the state of mind of the accused. The Evidence Act is a general Act that applies to all proceedings. Nothing in AMLO, CNSA or ATA qualifies the generality of this rule.

232. **Criminal Liability of Legal Person (c.2.4):** The position under the laws of Pakistan on the criminal liability of legal persons is rather confusing. The PPC defines the word “person” for the purposes of the liability for offences under the Act as including “any company or association, or body of persons whether incorporated or not,” which seems to set the criminal liability of legal persons as a general principle. AMLO contains a similar definition of person that encompasses all individuals, all juridical persons and unincorporated groups of persons.

233. S. 37 of AMLO, which is titled “Offences by companies” provides that “Where a person committing a contravention of any of the provisions of this Ordinance or of any rule, direction or order made hereunder, every person who, at the time the contravention was committed, was responsible for such contravention in the conduct of the business of company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.” The section goes on to give an officer of the company a defense against liability if he proves that he did know or that he exercised all due diligence.

234. When the assessors probed the issue with the key investigative agencies: FIA, NAC and ANF, it became evident that the understanding of corporate criminal liability is confined to the narrow sense defined in s. 37. Accordingly, corporate criminal liability under Pakistani law is nothing but the strict liability of the responsible natural persons who act on its behalf. All the agencies met, including NAB and ANF, which are active in asset investigations, confirmed that they have never prosecuted a body corporate in its own capacity and that they have never considered it or considered it possible. They have all however agreed that there is nothing in the law itself or in the general principles that prevents such prosecution. The omission is just a matter of practice and lack of understanding of the possibility of such direct prosecution of the corporation. On this basis, investigative agencies in Pakistan are unlikely to pursue criminal liability against legal persons according to the current practice in Pakistan.

235. The assessors were also not satisfied that there were alternative sanctions, civil or administrative, available against the body corporate who commits section 3 offence of ML under AMLO or ML under ATA or CNSA. The authorities do emphasize in that respect that both SBP and SECP have sanctions available against legal entities under their purview (which is large for SECP given its role regarding corporations). They consider that these civil penalties can be substantial (see recommendation 17). However, the assessors note that the legal system of Pakistan does not know the practice of imposing civil sanctions against the corporations outside the regulatory framework to which the corporation maybe subject, and that no example was provided of using these tools in the AML/CFT context. Even where there is in place a regulatory framework that permits the imposition of civil sanctions, there is no practice of linking such regulatory action to a successful prosecution of the officers of the corporate body for an offence that found the acts attributable to the corporation.

236. To illustrate, NAB investigators and prosecutors confirmed to the team, that even in instances where corporations were found to be involved in the commission of a corrupt practice punishable under the Act, there was no liaison with SECP or other regulatory body to invoke the application of available sanctions under the regulatory framework to penalize the criminal acts attributable to the corporation. It is worth noting that fines are imposed on financial institutions for failure to report suspicious transactions under AMLO, but that is within the regulatory and supervisory framework of the SBP.

237. S. 4 of AMLO makes money laundering punishable by “rigorous imprisonment” for 1-10 years. It also imposes mandatory fine of up to one million rupees and mandatory forfeiture of “property involved in money laundering.” This is a narrower term than “proceeds of crime” and it is not defined in the Ordinance. The section also imposes non-mandatory fine of up to one million rupees that the court may or may not impose.

238. S. 11N of ATA made the offence of laundering terrorist property under s. 11K punishable with imprisonment of five years to ten years and with a fine, which is “to be defined by the Court having regard to the circumstances of the case” according to s. 2(h).

239. Of all three ML offences under Pakistani law, the offence of narco-laundering under s. 12 of the CNSA defines the severest punishments. S. 12 laundering is punishable by (1) 5-14 years of imprisonment; (2) compulsory fine of an amount not less than the prevailing value of the assets; (3) compulsory forfeiture of all the assets. The assets are defined very broadly to include all the assets belonging directly or indirectly to the accused.

240. The punishment imposed under s.3 of AMLO, are comparable in severity to those imposed for similar offences under the laws of other countries in the region (India: 3-7 years; Australia: 5-25 years, Malaysia – 7 years; Indonesia – 5-15 years, Singapore – 7 years, Chinese Taipei – 3 to 7 years, Thailand, 1 to 10 years, Philippines 7-14 years, ). They are also comparable to the punishments attached to other offences of economic nature under special acts: (Fraudulent acts in the securities market: -3 years, Corrupt practices: -14 years, Electronic fraud -7 years).

241. Based on the above, the assessors consider that s.3 sanctions under AMLO are within the regional and domestic range for this type of offence in terms of imprisonment. They consider however that the pecuniary sanctions do not reflect the potential seriousness of the offence. In that respect they do not deem 1 million rupees as a maximum penalty to be sufficiently deterrent to those involved in money laundering especially as Pakistan moves towards direct criminal liability of corporations. Under the proposed amendments (section 4) the penalty is being raised to Rs. 5 million for both natural and legal person involved.

242. The forfeiture provision is too narrow and is not sufficient to take the profit out of crime. It is not clear why the legislative policy opted for lower imprisonment sanctions for terrorist property laundering under ATA. This approach seems inconsistent with the severity and the violent nature of the predicate offence. The pecuniary sanctions are however more appropriate under the ATA and gives the courts more discretion to impose a fine proportionate to the assets involved.

#### *Analysis of Effectiveness*

243. There has not been any investigation or prosecution under the ML offences of AMLO, nor ATA.

244. As for the ML statutes pre-existing AMLO, and in particular CNSA s. 12, the authorities indicated that there has been one or two successful prosecutions for money laundering, albeit in connection with a prior conviction for a predicate offence. The assessors have not seen the court's decisions in these cases. The information provided to the assessors did not indicate any meaningful flow of on-going investigations or prosecution under these other ML statutes, despite them having been in place for a much longer time than AMLO.

245. The assessors reviewed these indications of the effectiveness of the various ML statutes against their evaluation of the ML risk in Pakistan, as presented under the general section of this report. While taking note of the efforts undertaken by the authorities with a handful of investigations and prosecutions, the assessors are of the view that the results achieved so far, even taking into account the novelty of AMLO, are not commensurate with the significant risks facing the country. In and of itself, the assessors consider that the legal weaknesses in the ML statutes are to be noted, but are not to be over-played. Based on discussions with the authorities, it appears that the key impediments are:

- Lack of understanding amongst investigating agencies of the scope and possible use of the money laundering offence.
- Lack of capacity to conduct financial investigation at an early stage of the investigative process.
- The agencies quoted extreme difficulty of proving that the money is proceeds due to the very high standard of proof required by the courts.

246. As a result of their analysis, the assessors note the legal gaps existing in the legal framework, by reference to the Standard and the methodology. In addition, and this is key to their analysis and to the rating, the most important issue lies with the lack of effectiveness of the criminalization of ML in Pakistan, irrespective of the statute considered.

#### **2.1.2. Recommendations and Comments**

247. In order to meet the international standard:

- The authorities should expand the scope of the acts of laundering to cover the elements of the Vienna and Palermo conventions.
- The authorities should expand the scope of the predicate offence to cover a range within all the designated categories.
- Create a sufficient range of ancillary offences to support the money laundering offence.

- Ensure that money laundering is investigated and prosecuted as an autonomous offence and train the investigative authorities so that they can gather evidence in support of the money laundering offence regardless of conviction for a predicate offence.
- Ensure that legal persons are held liable for acts of money laundering.
- Ensure that there are a proportionate and dissuasive range of sanctions available against legal persons who may be liable for money laundering.
- Review and remove the obstacles that hamper the effectiveness of the investigation and prosecution of money laundering.
- Make sure that the laundering of the proceeds of terrorism financing is fully criminalized.

### 2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating <sup>7</sup>
<b>R.1</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>- The definition of the acts of laundering misses some of the elements required under applicable conventions. The gap is very small</li> <li>- 4 of the 20 categories of designated offences are not currently predicate offences to ML and piracy and insider trading are not criminal offences in Pakistan.</li> <li>- The investigative authorities do not envision the possibility of prosecuting ML as an autonomous offence.</li> <li>- The main ML offence under AMLO lacks a sufficient range of ancillary offences.</li> <li>- There is an overall lack of effectiveness of the investigation and prosecution of money laundering reflected in the nearly total absence of cases.</li> </ul>
<b>R.2</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>- It is not currently the practice in Pakistan to charge legal persons for ML offences or for the predicate offences and there is not an alternative system of civil sanctions applicable to their breaches.</li> <li>- The maximum pecuniary punishments allowed for money laundering under AMLO are potentially too lenient for the cases involving large proceeds.</li> <li>- Despite the existence of a ML offence under CNSA since 1997 and ATA since 2005, there has not been any track-record of successful prosecution for ML under those statutes.</li> <li>- There is overall a lack of effectiveness in sanctioning the ML offence</li> </ul>

7. These factors are only required to be set out when the rating is less than Compliant.

## 2.2. Criminalization of Terrorist Financing (SR.II)

### 2.2.1. Description and Analysis

248. Legal Framework: The Anti-Terrorism Act 1997 (ATA) as amended in 2001.

249. **Criminalization of Terrorist Financing (c.II.1):** To assess whether the criminalization of terrorist financing is in line with the international standard, several elements need to be compared for consistency: (1) the definition of the acts that would constitute financing; (2) the definition of funds or other related concepts that is central to the definition of financing; and (3) The definition of terrorism, terrorist acts, terrorists, and terrorist organizations.

250. The ATA creates several offences of terrorism financing: The Table below summarizes the various criminalization provisions under the Act:

Section	Criminal Acts	Recipient of destination of the funds
11F(5)	Soliciting, collecting or raising funds	For a proscribed organization
11H(1)	Invites another to provide money or other property	Intending that it should be used or having reasonable cause to suspect that it may be used for the purpose of terrorism.
11H(2)	Receives money or other property	Intending that it should be used or having reasonable cause to suspect that it may be used for the purpose of terrorism.
11H(3)	Provides money or other property	Knowing or having reason to suspect that it will or may be used for the purposes of terrorism
11I(1)	Uses money or other property	For the purposes of terrorism
11I(2)	Possesses money or other property	Intending that it should be used or having reasonable cause to suspect that it may be used for the purposes of terrorism
11J	Enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available	Having reasonable cause to suspect that it will or may be used for the purposes of terrorism

251. As the table above shows, ATA criminalizes a wide range of acts that fall broadly within the definition of financing under the standard. The question here is whether the acts criminalized by s. 11 ATA would cover the meaning of “collection” and “provision” of funds by any means directly or indirectly as required by the standard.



252. In the absence of case law on any of the financing provisions of the ATA, the assessors have to rely in the analysis on what can be read in the text of the law. The law clearly criminalizes the provision of money or property under s. 11H (3). While it does not specify that this provision of funds could be indirect, there is nothing in s. 11H(3) that makes it restrictive and it is to be expected that the courts would take the broad interpretation if it was satisfied that the person knew or suspected that the funds will be used for the purposes of terrorism. The authorities advised the team that the terms have very broad definition, which would extend to both direct and indirect methods of collection and provision. They drew the attention of the team to the definition of terrorist property in the act, which includes both directly and indirectly derived property. The authorities indicated that similar approach would apply to the interpretation by courts of the acts that constitute terrorism financing.

253. Section 11 criminalizes collection or what may be construed as forms of collection in three subparagraphs of the section:

- (1) Soliciting, collecting or raising funds for a proscribed organization (s. 11F (5))
- (2) Inviting another to provide money or other property (s.11H (1))
- (3) Entering into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another for the purposes of terrorism.

254. In relation to proscribed organizations, *collection* is unambiguously criminalized. In relation to the other forms of TF, such as the financing of acts of terrorism, the ATA is much less clear. The crime of inviting *another to provide* appears on its face to be too narrow. The assessors read it as referring to a direct communication with one other person, and not to the mass collection of funds that may not involve direct communication such as placing donation boxes at appropriate places. While the courts may very well construe such acts as acts of inviting another and may take a liberal view and not require proof of multiple interactions, the words on their face are not very explicit especially by contrast to the acts of “solicitation, collection, or fund raising” for a proscribed organization under s. 11F(5). The authorities advised the team that in Pakistan singular form wherever used is construed as embodying the plural as well and the judicial interpretations of ‘another’ without doubt would cover invitation at large, to a body of persons.

255. The law criminalizes collection explicitly in relation to proscribed organizations and uses the different language of “invite another to provide” when it comes to the criminalization of terrorist acts. This variation in the language cannot be considered meaningless because it is agreed universally that legislative interpretation assumes that the law maker is purposeful and that legislative language cannot be presumed redundant or meaningless.

256. The act of “entering or becoming concerned with an arrangement” under s. 3 seems to be broad. It is not however free of ambiguity. The Act does not define “an arrangement.” It is reasonable to interpret such term as capturing all schemes or arrangements for collecting, soliciting or fund raising; such as placement of donation boxes, dispatching individuals to collect funds, or even selling publications and other items with the ultimate objective of collecting funds. It will however be subject to judicial interpretation and it is not as straight-forward as the term “collection.” This does not preclude that these acts may be covered by s, 11J if the courts interpret that section broadly.

257. It is important to consider in this context the scope of s. 11I (2), which criminalizes “possession of money or other property.” This section may apply to some of the acts of collection in that collection should at some stage result in possession. This section is broad and will necessarily capture many instances of collection. It does not serve however to cover the masterminds of collection schemes who

never take possession of the funds. The assessors are not satisfied by the argument put forward by the authorities that they would be able to apply a concept of “constructive possession” to cover such situations. This ambiguity will only be resolved through the decisions of the courts.

258. On basis of the analysis above, the provisions of ATA cover the act of providing funds, and cover a wide range of the acts of collection. The assessors consider that they provide scope for leaving some acts of collection outside the scope of the criminalization under the act because of the lack of straightforward criminalization of “collection” except in relation to proscribed organizations. The gap is most likely going to be very small.

259. Apart from the specific offence under s.11D (5) of financing proscribed organizations, all the other offences pertain to forms of financing “for the purposes of terrorism.” The Act does not define the term “for the purposes of terrorism.” It does however define “terrorism” in s.6. The assessment here will be based on a reading of the provisions that drops the word “for the purposes” and examines the scope of the Act as if the provisions were criminalizing financing “for terrorism.” The word “for the purposes” may be interpreted by the courts in a way that broadens the scope of the Act. The assessors’ analysis allows for this possibility by accepting that some of the gaps identified maybe addressed through such broader interpretation. That is why when a gap is identified it is described more as an ambiguity rather than outright omission of exclusion.

260. Section 6 defined “terrorism” as the use or threat of certain types of violent actions defined in the same section, when the use or threat is designed to “coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society” (s. 6(1) (b)) or “the use or threat is made for the purpose of advancing a religious, sectarian, or ethnic cause.” S.6 (3) goes on to exclude the necessity for proving any specific purpose when the action carried out or threatened involves the use of firearms, explosives or any other weapon. In these very broad instances, the action is classified as terrorism regardless on any specific purpose or intention.

261. The action, which constitutes terrorism or an act of terrorism, when used or threatened for the purposes defined above, extends to a wide range of violent acts against individuals as well as property. The following are relevant to the assessment of compliance with the standard under SRII:

- (1) Action involving the doing of anything that causes death
- (2) Action involving grievous violence against a person or grievous bodily injury or harm to person
- (3) Action involving grievous damage to property
- (4) Action involving the doing of anything that is likely to cause death or endangers a person’s life;
- (5) Action involving kidnapping for ransom, hostage-taking or hijacking;
- (6) Action designed to seriously interfere with or seriously disrupt a communications system or public utility service;
- (7) Action involving serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;
- (8) Action involving serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.
- (9) Action creating a serious risk to safety of public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civil (civic) life

262. Under SRII, countries are required to extend the definition of terrorism for the purposes of the financing offences to all the acts that constitute offences under any of the 12 terrorism conventions that are annexed to the Convention on the Suppression of the Financing of Terrorism. Pakistan is party to 11 out of the 12 applicable conventions, the only exception being the Convention on the Physical Protection of Nuclear Material (1980). They are also required to criminalize more generally the financing of acts intended to cause death or serious bodily injury.

263. According to the description of the law above, ATA's definition of terrorist acts complies with the requirement of criminalizing the financing of acts that are intended to cause death or serious bodily injury since these are specifically defined as acts of terrorism under s. 6 of the ATA. The question that remains is whether the definition of acts of terrorism under the ATA extends to all acts proscribed under the terrorism conventions as required by SRII.

264. While the ATA does not refer specifically to the Terrorism Conventions or to the provisions under Pakistani law proscribing the offences defined under this set of conventions, the ATA defines acts of terrorism very broadly as shown above. It is very likely that the courts' application of s.6 definition will cover all of the acts proscribed under the conventions to which Pakistan is a Party. The acts covered by the ATA do not extend however to some of the acts that should be criminalized under the Physical Protection of Nuclear Material (1980). Pakistan is not yet a party to this convention.

265. S.6 (5) of the ATA extends the definition of terrorism to include any act done for the benefit of a proscribed organization.

266. The analysis of the provisions described above shows that ss.11H-J certainly proscribes that finance of terrorist acts and the definition of terrorist acts is to a large extent consistent with the definition required under SRII.

267. Also, ss. 11H-J as well as s. 11F (5), certainly extend to the financing of "proscribed organizations." A proscribed organization is an organization that the Federal Government listed it by order in the First Schedule to the ATA because it has reasons to believe that such organization is concerned in terrorism. So, to the extent that the Federal Government have proscribed an organization in the First Schedule to the ATA, any of the financing acts under ss.11H-J, would be criminalized if it is carried out for the benefit of such an organization. The ATA does not however give the court the power to convict a person for any of the financing offences under ss.11H-J when the act is done for the benefit of an organization that has not been proscribed even if that organization may be categorized as terrorist within the definition of "terrorist" provided for in s. 6(7). The ATA also does not include in the definition of terrorism acts done for the benefit of individual terrorists despite the existence of s.6 (7) definition of "terrorist" that is consistent with the definition of "terrorist" and "terrorist organization" under SRII.

268. **To sum-up**, section 11 of the ATA proscribes a wide range of financing acts that cover a major part of the possible acts of "provision and collection." The offences defined in s.11 may leave some minor gap in the coverage of possible acts of collection.. The assessors are however satisfied that the breadth of the definition makes it reasonable to conclude that this would be the case when the issue arises before the courts. The offences certainly extend to the financing of terrorist acts, the definition of which is largely consistent with SRII. The offences also certainly extend to the financing of "proscribed organizations." The ATA offences do not however extend to the financing of terrorist organizations that have not been proscribed. It does not extend to the financing of individual terrorists. Worth noting that the Act contains a definition of "terrorist" that covers both individual terrorists and terrorist organizations and that is consistent with the definitions under SRII.

269. The definition of terrorism and acts of terrorism does not require that acts have actually occurred. It is sufficient that the action is threatened for it to qualify as terrorism. The offences under ss.11H-J also do not require that the money and property be used for the purposes of terrorism. It is sufficient that such money and property were *intended for use*. This is consistent with the requirements of SR.II

270. One ambiguity remains. It is not clear under the Act, whether the definition of terrorism covers acts of terrorism that occur overseas and that are directed against foreign governments or foreign populations. This is explained in more detail below.

271. The Act does not extend explicitly to acts of terrorism that are intended to intimidate an international organization as required by the TF convention and by SR.II.

272. **The Definition of funds, money or other property:** The term funds is not defined in the ATA, even though it is central to the definition of the offence of collection, solicitation and raising of funds under s. 11F(5). This leaves the scope of that offence ambiguous. The term money is defined in s. 1(aa)(i)(c) to include any cash broadly defined to include: any coins, notes in any currency, postal orders, money orders, bank credit, travelers' checks, bank checks, bankers drafts, and such other kinds of monetary instruments as the Federal Government may by order specify." The ATA however omits to define the term property. This introduces ambiguity in relation to the definition of the offences under the s. 11 and makes the consistency with SR.II contingent on how the courts would interpret the Act. S. 2(cc) provides that "all other terms and expressions used but not defined in this Act, shall have the meanings as are assigned to them in the Pakistan Penal Code, 1860, or the Code of Criminal Procedure, 1898." The PPC and the CCP do not contain definitions of property and funds, therefore they are not helpful on this point. The authorities provided that the interpretation of these terms is not restrictive and is well-established in the jurisdiction. It is however worth noting that ATA certainly does not restrict the money involved in the financing offences under s. 11 to money derived from unlawful resources. All s. 11 offences still occur even if the financing was done using money derived from lawful sources.

273. **Ancillary offences to TF:** Under section 21-I of ATA, whoever aids or abets any offence, shall be punishable with the maximum term of imprisonment provided for the offence or the fine provided for such offence or with both.

274. Attempt is not criminalized as such under the ATA. The financing offences are however very broadly defined to encompass the acts of financing regardless of whether or not actual financing has occurred. They find sufficient that the act took place with intention, suspicion or knowledge regardless of any criminal result. To illustrate:

- Providing money or other property under s.11H (3) is defined in s. 11H (4) to include giving it, lending it or making it available. There is no reference that the money should have actually been received as long as it was made available.
- The offence of entering into funding arrangements under s. 11J occurs even if the money was not actually made available for the purposes of terrorism under this arrangement. It is sufficient if it was *to be made* sufficient.

275. In that sense these offences are mere endangerment offences and they capture the acts that are typically encompassed by attempt. It is the view of the assessor that there is no need for additional criminalization of attempt within this widely-cast framework of criminalization.

276. **The Offences of Participation and Organization:** Article 11V of the ATA makes it a criminal offence to direct activities connected with the commission, preparation or instigation of acts of terrorism or to direct an organization concerned with this type of activities. This offence is punishable by a maximum term of 7 years of imprisonment and to forfeiture of his assets.

277. Article 11F of the ATA makes it a criminal offence to belong or profess to belong to an organization proscribed according to the proscription mechanism defined by the ATA. This is a limited version of participation in a criminal group concerned with terrorist acts in accordance with article 2(5) of the UN Convention of the Suppression of the Financing of Terrorism. Worth noting that the ATA contains a broad definition of an “organization concerned in terrorism” in article 11A.

278. **Terrorism Financing is a predicate offence for money laundering (c. II.2):** As discussed above, under R.1, terrorism financing is a predicate offence to money laundering under AMLO. In addition, s. 11K of the ATA creates an autonomous offence of laundering terrorist property.

279. It is also worth noting here that the possession of money or other property for the benefit of a proscribed organization is a criminal offence under 11I (2).

280. **Extraterritorial Financing:** Absent court decisions this question will remain ambiguous. The fact that the word Government is defined in s. 1(i) to mean the Federal or Provincial Government of Pakistan gives the entire provision an inward focus. The remaining part of s.1 is neutral on the target of the threats or acts of violence, which allows it to be applied to any such acts regardless of whether they were committed against the interests of Pakistan or not. The domestic understanding of the provision however seemed to be shared amongst investigative agencies. When asked by the assessors, they indicated that the provisions are likely to be domestic and are not sure to be applicable to acts committed against other countries interests. The international standard requires that the law should be clearly applicable to the offences of financing of terrorism committed against other countries and foreign populations. Recent reporting in the press indicates that Pakistan is moving towards prosecuting individuals that were identified as involved in the terrorist attacks that occurred in Mumbai-India in January 2009. Should such action succeed before the court, it would indicate that the definition of terrorism under ATA extends beyond domestic terrorism. The investigation is however still pending and there is no final judicial decision on this matter.

281. **The Liability of Legal Persons:** The ATA does not define the term “person” under the Act. S. 2(cc) provides that “all other terms and expressions used but not defined in this Act, shall have the meanings as are assigned to them in the Pakistan Penal Code, 1860, or the Code of Criminal Procedure, 1898.” The term person is defined in the PPC as including both legal and natural persons. The criminal liability of legal persons is therefore applicable, but it still suffers from the general weakness of this form of liability under Pakistani law as described under the analysis of R.2 above.

282. **Proving the intentional element:** The same provision of the Evidence Act applies here. Inference of the intentional element could therefore be inferred from objective factual circumstances.

### *Analysis of Effectiveness*

283. Even though the offence of terrorism financing has been on the books since 2001, there has never been any investigation or prosecution of terrorism financing acts. Discussions with the law enforcement authorities reflected lack of awareness of the tool of pursuing the finance as means of fighting terrorism. While there is good understanding of the risk of terrorism, there is no adequate mapping of the risk and methods of terrorism financing amongst law enforcement agencies.

## 2.2.2. Recommendations and Comments

284. In order to meet the requirements of SR.II, the authorities should take the following steps:

- Remove the ambiguity regarding whether the offence of financing terrorism would apply to financing acts of terrorism committed against foreign governments and populations. This could be achieved either through legislative amendment, court decision, or authoritative interpretation of the provisions of the Act.
- The law should criminalize the participation in a terrorist organization regardless of whether this organization has been administratively proscribed or not.
- Expanding the scope of the offence to cover the financing of individual terrorists and the financing of terrorist organizations even when they are not proscribed.
- Review the system and identify the reasons for the lack of effectiveness of the financing offences.

## 2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"><li>- Pakistani law is ambiguous on the criminalization of financing of individual terrorists.</li><li>- Pakistani law is ambiguous on the criminalization of financing of terrorist organizations unless they are so proscribed by the Federal Government.</li><li>- There is no definition of property leaving the scope of the financing offences ambiguous.</li><li>- There is ambiguity as to whether the offence would extend to the financing of terrorism committed against foreign government or populations.</li><li>- The ATA does not recognize explicitly actions designed to intimidate international organizations as terrorism.</li><li>- There is overall lack of effectiveness reflected in the fact that there has never been any prosecution for terrorism financing.</li></ul>

## 2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)

### 2.3.1. Description and Analysis

285. Legal Framework: Provisions relating to freezing and forfeiture are found in AMLO, CNSA, NAO and ATA. Other than the NAO, these Acts and Ordinances enable freezing and post-conviction forfeiture of “tainted” property. NAO enables post-conviction forfeiture of any property found to be “disproportionate” to the accused’s “known sources of income”: s 10.

286. Additionally, the Code of Criminal Procedure establishes laws and procedures of general application in criminal proceedings to the extent they do not conflict with any procedures established for the Special Courts. Section 517 provides for confiscation of any property “regarding which an offence

appears to have been committed or which has been used for the commission of any offence” and therefore enables recovery of actual, but not intended, instrumentalities.

*Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):*

#### AMLO

287. AMLO has more than one avenue for forfeiture, each of which is problematic. Central to this is AMLO’s inconsistent use of terminology, such that it is unclear what, exactly, is able to be forfeited under any of the available mechanisms.

288. Section 4 of AMLO is the punishment provision. In addition to prescribing penalties of imprisonment and fines upon conviction for money laundering, it sets out liability to forfeiture of “property involved in the money laundering”.

289. The term “property involved in the money laundering” is undefined. “Proceeds of crime” is separately defined.<sup>8</sup> The Evaluation Team is therefore not convinced that s4 enables forfeiture of proceeds of crime.

290. Sections 8 and 9 offer an alternative, four-staged avenue of forfeiture by way of a provisional freezing mechanism that, upon conviction, may lead to forfeiture of the frozen assets. The four stages are: (i) provisional attachment by an investigator; (ii) confirmation of provisional restraint by the Court; (iii) Court declaration, following trial, that the order be rendered “final”; and (iv) apparent conversion of attachment into an order for forfeiture.

291. As with s 4, assets amenable to this process of forfeiture are inconsistently described as “proceeds of crime” and/or “property involved in money laundering” – with the result that the ambit of forfeiture under these provisions is also unclear.

292. Forfeiture under the s 9 procedure is further complicated by s 17(5), which provides as follows:

(5) After passing the order for forfeiture under sub-section (6) of section 9, the Court shall direct the release of all properties other than the properties involved in money laundering to the persons from whom such properties were seized.

293. As noted, s 9(6) provides that property frozen “shall” be forfeit upon conviction. Property frozen includes both proceeds and “property involved in money laundering”: s 9(3) (b). On its face, however, s 17(5) reduces the scope of an s. 9 order to only “property involved in money laundering”.

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8. Under s 8, an investigating officer may provisionally “attach” property reasonably believed to be “proceeds of crime or involved in money laundering”. In this context, then, “property involved in the money laundering” is clearly distinguished from proceeds. However, provisional attachment can be rescinded simply upon proof “that the property is not involved in money laundering” – no mention is made of the possibility that the property might nonetheless be proceeds. Equally, the test for whether a provisional order should be brought before the court for confirmation is simply whether it appears to concern “property involved in money laundering”. The position is further complicated by the fact that the Court can declare such an order to be “final” – with the result that the property is then amenable to forfeiture – if the property “is proceeds of crime or involved in money laundering”: ss 9(3)(b) & 9(6).

294. It is unclear whether the phrase “property involved in the money laundering” denotes instrumentalities. If it does, the mechanisms in sections 4, 8 and 9 would extend to instrumentalities of laundering – but not to instrumentalities of the predicate offence. As noted, the CrPC enables forfeiture of instrumentalities.

295. This term does not extend to intended instrumentalities of laundering: the “involvement” referred to in the phrase “property involved in the money laundering” is actual involvement, not intended involvement.

296. Because it is unclear whether proceeds are forfeitable under AMLO, it is also unclear whether indirect proceeds, or proceeds held by third parties, are forfeitable, even though the definition of “proceeds of crime” expressly extends to indirect proceeds.

### CNSA

297. Section 13 of the CNSA provides for forfeiture following conviction for the money laundering offence under s 12.

298. Section 13 refers to forfeiture of simply “the assets”. This must be a reference back to “the assets” laundered under s 12. Assets capable of being laundered, and therefore forfeited, are assets “derived, generated or obtained, directly or indirectly” from the commission of specified “narcotics offences” (including offences against the Customs Act). The provision extends to assets held in the offender’s name or in the name of “associates, relatives or any other person”.

299. In addition, where a person is convicted of an offence under the CNSA and is sentenced to more than three years, all assets “derivable from trafficking in narcotic substances” are forfeit unless the offender satisfies the Court “that they, or any part thereof, have not been so acquired”: s 19. Money laundering under s 12 is punishable by a minimum of 5 years, with the result that, following conviction for that offence, a reverse burden of proof always applies to proceeds of trafficking. The Evaluation Team was told that, for this reason, money laundering under s 12 is a useful charge against which to secure a conviction.

300. Save to the extent that derived assets might include instrumentalities, the CNSA does not appear to extend to forfeiture of actual or intended instrumentalities (although the CrPC does). However, the Evaluation Team was advised that the Special Court will, upon conviction, generally order the forfeiture of all assets that are provisionally frozen, which may well extend to instrumentalities and derivative assets.

301. Derivative proceeds are forfeitable to the extent that they are either (i) derived “indirectly”, within the meaning of s 12 or (ii) “derivable from trafficking” in cases where s 19 applies.

### NAO

302. Section 10 of the NAO provides for forfeiture of proceeds of corruption and corrupt practices by enabling post-conviction forfeiture of assets either “found to be disproportionate” to the offender’s “known sources of his income” or “acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamindars.” Benamindars are, essentially, nominees.



303. Because property amenable to forfeiture is any property found to be disproportionate to an accused person's known source of income, the NAO extends to forfeiture of derivative proceeds and, potentially, instrumentalities.

#### ATA

304. The ATA enables forfeiture of proceeds. Section 11Q(6) provides that, where a person is convicted of one of the terrorist financing offences contained in sections 11H to 11K, the Court may order forfeiture of any money or other property received as payment or other reward. This does not extend to derivative assets.

305. Under s 11R, there is also scope for civil-based forfeiture of cash seized from a "proscribed organization". This is considered below in relation to Special Recommendation III.

306. Under s 11V, the assets of any person convicted of "directing" organizations concerned in terrorism or terrorist activity may be forfeited.

307. The ATA also enables forfeiture of instrumentalities. Where a person is convicted under sections 11H or 11I (which variously establish the offences of collection, receipt, possession or use of money or other property, intending or suspecting it to be used "for the purposes of terrorism"), the Court may order forfeiture of any property that is in the person's possession at the time of the offence and is intended to be used (or suspected might be used) "for the purposes of terrorism": s 11Q(2) and (3). Similarly, where a person is convicted of being concerned in an arrangement, pursuant to which property is made available "for the purposes of terrorism", the property made available is amenable to forfeiture: s 11Q (4).

308. The scope of instrumentalities forfeiture is unclear. As noted earlier in this report, "for the purposes of terrorism" is not defined. "Terrorism" is defined in terms that do not include terrorist financing, other than for a proscribed organization: sections 6(1) and 6(5). Unless the entity concerned is proscribed, therefore, instrumentalities of terrorist financing are unable to be confiscated. Where the entity is proscribed, offices and accounts (which might represent either instrumentalities or derivative proceeds) may be frozen. However, there is no avenue for ultimate forfeiture.

309. It is not certain whether property amenable to forfeiture remains forfeitable when held by a third party. This is because, following a conviction under sections 11H or 11I, the Court may order forfeiture of any property that is "*in the person's possession at the time of the offence*" and is intended to be used (or suspected might be used) "for the purposes of terrorism": s 11Q(2) and (3).

#### *Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):*

310. General mechanisms to give effect to provisional attachment are found in the Code of Criminal Procedure. The Revenue Officer can prohibit disposition of property situated in rural areas and is competent to enforce the prohibition. Sub-Registrars appointed by the government have similar powers with respect to urban property. Receivers can be appointed. Attachment orders can also be marked against registered titles. Intangible assets can be frozen by informing the person who has right or interest in the property or by informing the authorities concerned with the transfer of such rights.

#### AMLO

311. As noted, initially a burden rests upon a person named in a section 8 provisional attachment order to convince the investigating officer that the property concerned is not "involved in money laundering". This is done pursuant to a notice issued by the investigating officer that "shall call" upon the person,

within not less than 30 days, “to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property”: s 9(1). If dissatisfied with the explanation, the investigating officer must make formal application for the Court to confirm the attachment.

312. If the accused person is acquitted, the attachment shall cease to have effect. If convicted, the court “shall, after giving an opportunity of being heard to the person concerned, make an order for forfeiture of such property”: s 9(6).

### CNSA

313. Section 37 of the CNSA enables provisional freezing of assets of an “accused” where there are reasonable grounds for believing such a person has committed an offence against that Act. For an initial period of seven days, freezing is pursuant to direction of the Director General. Freezing thereafter is determined by the Court. At this stage, property susceptible to freezing by the Court extends to assets of not only the “accused” but also his “relatives and associates”. “Assets” is broadly defined to include property owned, controlled or belonging to an accused, whether directly or indirectly, or in the name of his spouse or relatives or associates whether within or outside Pakistan for which they cannot reasonably account.

### NAO

314. Under s 12 of the NAO, the Chairman of the NAB has power to order the freezing of property of any person suspected of having committed an offence against that Ordinance. Such a freeze can extend also to the assets of any relative or associate of that person and any person acting on his behalf. Section 12 also provides for the processes by which such a freeze can be practically effected, including by way of appointment of receiver, taking possession, prohibiting rental payments and “such other methods” as the Chairman may deem fit.

315. Such freezes are effective for 15 days, following which a court order is required.

### ATA

316. The ATA does not confer provisional powers other than in relation to cash or the offices and accounts of a “proscribed organization”. Officials, however, referred the evaluation team to s 5(5) of the FIA Act 1974. This section empowers members of the FIA to direct that any property that might constitute “the subject-matter of [an] investigation” not be removed or disposed of. Its purpose is to ensure that property that is central to an investigation is preserved before “an order... for its seizure is obtained”, rather than to enable restraint of other property on the simple basis that it might become subject to an order for forfeiture. Further, the applicability of s 5(5) is limited to offences falling within the investigatory remit of the FIA, which does not include terrorism *per se*.

317. Under section 11O, an “authorized officer” may seize and detain any cash he reasonably suspects either (i) is intended to be used for the purposes of terrorism, (ii) constitutes resources of a “proscribed organization” or (iii) is “terrorist property” within the meaning of the Act. “Terrorist property” is defined as including proceeds of acts of terrorism or of acts carried out for the purposes of terrorism: section 2(aa). Detention of any such cash beyond a period of 48 hours requires Court order. A Court is empowered to order continued detention if “justified pending completion of an investigation of its origin or derivation”.

318. Under section 11R, an “authorized officer” may then apply to the Court for an order for forfeiture whether or not proceedings have been instituted in relation to any offence with which the cash may be

connected. This section also confers rights of audience upon any other party who may claim an interest in the cash. Rights of appeal are provided under section 11S.

319. As noted, provisional restraint under the ATA is also available over the offices and funds in accounts of “proscribed organizations”. Such offices and funds are liable to forfeiture upon conviction for any of the offences set out in section 11H to 11M, namely upon conviction for the various terrorist financing offences or for the offence of failing to disclose a reasonable belief that another person has committed an offence against the Act.

320. Beyond this, the offence provisions operate to effect a limited freeze on certain dispositions of other types of asset. For example, assets in the control of third parties are frozen to the extent that it is an offence to become concerned in an arrangement as a result of which “money or other property” is “made available” for the purposes of terrorism: section 11J. However, the offence provisions do not constitute a prohibition upon disposition per se. In each case, there must be the requisite mens rea, which is generally expressed in terms of knowledge or intention concerning an underlying “purpose of terrorism”.

*Ex Parte Application for Provisional Measures (c. 3.3):*

AMLO

321. An investigating officer may provisionally “attach” property reasonably believed to be “proceeds of crime or involved in money laundering” without prior notice.

CNSA

322. Provisional freezing under s 37 of the CNSA is pursuant to merely the direction of the Director General. The Director General has delegated this power to appropriate law enforcement personnel.

NAO

323. There is no need for prior notice of freezing by the Chairman of the NAB under s 12.

ATA

324. Detention of cash can be effected without prior notice. Freezing of offices and accounts is a legal consequence of proscription, which occurs without prior consultation.

*Identification and Tracing of Property subject to Confiscation (c. 3.4):*

325. As noted under Recommendation 28, the assessors were not made aware of any problems in relation to powers of search and seizure or powers concerning production of general or banking documentation.

*Protection of Bona Fide Third Parties (c. 3.5):*

326. The Evaluation Team was advised that Article 199 of the Constitution provides an avenue of redress for third parties aggrieved by freezing, seizing or forfeiture action. This article enables the High Court to make orders that, inter alia, protect certain rights protected by the Constitution.

327. Aside from the convoluted nature of a writ process seeking Constitutional orders from the High Court, this provision is of limited use in the present context. Article 23 of the Constitution affords a right

to possession of property, subject to “reasonable restrictions imposed by law in the public interest”. A petitioner would need to show that the laws enabling freezing, seizing or forfeiture action were not reasonably enacted in the public interest. Article 24 protects against dispossession other than in accordance with the law. It is protection from laws that do enable dispossession that is relevant in the present context.

### AMLO

328. A person claiming an interest in property that is provisionally attached is afforded an opportunity of convincing the “investigating officer” that the property is not involved in money laundering: section 9(2). This provides limited protection only. Where the investigating officer does determine that the property is involved in money laundering, he/she “shall” apply for confirmation of the order. Furthermore, as noted, the order automatically becomes “final” if this is “proved in Court”, after which forfeiture “shall” ensue. The protection afforded by the requirement that, before ordering forfeiture, the Court provide persons with “an opportunity of being heard” (s 9(6)) is very unclear. There is no provision for equitable compensation.

### CNSA

329. Under section 33(2) third party claimants may apply for the setting aside of any order of confiscation. This right must be exercised within 30 days of the order, although this may also be extended. Unlike under the AMLO, NAO and ATA, this provision affords full third party protection: the issue is not whether the property was used or acquired in a particular way, but simply whether the third party “may claim any right thereto”.

### NAO

330. Under the National Accountability Ordinance, third parties have rights to object to provisional orders made by the Chairman: section 12. Rights to object must be exercised within 14 days (subject to only one right of extension for a further 14 days). The legislation provides no grounds or guidance upon which any objections stand to be considered.

331. The NAO does not permit appeals against final orders for forfeiture, which are automatic upon conviction.

### ATA

332. As noted, the ATA confers a power of civil-forfeiture of cash. Section 11R of the ATA confers upon third party claimants to detained cash an “opportunity to be heard” by the Court. Section 11S confers a right of appeal to the High Court. The sole basis of any objection by a third party complainant appears to be that the cash is not “of a kind as defined in section 11Q”. That is to say, as under AMLO, unwitting third parties have no redress if their property has been misused by terrorists or terrorist financiers. Furthermore, the right of appeal under section 11S is available only to “parties” to the proceedings. It is unclear whether a third party claimant is conferred standing as a “party” simply by being conferred an “opportunity to be heard”.

333. Most significantly, no protection is afforded to bona fide third parties holding an interest in non-cash assets that are susceptible to post-conviction forfeiture under section 11Q on the basis that they “might be used for the purposes of terrorism”.

334. The Court's powers to order forfeiture appear to be discretionary. No guidance is provided as to how that discretion is to be exercised. Presumably, the overarching requirement is that the discretion be exercised "in the interests of justice". It is arguable (although unclear), therefore, that third party interests may be taken into account as an element of the exercise of the overarching discretion to order forfeiture. Nonetheless, the legislation should be more specific in this respect.

*Power to Void Actions (c. 3.6):*

335. The only provision enabling the avoidance of contractual or other arrangements entered into by persons who knew (or should have known) that such arrangements would prejudice the recovery of property liable to confiscation under AMLO is s 23 of the NAO. This section renders it an offence for "an accused person or any relative or associate" to transfer or create a charge on "any property owned by him or in his possession" once the Chairman NAB has initiated an investigation and pending determination before the Court. It further deems any such transfer or charge to be "void".

336. Aside from this, s 206 of the Penal Code does not enable the avoidance of contractual or other arrangements but does render it an offence to undertake certain actions to prevent the operation of an actual or likely forfeiture order.

*Additional Elements (Rec 3)—Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):*

337. Section 31 of the Prevention of Smuggling Act provides for civil forfeiture of "property which is reasonably suspected to be acquired by international (but not inter-Provincial) smuggling. A "Special Judge" may issue a notice calling upon any person reasonably suspected of holding property acquired by smuggling to "show cause" why that property should not be forfeited. Where, following hearing, the Judge is "satisfied" that the property is acquired by smuggling, the property may be forfeited: s 32. The burden of proof in such hearings rests with the respondent: s 33. The ANF advised that, because this power is civil-based and entails a reverse burden of proof, it is well-used by that agency in cases of international drug trafficking.

338. As noted, s 19 of the CNSA itself supplies a reverse burden in cases where the offender is sentenced to more than 3 years.

339. Forfeiture of "disproportionate assets" under s 10 of the NAO is effectively also pursuant to reverse burden whenever consequent upon a conviction for the offence of being in possession of "disproportionate" assets (under s 9): the offence itself places a burden upon the accused to prove lawful provenance.

*Analysis of Effectiveness*

340. The Terrorist Financing offence – and hence the associated forfeiture provisions of the ATA – are untested.

341. Similarly, there have been no convictions under AMLO, with the result that the level of effectiveness of that Act's forfeiture regime is undemonstrated. As noted, however, ambiguities in its forfeiture provisions are liable to undermine effectiveness. The Evaluation Team was advised that the legal profession and the Courts in Pakistan vigilantly endeavor to protect the "fundamental rights" to possess property that are enshrined in the Constitution. Where laws intruding on these rights are

ambiguous, they are vulnerable to challenge. Additionally, AMLO presents certain procedural complexities that have the potential to impact the effectiveness of the regime.

- It purports to direct forfeiture as an automatic consequence of a “final” order yet confers the offender an opportunity to be heard – and without providing any guidance as to the purpose of any such hearing.
- For all the attachment process does not legally require an individual “to indicate the sources of his income, earning or assets” when called upon, the fact that failure to cooperate will in all probability lead to continued freezing arguably compromises the privilege against self-incrimination enshrined in Article 13 of the Constitution.
- The “Court” that considers whether “it is proved... that the “property is proceeds of crime or involved in money laundering” is the trial court (i.e., the court determining the substantive proceedings for a predicate or money laundering offence). The Evaluation Team was advised that the trial Court would receive not only evidence relevant to the charge at hand but also evidence relevant to the provenance of the restrained property. Because affected persons must be provided a minimum of 30-days to “show cause” why the property ought not be restrained, it is unclear how provisional restraint of any property discovered within 30-days of trial can result in forfeiture.

342. The CNSA and the Prevention of Smuggling Act supply appropriately enabling powers that appear to be well-used by the ANF. The Evaluation Team was advised that an average prosecution in the Special Court takes approximately only 1 year to resolve and that conviction rates are high: between January 2005 and the end of December 2008 the conviction rate stood at 88.51 percent. Additionally, at the time of the Evaluation Team’s visit, some 258 asset investigation cases were either in train, in trial or under appeal. It is standard operating procedure that, upon commencement, investigations are referred to one of five “Regional Directorates” for a determination as to the utility of conducting parallel asset-related investigations.

343. However, it was made clear to the Evaluation Team that the ANF pursues only investigations associated with a predicate offence and has not yet pursued as a stand-alone offence a charge under s 12 of the CNSA. Further, there are often considerable systemic impediments to seeking forfeiture. Since the inception of the CNSA in 1997, USD60.18 million in assets have been frozen pursuant to action taken by the ANF under ss 12 and 19 of that Act and s 31 of the Prevention of Smuggling Act. To date, however, under 10 percent of this has been actually forfeited (USD5.85 million). This was explained to the Evaluation Team as a consequence of court delays in seeking forfeiture orders from the Special Court: applications for forfeiture are frequently sought against leaders within organized criminal groups who have considerable resources to legally resist. The Evaluation Team was further advised that, as a result, it is not uncommon for forfeiture applications to take 10 – 15 years to resolve. The high percentage of assets frozen but not forfeited therefore represents not so much a poor conversion rate but systemic impediments to the efficient adjudication of forfeiture applications.

344. Similar impediments stymie official attempts to realize assets that are, finally, subject to forfeiture orders. The Evaluation Team was advised that, of the USD5.85 million in assets subject to forfeiture orders, only USD0.65 million has actually been realized. This was explained as a consequence of the method of realization – public auction – and the employment by organized criminal syndicates of intimidation tactics aimed at dissuading prospective bidders.

345. Under the NAO, in the 3.5 years between 2005 and mid-2008 assets to the value of 9.9 billion Rs were forfeited.

### 2.3.2. Recommendations and Comments

346. The ambiguities and procedural deficits in AMLO's forfeiture provisions, as identified in this report, should be remedied. In particular:

- It should be made clear that post-conviction forfeiture under s 4 covers proceeds of crime (both direct and indirect).
- The inconsistencies in terminology within sections 8 and 9 should be resolved, such that both proceeds of crime and instrumentalities are clearly amenable to freezing and forfeiture.
- The uncertainties surrounding the procedures for seizing, freezing and forfeiture should be clarified.
- The Act should also cover forfeiture of property of corresponding value.
- Powers of provisional freezing in terrorism and terrorist financing related cases should be introduced.
- Third parties should be afforded protection under AMLO and the ATA. Third party protection under NAO should extend to protection against forfeiture, as well as provisional freezing.
- Power to void actions taken to prejudice recovery of property subject to forfeiture should extend to beyond forfeiture under the NAO.
- Procedures within the counter-narcotic Special Courts should be reviewed with a view to ensuring far greater expedition in the disposal of forfeiture applications (for example, by way of judicially-enforced time-tabling orders).

### 2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
<b>R.3</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ AMLO's forfeiture provisions do not clearly enable forfeiture of proceeds of crime.</li> <li>▫ Only the NAO permits forfeiture of property of corresponding value.</li> <li>▫ There is no capacity to provisionally freeze under the ATA.</li> <li>▫ Only the CNSA offers effective protection to third parties.</li> <li>▫ Only the NAO confers power to void actions.</li> <li>▫ Levels of forfeiture under the NAO are not high.</li> <li>▫ The effectiveness of forfeiture under the CNSA is blunted by systemic impediments in the Special Court.</li> <li>▫ AMLO's attachment and limited confiscation powers have not been tested.</li> </ul>

## **2.4. Freezing of funds used for terrorist financing (SR.III)**

### **2.4.1. Description and Analysis**

347. Legal Framework: The key mechanisms for freezing assets in accordance with the relevant UNSCRs are Statutory Regulatory Orders (to give effect to UNSCR 1267) and proscription under the ATA (to give effect to UNSCR 1373).<sup>9</sup>

#### *Freezing Assets under S/Res/1267 (c. III.1):*

348. Freezing under UNSCR 1267 is enabled by virtue of the United Nations (Security Council) Act 1948. Section 2 of that Act provides that the Central Government may, “give effect to any decision” of the Security Council by way of “order published in the official Gazette”. In particular, the Government may make such provisions “as appear to it necessary or expedient for enabling... measures to be effectively applied and... for the punishment of persons offending against the order.”

349. Orders made pursuant to this power are termed Statutory Regulatory Orders (SROs). SROs constitute a form of subordinate legislation. SROs are issued with each amendment to the 1267 list. Once promulgated, they are published in the Gazette.

350. SROs relating to UNSCR 1267 that have been issued to date direct that “bank accounts, funds and financial resources, including but not limited to those used for the provision of internet hosting or related services” of listed entities shall “stand frozen”.

351. These SROs are expressed to take effect either “from the date of implementation of instructions” issued by the State Bank of Pakistan “or” from the date of implementation by any other duly authorized authority.

352. SROs apply to all persons in Pakistan. Express provision within the United Nations (Security Council) Act 1948 enables SROs to provide “for the punishment of persons offending against the order”. To date, no SROs have made such provision.

353. The SROs do not define the meaning of “stand frozen”. Nor do they define the meaning of “funds”. In practice, however, subject to a person becoming aware of the freezing requirement via the Gazette, the implementation of such freezes is limited by the extent of to which SROs are specifically disseminated.

354. Officials advised that, once notification of a UN designation is received, SROs are promulgated within 10-12 hours, frequently on the evening of the same day although often late in the evening. These are then immediately disseminated.

#### *Freezing Assets under S/Res/1373 (c. III.2):*

355. Section 11B of the ATA enables the Federal Government to “by order” list in the First Schedule to the Act “organizations” that it considers to be “concerned in terrorism” (the definition of which has been considered earlier in this report). “Organizations” is defined as “any group, combination or body of

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9. As noted earlier, (i) the offence provisions operate to effect a limited form of freeze in instances where the person in a position to make a disposition is aware of some nexus between the property and a terrorism-related purpose and (ii) there is power to seize and detain cash that can be linked to terrorism in one of the proscribed ways.



persons acting under a distinctive name”. Proscription, therefore, cannot extend to individuals or even clandestine organized criminal groups. The need for some distinctive name renders proscription appropriate only to organizations of a political, religious or military nature – as is reflected by the 22 proscriptions made to date.<sup>10</sup>

356. Proscription does not affect a comprehensive freeze in accordance with UNSCR 1373. Freezing is limited to the sealing of the offices of the entity, the freezing of its accounts and the detention of any cash found in its possession: s 11E and s 11O.

357. Additionally, a proscribed organization must submit “all accounts of its income and expenditure for its political and social welfare activities and disclose all finding sources to the competent authority designated by the Federal Government”: s 11E (2).

358. The lead agency for proscription is the Ministry of Interior. The process is coordinated by the National Crises Management Unit. Material taken into consideration includes intelligence received from a range of agencies, including provincial police. The decision to proscribe is taken by the Minister of Interior. The entity concerned need not be notified beforehand.

359. Freezing “without delay” in the context of UNSCR 1373 means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organization. Given limitations upon the scope of entities capable of being frozen pursuant to the ATA, the proscription process is unable to effect freezing without delay.

#### *Freezing Actions Taken by Other Countries (c. III.3):*

360. The proscription process might enable Pakistan to implement some level of freezing over the assets of entities listed by another State – but only where the entity is one possessing a “distinctive name”.

361. Proscription has not been used this way to date. Nor are there any established processes that would enable it to be so used. Uncertainty as to whether the ATA is purely “domestically-focused” (as discussed in relation to SRII) may limit Pakistan’s capacity to use the proscription process this way – unless the entity concerned is also a domestic threat to Pakistan.

#### *Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):*

##### 1267 - SROs

362. SROs cover (i) assets held by the listed entity and those held on behalf and (ii) assets and derivative assets.

##### 1373 - ATA

363. The limited freezing powers available under the ATA apply only to assets of “proscribed organizations”, namely, “its” offices and accounts. Whether offices and accounts held by third parties on

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10. Lashkar-e-Jhangvi, Sepha-e-Muhammad Pakistan, Jaish-e-Muhammad, Lashkar-e-Tayyaba, Sipah-e-Sahaba Pakistan, Tehreek-e-Jaafria Pakistan, Tehreek-e-Jaafria Pakistan, Tehreek-e-Nifaz-e-Shariat-e-Mohammadi, Tehreek-e-Islami, Al-Qaeda, Millat-e-Islamia Pakistan, Jamiat-ul-Ansar, Jamiat-ul-Furqan, Hizb-ul-Tehrir, Khair-un-Naas International Trust, Balochistan Liberation Army, Islamic Students Movement of Pakistan, Lashkar-e-Islam, Ansar-ul-Islam, Haji Namdar Group, Tehrik-e-Taliban Pakistan.

behalf of a proscribed organization can be frozen is unclear. The requirement that the organization be one operating under a “distinctive name” might suggest that any offices associated with that name would come within the ambit of any freeze.

*Communication to the Financial Sector (c. III.5):*

364. SROs are initially circulated to a range of agencies:

- Ministry Secretaries: Interior, Finance, Law Justice & Human Rights, Information & Broadcasting.
- Other federal entities: State Bank of Pakistan, ISI, Investigation Bureau, NAB, FIA, National Crisis Cell of Ministry of Interior, Attorney General, Electronic Media Regulatory Authority.
- Provincial entities: the Chief Secretaries and Home Secretaries of each of the provinces.

Notably, SECP is not included in this list. In terms of immediate freezing of financial assets, the critical recipient in this list is the SBP.

365. SBP communicates SROs and designations to reporting entities within its remit. Approval is required from the Governor of SBP. Once approval is obtained, circulation (via fax) is made to the Chief Executive / President of each of the regulated entities. Heads of financial institutions are required to inform the SBP of any overseas travel, with the result that the SBP is aware of an alternative contact for dissemination. To further expedite this process, the Deputy Governor-SBP now grants approval for the issuance of directives.

366. The Evaluation Team was advised that outward dissemination from SBP in this fashion “often” occurs the same day as receipt of the SRO by SBP but sometimes occurs the following day (if related UN designations were made in the afternoon, being late at night in Pakistan). Receiving entities are required to especially designate receiving officers. Receiving entities are required to report back to SBP the results of implementation, whether via nil return or otherwise. The report-back deadline is stipulated in the disseminated Circular. Typically, this is within 5 to 15 days<sup>11</sup>. The precise time frame depends upon an assessment by SBP of the likelihood of regulated entities possessing assets of the listed entity.

367. Notification of proscriptions under the ATA occurs by way of (i) dissemination within Government of a preliminary “Notification”, advising that a Statutory Regulatory Order has been promulgated and is to be published in the Gazette and (ii) actual Gazettal of the Order. The Evaluation Team was provided with two sample Notifications that had been disseminated within Government. The listed recipients in each case varied but in both cases included the Secretary of the Ministry of Finance – in one case this was expressly stated to be for the purpose of enabling the Secretary to “take further necessary action with regard to freezing of bank accounts etc” of the proscribed entity.<sup>12</sup>

368. Unlike SROs relating to UNSCR 1267 entities, the SBP does not receive ATA Notifications directly. The Ministry of Finance forwards notifications to SBP for onward dissemination by SBP.

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11. This report-back period has now been reduced to 5-7 days.

12. The Home Secretaries of the Provinces are also listed, presumably to ensure that provincial law enforcement agencies enforce the other (non-financial) aspects of freezing under the ATA.

*Guidance to Financial Institutions (c. III.6):*

369. SBP has not issued any guidance pertaining to the implementation of freezes, concerning the accrual of interest to frozen accounts or permissible withdrawals pursuant to UNSCR 1452. In practice, SBP permits such accounts to be credited but will not permit withdrawals.

*De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):*

SROs

370. Delisting under UNSCR 1267 can occur via promulgation of an amending SRO.

ATA proscriptions

371. Pursuant to s 11C of the ATA, the Federal Government must appoint a Proscribed Organizations Review Committee for the purpose of reviewing applications for “delisting”, i.e. removal from the First Schedule. This has not yet occurred. Officials were unable to advise the Evaluation Team who might sit on such a committee.

372. A proscribed organization has 30 days to file a review application, after which the Committee must decide the matter within 90 days. The proscribed organization has a right of appeal to the High Court.

373. Additionally, s 11U confers upon a proscribed organization a right to apply for a review of the proscription after three years on the basis “that the reasons for its proscription have ceased to exist”.

*Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):*

374. The Evaluation Team was advised that false positive name-hits are a real issue in Pakistan. and that reporting entities discovering name-hits will either (i) wait for confirmation from the SBP before freezing an account but endeavor to delay transactions pending confirmation or (ii) implement a freeze instantly but make its continuation contingent upon SBP approval. The Evaluation Team was advised that this process of confirmation was frequently required with the recent proscription of Jamaat-ul-Daawa in December 2008. The team was also advised that confirmation can take up to 5 days.

*Access to frozen funds for expenses and other purposes (c. III.9):*

375. The Evaluation Team was advised that the courts have jurisdiction to allow access to frozen assets for the purpose of meeting basic expenses. No cases were cited in support. Further, it is difficult to see how access might be granted. The SROs do not permit of exception. Similarly, under s 11E of the ATA the freezing of accounts and sealing of offices is a mandatory consequence of proscription. Moreover, enabling such access may well constitute an offence against one of the terrorist financing provisions – particularly section 11K, which renders it an offence for a person to facilitate control by another person of terrorist property.

*Review of Freezing Decisions (c. III.10):*

376. Appropriate recourse to the High Court is available to any proscribed organization dissatisfied with a decision of the Proscribed Organizations Review Committee.

*Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)*

377. Pakistan's capacity to freeze terrorist assets is dependent upon the issuance of an SRO or proscription under the ATA. Confiscation is limited to forfeiture of seized cash of proscribed organizations or post-conviction forfeiture, the scope of which is mentioned under Recommendation 3.

*Protection of Rights of Third Parties (c. III.12):*

378. Neither the SROs nor the ATA provide protection to unwitting third party claimants whose property may have been frozen as a result of misuse by, for example, a terrorist organization.

*Enforcing the Obligations under SR III (c. III.13):*

379. SROs apply to all persons in Pakistan. However, they do not provide for sanction in the event of transgression. This is despite express provision within the United Nations (Security Council) Act 1948 enabling SROs to provide "for the punishment of persons offending against the order". Nonetheless, officials advised the assessment team that SBP has "a range of [sanctioning] tools available and can invoke powers against banks as well as against management and board of directors as per severity of situation". No legal basis for this proposition was offered. Nor is one readily apparent. The principal sanctions provision under the BCO is s 83. Sanctions under s 83 are triggered only where there has been a contravention of a provision of the ordinance itself or of any "order, rule or direction made or condition imposed thereunder". The only sanction that appears to the assessors to be of more general applicability is s 41A, which enables the removal from office of a banking officer. This power is available – and therefore of possible relevance to enforcement of freezing requirements – whenever removal of office is "in the public interest".

380. Officials also alluded to the possibility that the SROs themselves impliedly confer a sanctioning power in that they expressly contemplate "implementation of instructions issued by the State Bank of Pakistan [and other authorized federal or provincial entities]". This argument is not convincing. Implementation of instructions is mentioned only in the context of defining when the freezes take effect (i.e., upon "implementation of issued instructions"). At most, this reference supports an implied authority on the part of the SBP to actually issue such instructions. Officials advised that SBP does not do this. It has the power to do so under s 41 of the BCO. If this power were used, sanctions for non-compliance would be available. As noted later in this report, any person who is "knowingly a party" to a breach of a directive under s 41 is liable under s 83(5) to a fine of 200,000 Rs with a continuing liability of 10,000 Rs for every additional day of contravention.

381. There is no provision in the ATA for penalty in the event of non-compliance with a freeze mandated under s 11E. The argument above - that, within UNSCR 1267-related SROs, there is an implied delegated authority to sanction - could not apply to sanctions for non-compliance with ATA freezes.

382. Monitoring for compliance with the SROs and proscriptions under the ATA is limited to systems audits undertaken by the SBP as part of its AML/CFT supervision.

383. In 2003, the SBPs power to enforce compliance with UNSCR 1267 was successfully challenged in the High Court of Sindh. That case concerned the freezing of accounts pertaining to a registered trust called the Al Rasheed Trust. In that case, a direction under s 41 was issued. However, critical to the Court's decision to declare the SBPs direction to freeze to be *ultra vires* was the fact that, at the time the direction was issued, no SRO had been promulgated by the Government. The assessors were advised

that, since then, communications from the SBP concerning freezing have all been subsequent to the promulgation of SROs and have not been challenged.

384. As noted earlier in this report, any person who is “knowingly a party” to a breach of a directive under s 41 issued by the SBP to effect a freeze is liable to a fine of 200,000 Rs with a continuing liability of 10,000 Rs per annum for every additional day of contravention: s 83(5) Banking Companies Ordinance 1962.

385. SBP advised that it is unaware of any instances of non-compliance freezing obligations under UNSCR 1267 or under the ATA.

*Additional Element (SR III)—Implementation of Measures in Best Practices Paper for SR III (c. III.14):*

386. Several of the measures contained in the Best Practices Paper for SR III are not implemented. For example: there are no procedures for providing access to frozen funds or other assets in accordance with S/RES/1452 (2002); there are no hold-harmless or public indemnity laws; there is no system for mutual, early, and rapid pre-notification of pending designations to other jurisdictions; there are no procedures to ensure that law enforcement authorities provide feedback to financial institutions indicating how financial intelligence is being used to support law enforcement actions.

*Additional Element (SR III)—Implementation of Procedures to Access Frozen Funds (c. III.15):*

387. As noted, Pakistan’s capacity to grant access to frozen funds is questionable.

*Analysis of Effectiveness*

388. It is the view of the Evaluation Team that, given the risks present in Pakistan the domestic proscription under the ATA of only 22 entities is not high. The Evaluation Team accepts, however, that under the ATA proscription is limited to certain types of organization possessing a distinctive name.

389. Significantly, over USD10 million in assets have been frozen to date in accordance with UNSCR 1267. Approximately USD150,000 in assets have been frozen pursuant to domestic proscription.

390. Additionally, as noted, the Evaluation Team was advised that in the absence of indemnity from litigation some reporting entities await “confirmation” from SBP before initiating freezing action following a name-hit. Because of the relatively high prospect of false positives in the context of Pakistan, this practice is common.

391. The Evaluation Team was further advised that often there are delays in the provision of confirmation to banks as to whether accounts subject to name-hits do indeed belong to the listed entity. In such circumstances, some reporting entities resort to endeavoring to delay cooperation with withdrawal requests by the affected customer.

#### **2.4.2. Recommendations and Comments**

392. The authorities should consider the following recommendations:

- The ATA should be amended so as to provide a mechanism for the freezing of assets of entities covered by UNSCR 1373 that are not organizations with a distinctive name (and therefore unable to be proscribed).

- The scope of property capable of being frozen should be expanded to cover all assets. Under the SROs it is expressly limited to “bank accounts, funds and financial resources, including but not limited to those used for the provision of internet hosting or related services”. Action under the ATA is limited to offices, accounts and seized cash.
- SROs should come into force upon promulgation, such potential ambiguity as to whether they take effect “from the date of implementation of instructions” issued by SBP or from the date of implementation by “any other duly authorized authority” is resolved.
- Non-compliance with freezing obligations should be made enforceable via sanction. With respect to entities regulated by SBP, this could be done very simply via the issuance of a single directive under s 41 of the BCO concerning all entities proscribed or listed to date (and future disseminations by SBP being similarly coupled with related directions). Additionally, an SRO could be issued providing penalties and enforcement procedures (as contemplated under the United Nations (Security Council) Act 1948). Such an SRO would ensure that non-compliance is generally sanctionable, including in relation to unregulated entities.
- Dissemination of SROs and notifications of proscriptions should extend to SECP, such that the power to direct and enforce freezing action is not limited to those entities regulated by SBP.
- The report-back period of 5 to 15 days should also be reviewed, particularly such that same-day turn-around is required where entities have IT systems capable of concluding a same-day data-matching.
- Consideration should be given to conferring reporting entities with indemnity from litigation arising from freezing action, so as to address the concerns of entities reluctant to undertake freezing action in the absence of confirmation from SBP.
- Guidance should be provided to entities expected to undertake freezing action – particularly if, as recommended here, entities regulated by SECP are to be newly subject to enforced compliance. Such guidance should consider matters such as access to funds, as set forth in UNSCR 1452.
- Protection should be more clearly and readily extended to third parties inadvertently affected by freezing action.

#### 2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
<b>SR.III</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ Freezing of assets of non-1267 entities is limited to financial assets and compromised by the need for such entities to possess a “distinctive name”.</li> <li>▫ Although SROs relating to 1267 entities are of general application, only the freezing action of entities regulated by SBP is monitored</li> <li>▫ Freezing of assets of 1267 entities does not extend to all assets.</li> <li>▫ Non-compliance with freezing obligations is not sanctionable.</li> <li>▫ In the absence of indemnity/hold-harmless provisions, some entities do not effect freezes without confirmation that there has been no false-</li> </ul>

		<p>positive name-hit, which may take up to five days.</p> <ul style="list-style-type: none"> <li>▫ Pakistan's capacity to freeze assets of entities in line with foreign country freezing measures is not clear nor are there any established procedures enabling consideration of foreign requests for freezing..</li> <li>▫ No guidance has been provided to entities expected to undertake freezing action.</li> <li>▫ There are no provisions for the protection of bona fide third parties.</li> </ul>
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## **Authorities**

### **2.5. The Financial Intelligence Unit and its Functions (R.26)**

#### **2.5.1. Description and Analysis**

393. Legal Framework: The Financial Monitoring Unit (FMU), the FIU for Pakistan, was established as an independent body as a result of the promulgation of the Anti-Money Ordinance (AMLO) in September 2007 and its listing in the official Gazette on 4 December 2007.

394. Separate and multiple reporting requirements existed for some years prior to AMLO under the NAO, CNSA and SBP Prudential Regulations. These statutes and instruments nominated a number of agencies as competent to receive STRs. In the years immediately prior to the AMLO, an agreement was reached to allow the SBP to serve as the point of receipt for all STRs provided under the various instruments, and agreed that SBP would be responsible for forwarding on STRs to NAB, ANF and the Police. An AML Unit in the BRPD of the SBP performed the function to receive and pass on STRs, however no analysis was undertaken. The majority of STRs received in the pre-AMLO period were directed to the NAB.

395. Section 6 AMLO deals with: the appointment of its Director General; makes the FMU subject to the supervision and control of the General Committee; deals with the functions of the FMU: receipt, analysis, dissemination, creation and maintenance of a database; co-operation with foreign FIUs and LEA; to represent Pakistan at FIU forums; submission of reports to the NEC; frame regulations regarding STRs and CTRs in consultation with SPB and SECP; engagement of experts (where necessary) to implement the Ordinance; and any functions to fulfill the Ordinance.

396. Section 7 AMLO deals with reporting requirements for STRs and CTRs and allows the FMU to prescribe the extent and manner of reporting. It also mandates reporting entities report directly to the FMU. CTR implementation will require regulations to be issued before the system is put into effect.

397. Section 26 AMLO Sets out arrangements regarding agreements with foreign countries whereby the Federal Government may enter into such agreements.

398. The FMU issued the Money Laundering Regulation (6 January 2009) to all covered institutions, which reinforces the obligations in AMLO to report STRs and designates a standard reporting form for STRs.

399. Prior to the Money Laundering Regulations 2008 the SBP issued Prudential Regulations, which are still in force, requiring reporting of suspicion to the FMU.

400. The ATA s11L contains the following requirement to make a report related to suspicion of TF to a police officer rather than the FIU:

*where a person (a) believes or suspects that another person has committed an offence under this Act; and (b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment, he commits an offence if he does not disclose to a police officer as soon as is reasonably practicable his belief or suspicion, and the information on which it is based..*

*Establishment of FIU as National Centre (c. 26.1):*

401. The FMU was established on 4 December 2007 as a National Centre for the receipt, analysis, and dissemination of STRs and other data related to ML and TF. Previous requirements required separate STR reporting to the SBP, NAB and ANF and the Police based on the suspected predicate crime, whilst very low in number, these have not been forwarded to FMU for incorporation in their database. These previous reporting requirements have been superseded by s7 AMLO.

402. At the time of the onsite visit the FMU had a Director General and four staff, all whom were drawn from the SBP. One member of the FMU staff had benefitted from an earlier secondment to the NAB.

403. Section 7 AMLO mandates the reporting by 'financial institutions', of suspicion of ML and TF to the FMU. However, section 11L ATA has a more general and wider reporting requirement to a police officer of any offences against the ATA, which includes TF, from any person not just 'financial institutions' this creates the potential for two separate reporting requirements in relation to TF.

404. **Receipt:** At the time of the onsite visit the FIU had not yet established an online system of reporting. All STRs were sent to the FMU by courier service and received by the FMU Director General or a delegated officer in his absence.

405. Since its inception FMU has received a total of 170 STRs in 2008 and 350 STRs in the period January – April 2009, and those were received exclusively from the banking sector. The assessors were also informed that the quality of the reports FMU is receiving is generally quite poor. Both of these factors affect the quality of eventual analysis.

406. **Analysis:** Following receipt of STRs, they are assigned to designated staff for analysis. FMU analysts undertake a range of checks. For the vast majority of all STRs the FMU requests further information from the reporting institution, both to fill in the gaps in the reported STR and to gain further account records. FMU analysts cross check STRs with current FMU data holdings and a commercial PEPs database. FMU analysts generally do not go to either FIA, ANF, Customs or the Police for criminal records or criminal intelligence, except in the case of checking the names against the FIA's list of ATA Schedule 4 proscribed organizations. Analysts regularly cross check with NAB's data holdings as well as accessing SECP company records. FMU is working towards having online access to the NADRA database, which cross references various data holdings and the national ID card system.

407. AMLO mandates the creation and maintenance of a database within the FMU; currently retrieval of STRs and other data as well as the overall analysis of STRs are seriously hampered by the lack of such an effective database application. FMU is currently using a poorly designed Microsoft Excel spreadsheet as its database application. The analysis department, effectively all 4 FMU staff (everyone except the DG FMU), is generally under resourced to effectively undertake its core functions – additional work and current working practices also impinges on effectiveness



*Guidelines to Financial Institutions on Reporting STR (c. 26.2):*

408. FMU is required to frame regulations in consultation with SBP and SECP for ensuring receipt of STRs and CTRs from the financial institutions and non-financial businesses and professions with the approval of the NEC. In accordance with this mandate Regulations mandating the form of reporting were issued in 6 January 2009 by the FMU, SBP and the SECP. Whilst these regulations designate the forms on which to report STRs and CTRs they do not give any guidance on discretionary or mandatory fields nor is there guidance on the nature and or extent of detail required in each field. Such guidance on completion of the STR form is particularly important as the 'language' used in the form is primarily banking sector specific yet the single STR form is designed to be used by all reporting entities.

*Access to Information on Timely Basis by FIU (c. 26.3):*

409. The provisions with s6(4)(b) AMLO focus on access to official information for analysis: "to analyze the STRs and CTRs and in that respect the FMU may call for record and information from any agency in Pakistan (with the exception of income tax information) concerning the person in question. All such agencies shall be required to promptly provide the requested information". Access to this 'official' information is on an indirect case-by-case basis, and there is a lack of systematic approach to gathering further information to aid analysis of STRs. Such an approach effects timeliness of enquiries and response time and also hampers effective analysis of STRs. The FMU has direct access to only limited information:

- FIA database on proscribed organizations and their associates
- SECP database which includes Company registration information.
- Credit Information Bureau (CIB);
- World Check database.

410. The FMU is negotiating with the National Database Registration Authority (NADRA) to gain online access to the NADRA database, which is a comprehensive national holding of various data sets related to all National Identity Card holders in Pakistan.

*Additional Information from Reporting Parties (c. 26.4):*

411. FMU access to financial information does not appear to be explicitly covered within AMLO, and the FMU relies on Section 6(4) (d) of AMLO which provides for the FMU to analyze STRs and CTRs and, to achieve that role, to call for information from any agency in Pakistan. This does not clearly extend FMU the power to call for additional information from reporting parties, albeit in practice banks appear willing to co-operate in the provision of additional data covering STRs when requested by the FMU. The reason for this cooperation from banks may well be because they view the FMU as part of the SBP (this is a matter of general perception by the financial sector) and see the provision of information as a requirement of their supervisor. . Given the lack of clear powers within AMLO, there is a need for the FMU to clearly indicate the powers of another competent authority, whether SBP, SECP or some other regulator, which authorizes the FMU to obtain additional information from reporting parties to aid in analysis of FMU data.

*Dissemination of Information (c. 26.5):*

412. Section 6(4)(c) empowers FMU to disseminate, after having considered the reports and having reasonable grounds to suspect, the STR and any necessary information can be disseminated to the 'investigating agencies'. The definition of 'investigating agency' is contained in s2 (k) AMLO which designates only the NAB, ANF, and the FIA and therefore does not allow for dissemination to other

investigative agencies such as provincial Police, customs or the tax authority. FMU does disclose intelligence to the NAB, FIA and ANF. However, there is no clear policy regarding dissemination. Where it appears to be explicitly a drug, corruption or terrorist offence dissemination is clear but where the offence is not known or apparent involves multiple types of offences there is no clear policy on who the information should be disseminated to. The assessors note however, that the lack of a clearly defined policy on dissemination, to date, taking into account the low levels of STR reporting, has not yet been seen as a problem in dissemination by the FMU.

*Operational Independence (c. 26.6):*

413. s6 (2) AMLO states “The FMU shall have independent decision making authority on day-to-day matters coming within its areas of responsibility”.

414. However s6(3) AMLO also places the FMU “subject to the supervision and control of the General Committee”, in reality this is not the case – as the General Committee has devolved this responsibility to the Governor of the SBP. Whilst this may appear to be a pragmatic approach it raises two issues: (i) regarding independence and autonomy of the FMU by place it directly under the Governor SBP and (ii) whether AMLO allows or even intended such powers to be devolved from the GC. Also FMU is currently physically housed within the State Bank of Pakistan (SBP) with its Director General and four staff currently being drawn or seconded solely from the SBP putting a higher and sole reliance upon the SBP for its support.

415. Some concerns have been expressed regarding the operational independence of the FMU given this oversight by the GC. As such, the standard does not imply an absence of oversight on an FIU (the FMU in this case) – it seems on the opposite a rather good policy to have the FMU report on its results and be accountable in relation to its overall performance against national objectives. The concern regarding operational independence is also related to the decision regarding the dissemination of STRs post-analysis. In that respect, the concern (on paper) of risk of interference under the direct and sole supervision of the Governor is higher – the team was provide many assurances that no interference has been taking place on specific STRs.

416. Other issues affecting the independence and autonomy of FMU are (i) the lack of a detailed and devolved budget (ii) the current lack of ability for the FMU to independently recruit staff; FMU is still where it was at its inception a year ago with only a DG and four staff. Both of these issues, the assessors were informed, are held-up in discussions between the SBP and the Ministry of Finance and also in the case of new staffing the need to officially ‘Gazette’ such posts and on whose authority the Gazette entry should be placed. Each of these issues raises the question of its autonomy and is also seriously affecting the effectiveness of the FMU.

*Protection of Information Held by FIU (c. 26.7):*

417. Information is generally held securely and disseminated in accordance with the law. FMU does have secure and separate facility within the SBP which is accessible via electronic key which identifies and allows access to authorized users. Within the unit computer access is restricted by individual password entry. All staff within the FMU is bound by the SBP public sector integrity and secrecy provisions. FMU staff is drawn from the SBP and are subject to a ‘vetting’ process prior to their employment.

418. Physical storage of document was resolved during the on-site assessment whereby FMU secured a large ‘walk-in safe’, within their unit, for storage of STRs and other documents. IT security requirements are dependent upon services provide by SBP. FMU does not have data back-up routines for

the protection of FIU data. FMU does not currently have its own disaster recovery plan; while there may be a recovery plan for SBP this may not adequately take account of FMU-specific needs.

*Publication of Annual Reports (c. 26.8):*

419. Section 6(4) (g) AMLO requires the submission to the NEC of an annual report containing recommendations based upon necessary information and statistics regarding countermeasures which can be taken to combat money laundering and such reports shall provide an overall analysis and evaluation of the STRs limited to details of the investigations and prosecutions that have been or are being conducted in relation to the offence of money laundering in Pakistan. FMU has been operational since December 2007 and to date has not published such a report. It is also FMU's interpretation of AMLO that apart from the annual report for the consumption of NEC, there is no provision in the AMLO whereby FMU could issue its annual reports to the public. There are no specific provisions in AMLO requiring the competent authorities to make periodic public reports, however, there are also no provisions prohibiting this.

*Membership of Egmont Group (c. 26.9):*

420. FMU has considered and is pursuing membership of Egmont but has not yet formally applied for membership.

*Egmont Principles of Exchange of Information Among FIUs (c. 26.10):*

421. In the opinion of the assessors the international requirements for sharing information contained within AMLO and general procedures, for governmental department and agencies, would fall short of the Egmont principals. S 4(e) AMLO on the face of it allows the FMU to share information with international counterparts. However, s26 AMLO which has a wider mandate than just the FMU international co-operation requires the intervention of the Federal Government to enter into an agreement to undertake foreign co-operation – it is the interpretation of Pakistani officials that s26 overrides the provision within s6(4)(e) in the process of providing co-operation. Further, as a matter of standard operating practice, international co-operation for all the department/agencies has to be routed through the Foreign Ministry, notwithstanding the requirement to involve the Federal Government in agreements the necessity to route requests through the Foreign Ministry would affectively rule out spontaneous co-operation to or from the FMU.

*Analysis of Effectiveness*

422. FMU is acknowledged for the valuable contribution it has made to Pakistan's AML/CFT efforts and in its co-ordination role with other agencies particularly in matters affect the work of the NEC and GC. The DG FMU through the statutory functions (within AMLO) acts as secretary to both NEC and the GC has also inherited the Secretariat functions to both committees. With the very limited resources available to FMU these additional and sometimes ad-hoc functions are impacting on the efficiency and effectiveness of the FMU to fulfill the core functions of and an FIU (FMU in this case): receipt, analysis and dissemination. At the time of the on-site assessment the FMU had a back-log of STR's which was estimated to amount to 40 days.

423. FMU is wholly under resourced in the area of manpower and skill but generally has good support services provided the SBP. Technical resources in the area of database application are wholly inadequate to fulfill its function currently and more so to the future. A broader range of skills and more specific training would assist staff in their analysis function.

### 2.5.2. Recommendations and Comments

424. The authorities should consider the following recommendations:

- ATA requirements to report suspicion of TF offences should include a requirement for a report to be made to the FMU as the national centre for receiving all ML and TF related STRs, even if TF related STRs are made in parallel to the police.
- FMU should clearly indicate the powers of other competent authorities which are used to authorize the FMU to obtain additional information from reporting parties to aid in analysis
- Authorities should provide guidance to reporting entities on the completion of STRs.
- FMU should ensure that systematic procedures are in place to make use of indirect access to other information for analysis to ensure timeliness of obtaining information.
- FMU policies for dissemination should be clarified to help overcome the fragmentation of responsible investigating agencies.
- Legal and working practice constraints do not meet Egmont principals
- DG FMU should set out an action plan detailing current and medium term needs including staffing and infrastructure requirements to meet the FMU's core functions of receipt, analysis and dissemination as well as its ancillary functions assigned through AMLO and those undertaken to support the NEC and GC.
- A devolved budget should be allocated to the DG FMU to appropriately implement the action plan.
- There needs to be clarity in relation to operational independence and autonomy of the FMU. Language in s6 (3) AMLO "FMUs... supervision and control of the General Committee" also needs to be reviewed and clarified to ensure the perception of operational independence and autonomy is maintained.
- A working practices document need to be developed for FMU operations including: priorities for STR reporting requirements (with SBP and SECP); STR quality; dissemination policies to take into account law enforcement fragmentation; standard operating procedures for analysis; procedures for information requests and responses; security policies including physical security and visitors. Consideration should be given to amending AMLO that gives FMU explicit access to additional financial information needed in to undertake its functions.
- Separate the FMU database from the SBP IT systems and implement a policy for IT back-up and disaster recovery planning.
- FMU should prepare an FMU Annual Report which includes statistics typologies and trends
- The FMU should implement the Egmont Principles for information exchange. Powers for international co-operation should be clarified to allow FMU autonomy to participate in international cooperation.
- FMU staff should be trained in typologies of criminal (including terrorist) structures and money flows specific to Pakistan.

### 2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	PC	<ul style="list-style-type: none"><li>□ ATA requirements to report suspicion of TF offences do not provide for reporting of such STRs to the FMU</li><li>□ No guidance is given to reporting entities on the completion of STRs.</li><li>□ FMU does have indirect access to other information for analysis but the lack of a systematic approach to this affects timeliness of obtaining such information.</li><li>□ Effectiveness of dissemination is impacted by staff experience and the lack of clear policies that deal with the differing ‘investigative agencies’.</li><li>□ FMU is judged not to have sufficient operational independence and autonomy.</li><li>□ No reports and or statistics are published</li><li>□ Legal and working practice constraints impede information sharing</li></ul>

## 2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27, & 28)

### 2.6.1. Description and Analysis

*Legal Framework and Designation of Authorities ML/FT Investigations (c. 27.1):*

425. The Code of Criminal Procedure 1898 provides law enforcement agencies (both federal and provincial, including the police) overarching investigative powers for all crimes. There is additional legislation dealing with the federal investigation agencies’ powers detailed below.

426. Drug offences and related ML fall within the jurisdiction of the ANF. Public sector corruption and banking fraud, and allied ML, falls within the jurisdiction of the NAB.

427. The ATA creates offences of terrorism and TF. Responsibility for the investigation of the acts of terrorism, including terrorist financing falls to the provincial police. Responsibility for TF investigation involving inter-province or international aspects rests with the FIA – notwithstanding that the two crimes may be interlinked.

428. Investigation of serious crime, for example organized car crime and the vice trade, falls to the provincial police. However, the investigation of any associated ML would fall to the FIA. Immigration or passport related crime and white collar crime with inter-provincial or international ramifications fall with the jurisdiction of the FIA –as does any allied ML.

429. Section 6(4) (c) AMLO assigns to designated ‘investigative agencies’ the task of pursuing ML investigations that emanate from the STR analysis and dissemination. The designated ‘investigative agencies’ are defined in s2 (k) AMLO as NAB, ANF and the FIA – and any other law enforcement agency as may be notified by the Federal Government. This provision however deals solely with the investigation of the disseminated product from the FMU and not the wider investigation of ML or TF.

430. Section 24 AMLO sets out who may be an investigating officer and, thereby, exercise the powers set out in the Ordinance. In addition to the staff of the investigating agencies, the federal government may

designate an officer of the federal or provincial governments to act as an investigating officer. Pakistan has not yet designated any additional agencies as investigating agencies, nor appointed individuals as investigating officers. Customs is currently being considered to be included as an investigative agency; however, the route currently being considered to include them is by substantive legislative amendment to the Ordinance.

431. Section 39 AMLO is relevant to investigations of ML and TF that are not initiated by way of STRs. It states that the provisions of AMLO shall be in addition to, and not in derogation of the NAO, CNSA and ATA. Accordingly, existing investigation powers under that legislation remain applicable to the investigation of ML, predicate offending and asset recovery. The FIA Act was amended in October 2008 to also include the investigation of offences punishable under AMLO.

432. Section 21 AMLO defines offences punishable under AMLO as non-cognizable crimes and as such would fall within the general investigative powers of the Provincial Police (subject to the information being laid before a magistrate).

*Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):*

433. Scope to postpone or waive (in order to gather evidence) either the arrest of a suspected person or the seizure of monies depends upon whether the crime is designated as ‘cognizable’ or ‘non-cognizable’. Cognizable crime may be investigated by an officer in-charge of a police-station, without the order of a Magistrate. ‘Officer in-charge of a police station’ has been defined under the CNSA FIAA and NAO in terms that ensure that the power to ‘postpone or waive’ rests within the investigating agency. In cases concerning non-cognizable offences, the power to investigate (and thereby postpone or waive) rests with a Magistrate.

434. Drug trafficking and associated ML under the CSNA, terrorism and TF under the ATA and public sector corruption, bank fraud and associated ML under the NAO are all cognizable offences. However, under AMLO the ‘stand-alone’ offence of ML is non-cognizable. The two processes for investigation (cognizable and non-cognizable) in cases where the underlying ML scenarios are identical create a wholly fragmented approach to the ability to ‘postpone or waive’ the arrest or seizure’.

435. The assessors were not made aware of any examples of the use of postponement or waiver. Indeed, the examples supplied showed that early seizure was the normal practice.

*Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):*

436. There is no legal bar on law enforcement agencies using special investigative techniques like controlled delivery and undercover operations while conducting investigation of money laundering or terrorist financing. This is demonstrated, in particular, by the ANF in drug related operations. The Qanun-e-Shahadat Order, 1984 allows use of modern techniques. Whilst these techniques are being used in the investigation of predicate crimes, no evidence was provided to the assessors that showed they are being used or considered in the tracing of criminal assets or investigation of ML and TF as stand-alone offences.

*Additional Element—Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):*

437. See comments above regarding 27.3

*Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):*

438. There are no specialized groups or bodies that focus specifically upon the investigation of ML or upon the seizure, freezing and confiscation of proceeds of crime – whether for domestic or international operations. If the predicate crime was thought to fit with another agency the whole case would generally be handed over.

439. There is evidence of good collaboration between FIA and the provincial police, in particular regarding domestic terrorist operations. The FIA has established the Special Investigation Group (SIG to investigate terrorism cases, which would include terrorist financing investigations and the SIG works closely with the provincial police and other investigations authorities. The SIG has been involved in multi-national cooperative investigations with various international partners in relation to terrorism and aspects of terrorist financing investigations being pursued by foreign partners.

*Additional Elements—Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):*

440. There was no evidence of agency-level analysis of ML and or TF techniques and or trends or of the ML or TF components of operations being ‘de-briefed’. Available forums were not being widely used to share ML and TF trends at a multi-agency level between LEAs and the FMU.

*Ability to Compel Production of and Searches for Documents and Information (c. 28.1):*

441. Section 165 Criminal Procedure Code 1898 provides the power for law enforcement to obtain banking and similar documents. Permission in writing of either a Session Judge or the High Court is required. Wider search powers, available on the authority of a police officer, are available when the sought material is not banking documents. Other Powers also exist under the Bankers' Books Evidence Act, 1891. Additionally AMLO s14 and 15 also provide investigating officers with powers to survey, search and seize for the purpose of investigation (but not in relation to banking records). The search powers also allow material to either be seized or obtained.

442. NAB has additional powers under s19 NAO to call for information from any person, bank or financial institution. Specifically, sub-section (d) states that NAB may “require any bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information relating to any person whosoever, including copies of entries made in a bank’s or a financial institution’s books such as ledgers, day books, cash books and all other books including record of information and transactions saved in electronic or digital form, and the keepers of such books or records shall be obliged to certify the copies in accordance with law”. The search powers also allow material to either be seized or obtained.

443. ANF has additional powers. Under s31 (d) CNSA, an authorized officer may require any bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information whatsoever. More general powers of search are provided under s20 (on the authority of a court) and s21 (on the authority of authorized officers). The search powers also allow material to either be seized or obtained.

444. The ATA has various provisions relating to general search and seizure. ATA does not appear to have exclusive provision for the obtaining of banking material and would rely upon the Criminal Procedure Code.

*Power to Take Witnesses' Statement (c. 28.2):*

445. S. 161 Criminal Procedure Code 1898 gives the general power for investigation officers to take witness statements. Section 13 (3) AMLO also allows for the obtaining of statements relating to certain searches in relation to ML.

*Resources of the prosecution services*

446. The NAB, FIA and ANF possess limited in-house prosecutorial capacity. The enabling legislation of these agencies permits them to significantly depend upon the services of Special Prosecutors appointed from the private bar. That said, the internal prosecution wing of the NAB is currently understaffed. Formerly, there were 5-7 prosecutors per regional office. Owing to the non-renewal of many contracts of service across the agency, each office currently has only 1 or 2 prosecutors.

447. In the provinces of Punjab and Sindh, prosecutions for agencies other than the specialist enforcement agencies (NAB, FIA and ANF) are undertaken by a provincial "Prosecution Service". These Services are headed up by a Provincial Prosecutor General. Prosecutors are subject to codes of conduct.

448. The Evaluation Team was advised that staff retention presents challenges to these Prosecution Services. Prosecutors are grossly underpaid compared to counsel in private practice and appointments are generally pursuant to short-term contract. Staff retention is a problem. Independence of prosecutorial function is compromised. In Punjab, the office of Prosecutor General has been vacant for a considerable time. Officials, however, advised the Evaluation Team that provincial prosecutor pay scales have been revised and special allowances and other benefits made available. However, it was accepted that, at the federal level, there is need for improvement.

449. As a further corollary, the skill levels of prosecutors from the Prosecution Services are generally well below those of opposing defence counsel. The Evaluation Team was advised that this imbalance is a common contributor to acquittals. Officials advised that the appointment of eminent lawyers as Special Public Prosecutors in high profile cases has yielded positive results.

450. The Sindh and Punjab provinces also have Offices of the Advocate General to undertake appellate work in the High Courts. Staff retention within these offices is better, with tenured prosecutors receiving better rates of remuneration.

451. In the other provinces, prosecutions outside the remit of the specialist enforcement agencies are undertaken by barristers from a panel of accredited counsel.

452. Meetings with justice sector representatives consistently bore out a need for greater training of prosecution counsel and the judiciary in the field of financial investigation and the adducing of associated evidence.

*Resources of Law Enforcement Authorities*

453. LEA Resourcing: In relation to the FIA, it wholly under resourced in the areas of ML and TF to effectively fulfill these functions (see also comments under criteria 27 and 28) in all areas of manpower; specialist skill; and technical resources. The current structure within FIA only allows for a dedicated unit,



the SIG, to deal with terrorism and terrorist related financing areas of operation – this unit has approximately 100 staff dealing with a wide mandate in terrorism nationally and only 5 TF specialists – this does not reflect the size and to terrorist incident affecting Pakistan. No such explicit specialism exists for ML.

454. NAB is better resourced and has greater access to specialist skill and technical resources. And has specialty dealing with the financial investigations, The Banking Wing with expertise drawn from other agencies and the commercial sector. However these structures do not reflect a priority to the investigation of ML as it affects corruption and public sector fraud, priority has been set around voluntary recovery and investigation of directly recoverable assets.

455. ANF was established in 1995 and had in its original mandate, in relation drug assets, a ML mandate and prior to FMU the receipt of STR relating to drug suspected assets and has structures dealing with the financial aspects of drug trafficking. The focus of their financial operations appear to centre around pure asset seizure mainly connected to the principals concerned in the drug trafficking offence as opposed the crime of drug related ML. Whilst there clearly are skill within the ANF, they acknowledge that greater knowledge and training is required to adequately equip them to deal effectively with ML as a standalone crime. The lack of skill factor may also be borne out in the financial recovery statistics of ANF which shows only 10 percent is confiscated based on what ANF originally seized, or froze.

456. FMU is wholly under resourced in the area of manpower and skill but generally has good support services provided the SBP. Technical resources in the area of database application are wholly inadequate to fulfill its function currently and more so to the future. The current structure can and does only reflect the current staffing levels i.e. the DG and four analysts. Skills, whilst good, are limited to the experience of the 4 staff who are all drawn from the SBP (albeit one of the staff benefitted – and benefits FMU – with a previous secondment to NAB. A broader range of skill and more specific training would assist in their analysis function (see additional comments in criteria 26).

#### *Analysis of Effectiveness*

457. ANF, NAB and FIA have achieved results in the discovery, freezing and seizure of proceeds and associated assets and have deployed staff to undertake this work. However, these operations have neither extended to the wider aspects of the laundering of funds nor entailed investigations of ML or TF as ‘stand-alone’ crimes. None of these agencies have set aside any additional or devoted resource/manpower to deal with the additional work brought about by promulgation of AMLO in September 2007. Taking all the factors into consideration, Pakistan does not have effectively designated law enforcement authorities that have responsibility for ensuring that ML and FT offences are properly investigated.

458. Lack of clarity in laws regarding investigative powers (and/or understanding of those laws) is seriously hampering the investigation of ML and TF – as is the two tiered approach to cognizable and non-cognizable offences concerning (effectively) the same crime of ML.

459. Section 21(2)(b) AMLO enables a court to take cognizance of the AMLO ML offence “provided that where the person accused is a financial institution, the investigating officer or any other authorized officer, as the case may be shall, before filing such complaint, seek the approval of the FMU.”. LEAs perceived that this section creates a barrier to investigation. Their interpretation of this subsection is that the wording precludes the investigation, without consent of the FMU, of not only the financial institution but also individual employees of such institutions, and that such consent would not readily be given by the SBP or the FMU. The assessors do not share these views and do not see there to be a barrier to investigation here.

460. Responsibility for the investigation of the acts of terrorism and terrorist financing falls to the provincial police whereas the responsibility in practice for terrorist financing investigation falls to the FIA. The FIA also has power to investigate immigration or passport related crime and white collar crime with inter-provincial or international ramifications as well as any allied money laundering. Notwithstanding the fact that the two crimes (predicate and ML) may be interlinked there is a separation of responsibility / agency dealing with the two parts of the investigation.

461. Further, the investigation of serious crime, for example organized car crime and the vice trade, falls to the provincial police as would the associated ML, however, no evidence was provided to the assessors that demonstrated the Provincial Police had experience or capacity to investigate the associated ML crimes.

462. There are no policies or procedures to deal with crimes that cut across inter-agency jurisdiction, in particular, the investigation of money laundering or terrorist financing. The overall approach to the investigation of ML and TF is fragmented.

463. The FIA is the agency with the largest mandate covering both ML and TF but is not properly resourced to actually take on this mandate. It has over 3000 officers nationally to cover the wide range of offences within its mandate – of which ML and TF forms only a small part. Within FIA, there is the Special Investigation Group (SIG) which specializes in responsibilities dealing with terrorism and TF. The number of dedicated experts for TF is 5 officers. Whilst they can, and do, call on assistance of other officers, this resource is not proportionate to the size and magnitude of the TF problem, taking into account the number and seriousness of terrorist incidents and supporting international TF operations.

464. There was little evidence of ML or TF being pursued as a stand-alone offence. Investigations were centered on the seizure of assets directly related to the principal (or close associate) concerned with the predicate crime. In the view of the assessors, a primary reason for this limited application of the ML or TF provisions and the lack of focus of investigative / prosecution authorities to ‘follow the money’ does not come from deficits within AMLO, NAO, CNSA and ATA or other laws. It also stems from a lack of mobilization on the risks posed by money laundering or terrorist financing as such, not in relations to the predicates.

465. Benefit would be derived from a risk assessment that looks into: the value of proceeds generated by predicate crime; funds necessary to sustain terrorism and where those funds actually come from; how those proceeds are ‘directly’ enjoyed by the criminal (e.g. purchase of luxury items, cars, real estate); how they are used to ‘re-invest’ in ongoing criminality or the financing of terrorism; how criminals are assisted in disguising or dispersing those proceeds to avoid detection and seizure; and what financial sector and non-financial sector industries and products are susceptible to and used by criminal and terrorists.

466. Whilst the provisions to ‘waive or postpone...’ exist in law, in practice this was not seen in regard to the seizure of monies. Here also, the culture of “follow-the-money” does not appear to prevail – even though the concept of allowing the main commodity (drugs etc) to move in circumstances of controlled delivery is well known and often used by the investigative agencies. Such examples should be used in ML and TF investigations. Case examples were not quoted where the monies were allowed to move in order a ML or TF investigation could be pursued to gather evidence of either predicate crimes or of ML or TF themselves. To the contrary, case examples were given showing early interdiction of monies that would have allowed for ongoing investigations.

467. The assessors were not made aware of any problems in relation to search, seizure or production of general or banking documentation or concerning obtaining of witness statements. However, no statistics or other empirical evidence was produced to show the effective use of these provisions.

468. The NAB, which has significant experience of the investigation of proceeds of corruption and has specialist investigation powers, has undergone significant contraction of resources in recent times and, according to ministerial statements, may soon be replaced. The assessment team notes the strong investigations methodologies and experience developed by the NAB and the need to ensure that this capacity is retained in some form within Pakistan agencies to effectively investigate and prosecute the proceeds of corruption and related ML.

### 2.6.2. Recommendations and Comments

469. It is recommended that the authorities consider the following recommendations:

- Pakistan should, as matter of priority, ensure that those agencies designated to pursue investigations of ML and TF are responsible and resourced to properly pursue ML and TF investigations, including ML cases beyond cases of ‘self-laundering’ or the overt proceeds from the principal involved in the predicate crime.
- Pakistan should ensure proper investigation of ML and TF is supported by a sufficient understanding of investigative powers across all investigative agencies.
- All agencies responsible for investigating ML and TF should be properly resourced to ensure effective investigations.
- The investigative agencies should appoint and adequately resource dedicated financial investigators to: deal with asset-based investigations allied to the predicate crimes within their jurisdiction (including terrorism; ML and TF allied to the predicate crime) and; investigate ML and TF as a stand-alone crime irrespective of whether the source of information emanates from the FMU or any other source.
- High-level training in current laws for all investigative agencies, and in particular for all dedicated financial investigators within these agencies, is essential, including training to dispel the misconception that a predicate offence conviction is required prior to investigating/prosecuting ML.
- Pakistan should consider making all MF offences and associated investigations as cognizable to support a single approach to investigation.
- The authorities should adopt a clear and definitive policy on the concept of “lead agency” for the investigation and prosecution of ML and TF.
- Greater use of tools and techniques used in predicate crime investigation, such as the controlled delivery, would assist in understanding the concepts of ‘follow-the-money’.
- The Pakistani authorities should ensure that deployment of skilled financial investigators across all provincial and federal agencies with mandates to investigate ML and TF and asset recovery.
- Statistical framework should be put in place, particularly in relations to production, seizure, search and the obtaining of statements across all agencies.

### 2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
<b>R.27</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ There is no evidence of standalone investigations into ML or TF. Those investigations that have taken place are generally associated with overt proceeds</li> </ul>

		<p>from the principal involved in the predicate crime.</p> <ul style="list-style-type: none"> <li>▫ A general insufficient understanding of investigative powers across all investigative agencies and the FMU contributes to the lack of investigations into ML or TF.</li> <li>▫ The primary agency for investigation of TF (FIA) is insufficiently resourced to effectively to ensure proper investigations.</li> <li>▫</li> </ul>
<b>R.28</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>▫ Evidence was not produced to demonstrate effective use of provisions for search, seizure or production of general or banking documentation or concerning obtaining of witness statements in relation to ML or TF.</li> </ul>

## 2.7. Cross Border Declaration or Disclosure (SR.IX)

### 2.7.1. Description and Analysis

470. The Legal Framework: The Foreign Exchange Act of 1947 empowers the SBP to regulate the import and export of currency. Customs Authorities derive their authorities from the Customs Act of 1969.

#### *Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):*

471. Pakistan has not yet implemented an effective regime to cover cross-border transportation of currency and bearer negotiable instruments. Through its currency controls, Pakistan has instituted a partial declaration system that only covers people taking foreign currency out of Pakistan and people taking out or bringing in more than 3,000 Pak Rupees. Notification No.F.E.2/98-SB requires any person transporting more than \$10,000 in foreign currency out of Pakistan to obtain permission from SBP before taking the foreign currency out of Pakistan. Carrying more than \$10,000 in foreign currency out of Pakistan without SBP's permission is prohibited. Bringing in or taking out more than 3,000 Pak Rupees is also prohibited. The limited declaration requirement does not cover bearer negotiable instruments. There is no declaration or disclosure requirement for people entering Pakistan.

- Under the limited declaration system mandated by Notification No. F.E. 2/98-SB, SBP authorizes individuals or employees of exchange companies to carry more than \$10,000 in foreign currency out of Pakistan. Individuals who want to take more than \$10,000 in currency out of Pakistan must demonstrate a need to take the currency out of Pakistan before SBP grants permission. Exchange company employees taking more than \$10,000 in foreign currency out of Pakistan must take the following steps:

- Each exchange company representative must report to the SBP booth at the Karachi or Lahore airport at least four hours before the flight's scheduled departure.
- The representative must produce a letter that jointly addresses SBP and Customs officials and describes the particulars of the foreign currency transaction. SBP officials, Customs officials and the exchange company each retain a copy of the letter. The representative must also complete a declaration certificate, which details the denominations and amounts of foreign currencies.

- The representative brings the foreign currency to the SBP booth, where SBP and Customs officials verify the amount and denomination of the foreign currency. After verifying the count, SBP officials vacuum pack the currency to prevent tampering.
- Customs may check the currency at any point after the foreign currency has been packed and sealed.

*Request Information on Origin and Use of Currency (c. IX.2):*

472. When Customs officials discover that someone is taking more than \$10,000 in foreign currency out of Pakistan or transporting more than 3,000 in Pak Rupees across the border, they have the authority to request and obtain further information from the carrier. The Customs Act gives Customs officials the power to investigate the unauthorized movement of goods across Pakistan's borders. Section 2 of the Customs Act defines "goods" and includes "currency and negotiable instruments." Among Customs Authorities' powers:

- To search and arrest any person on reasonable ground and belief with or without warrant (Sections 158, 161, 162, 163 and 167 of the Customs Act);
- To screen or X-Ray bodies of suspected persons for detecting secreted goods (Section 160 of the Customs Act);
- To stop and search conveyances (Section 164 of the Customs Act);
- To compel aircraft to land for examination and search of goods (Section 164 of the Customs Act);
- To break open the lock of any door, fixture or package for making search (Section 164 of the Customs Act);
- To summon persons to give evidence and produce documents or things and to examine persons (Sections 165 and 166 of the Customs Act);
- To seize or detain things liable to confiscation; (Section 168 of the Customs Act); and
- To impose penalties and to confiscate goods (Sections 179, 156 and 157 of the Customs Act).

*Restraint of Currency (c. IX.3):*

473. Sections 168 and 172 of the Customs Act empower officials to seize or detain goods liable to confiscation. Customs authorities can charge cash couriers who make false declarations with smuggling, which carries a penalty of 14 years imprisonment and a fine of up to ten times the amount of currency smuggled. The Supreme Court has upheld Customs authorities' powers to seize and detain currency and has affirmed Customs' application of the smuggling statute to people who make false declarations.

*Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4):*

474. The SBP's Foreign Exchange Department closely holds records of currency declarations. Customs authorities maintain records of all seizures of goods, including currency.

*Access of Information to FIU (c. IX.5):*

475. SBP and Customs authorities do not share information about declarations with the FMU. During the on-site visit, Pakistan Customs authorities stated that they do not notify the FMU about suspicious cross-border incidents or by making declaration information available to the FMU in some other way. Pakistan Customs authorities said the law limits dissemination of Customs information and that there is no legal provision that allows them to share information with the FMU. Section 155H authorizes Customs to grant access to its computerized trade databases to other agencies only so that those agencies

may perform statistical research or to analyze import and export records. Other access is prohibited. Customs authorities said this provision prevents them from giving wide access to the records to the FMU.

*Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):*

476. Authorities said that the SBP, the FMU and Customs Authorities have an excellent working relationship. But Customs Authorities said they do not notify the FMU about suspicious cross-border incidents, and neither Customs authorities nor the SBP Foreign Exchange Department share declaration information with the FMU. There is, however, cooperation between the SBP's Foreign Exchange Department and Customs authorities as described in Criterion IX.1.

*International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):*

477. Pakistan Customs shares information through Regional Intelligence Liaison Offices (RILO) program. The RILO program facilitates the exchange of information on illegal customs activities among customs authorities worldwide. Pakistan is able to share information internationally through the RILO.

*Sanctions for Making False Declarations / Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8)*

478. The assessors concluded that there is no provision of law that prevents the prosecution of legal persons for criminal offenses. (See Section 2 for details) But, in practice, Pakistani authorities charge natural rather than legal persons. Assets owned by firms are attached if need be. The foreign exchange regulations contemplate civil fines for exchange companies that violate the regulations.

*Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):*

479. Customs authorities are not empowered to investigate terrorism financing, but they can refer suspected terrorism financing matters to the FIA. Customs authorities also lack the power to investigate money laundering, and must instead refer cases of suspected money laundering to the relevant agency. Customs authorities do, however, have the authority to investigate smuggling, narcotics trafficking and fraud.

*Confiscation of Currency Related to ML/FT (applying c. 3.1-3.6 in R.3, c. IX.10):*

480. Sections 168 of the Customs Act authorizes Customs officials to detain and seize cash, bearer negotiable instruments, precious metals or jewels that they believe are related to unlawful activity.

*Confiscation of Currency Pursuant to UNSCRs (applying c. III.1-III.10 in SR III, c. IX.11):*

481. Customs can confiscate currency pursuant to the U.N. Security Council resolutions. The SROs relating to UNSCR 1267 provide for the freezing of "funds and financial resources" of designated entities and individuals. Section 168 of the Customs Act empowers Customs authorities to seize or detain any goods brought into or taken out of Pakistan in breach of any prohibition or restriction. The Customs Act defines currency, bearer negotiable instruments, jewels and precious metals as goods. Customs Authorities, acting under the authority granted by Section 168, can therefore freeze funds when currency, bearer negotiable instruments, precious metals or jewels are physically transported by or on behalf a person or entity designated under UNSCR 1267. Similarly, authorities can seize cash belonging to organizations proscribed under Section 11E the ATA.

*Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):*

482. Section 168 of the Customs Act empowers Customs authorities to investigate illicit movements of precious metals and precious stones. The import and export of such items are tightly regulated. Individuals may import or export items of a personal nature, and businesses (such as jewelers) operate under a separate set of import/export restrictions, which are announced annually along with the federal budget. Customs authorities share information through RILO and through bilateral relationships under mutual legal assistance agreements.

*Safeguards for Proper Use of Information (c. IX.13):*

483. SBP and Customs officials keep reports of cross-border transportation of currency confidential. SBP shares information about cross-border transportation of currency with Customs only when it grants permission to someone taking more than \$10,000 in foreign currency out of Pakistan.

*Additional Element—Implementation of SR.IX Best Practices (c. IX.14):*

484. The deficiencies in Pakistan's legal regime inhibit its effective implementation of the SR.IX Best Practices Paper. Pakistan, for example, cannot establish interdiction operations to stop people bringing bulk cash into Pakistan, because bringing foreign currency is not prohibited or regulated. Pakistan has, however, implemented some of the SR.IX Best Practices. It has, for example, established a document review process in which it inspects the passport, visa and airline ticket of incoming and outgoing passengers.

*Additional Element—Computerization of Database and Accessible to Competent Authorities (c. IX.15):*

485. Section 155H authorizes Customs to grant access to its computerized trade databases to other agencies so that those agencies may perform statistical research or to analyze import and export records. Other access is prohibited. Customs authorities said this provision prevents them from giving wide access to the records to the FMU.

*Analysis of Effectiveness*

486. Given Pakistan's porous borders, effectively implementing its limited disclosure system is difficult. In practice, the limited declaration system is in place only at the airports in Karachi and Lahore.

487. Table 15 shows the amount of currency seized by Customs authorities in violation of the currency control law from 1 July 2006 to mid-June 2008. Although Customs authorities maintain case-specific data, they could not provide the number of incidents, nor could they provide figures that measured the amount of currency seized in a consistent manner. This reveals a lack of effectiveness in record keeping and data sharing procedures and raises doubts about whether the information that Customs authorities provide to the FMU on an annual basis has any investigative value.



**Table 15: Currency Seized by Customs Authorities**

<b>Currency</b>	<b>Amount seized (1 July 2006 to mid-June 2007)</b>	<b>Amount seized (1 July 2007 to mid-June 2008)</b>
Foreign currency equivalent Pakistan rupees	—	25,658,700
Pakistan rupees	—	330,000
Euros	100,000	—
Pounds sterling	8,015	—
Counterfeit U.S. dollars	9,900	500,000
U.S. dollars	143,843	80,000
Chinese Yuan	2,800	—
UAE dirham	614,800	—
Indian rupees	244,000	2,540,700
Counterfeit Indian rupees	—	126,800
Indonesian rupiah	5,006,00	—
Qatar riyal	39,992	—
Saudi riyal	237,100	—

488. The low volume of seizures raises doubts about how effective Pakistan Customs is in detecting illicit movements of bulk currency. Although Pakistan's porous borders impair Pakistan's ability to prevent or detect all bulk cash smuggling, Pakistan has seven international airports where Customs authorities screen incoming and outgoing international travelers.

### **2.7.2. Recommendations and Comments**

489. Pakistan's limited declaration system is not an operational element of Pakistan's AML/CFT regime, because, among other things, domestic coordination is lacking. SBP and Customs authorities do not share information about declarations with the FMU. The SBP also does not inform Customs authorities or the FMU when it denies a person's request to take more than \$10,000 out of Pakistan. Seizures are reported to the FMU on an annual basis, but Pakistan Customs is not currently authorized to share information with the FMU on a more regular or timely basis. Pakistan Customs is also not authorized to share information with the FMU when there is a suspicion of ML or FT. In addition, the limited declaration system does not apply to couriers bringing currency into Pakistan or to Pakistan rupees.

490. Pakistan is considering implementing a declaration system, but its challenging geography makes its borders porous. Establishing secure borders and enforcing anti-smuggling laws is difficult. Despite the difficulty of enforcing these laws at all potential points of entry, Pakistan should take efforts to combat cash couriers, in particular those that support TF and ML related to the narcotics trade.

- Pakistan should implement a disclosure or declaration that achieves AML/CFT objectives and covers all forms of currency and bearer negotiable instruments.
- SBP, as the foreign exchange regulator, and NBR (Customs), as the border enforcement agency, should share export control information with the FMU.
- SBP and Customs officials should share with the FMU all permission requests — both granted and denied — on a timely basis.
- Customs should share information with the FMU upon discovery of a false declaration.

- Customs authorities should share information with the FMU when they have a suspicion of ML or TF.
- Pakistan should ensure that powers available to customs to detect, interdict, seize and sanction cases of cash couriers are effectively implemented and related international cooperation is pursued.

### 2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
<b>SR.IX</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>▫ Pakistan's partial declaration system is focused on foreign exchange control rather than AML/CFT and only covers people transporting foreign currency out of Pakistan and does not cover people bringing foreign currency into Pakistan, any movement of Pakistan rupees or bearer negotiable instruments</li> <li>▫ SBP and Customs authorities do not share information about declarations with the FMU.</li> <li>▫ Customs authorities do not share information with the FMU upon discovery of a false declaration.</li> <li>▫ Customs authorities do not share information with the FMU when they have a suspicion of money laundering or terrorist financing.</li> <li>▫ The existing regime is not effectively implemented.</li> </ul>

### **3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS**

#### **Customer Due Diligence & Record Keeping**

##### **3.1. Risk of money laundering or terrorist financing**

491. At the time of the on-site mission, the laws and regulation in place in Pakistan did not foresee a risk-based approach to AML/C+FT. In particular, no legal steps had been taken to reduce or simplify some preventive measures to situations where there is a proven low risk of money laundering or terrorism financing. The revised prudential regulation on CDD issued by the State Bank of Pakistan in March 2009 now creates the first building blocks of such a framework. SECP adopted on April 28, 2009 (i.e. outside the period under consideration for this assessment) a regulation for Non-Bank Financial Companies that mirrors the revised SBP prudential regulation.

492. No risk analysis has been undertaken so far in the financial sector, or by financial institutions As indicated in the supervision section, supervisors of the financial sector partially adopt a risk-based approach (though not in a structured way) to supervision.

493. Microfinance institutions are regulated and supervised by SBP. As such, they are covered by the AML/CFT instructions issued by SBP. It is however the assessors' understanding that so far, no practical measure has been taken to effectively integrate them in the fight against money laundering and terrorism financing, or to enforce their compliance with these obligations. The authorities indicated that this decision was taken on the basis of the very limited size of this sector, and their appreciation that priority (from a risk perspective) shall be given to the traditional banking sector. They also indicate that Microfinance banks are members of the "compliance forum", therefore exposing them to AML/CFT related discussions between SBP and supervised entities.

494. Certain entities providing financial services (or undertaking financial activities) as defined by the FATF Standard are currently not covered by the AML/CFT framework, in particular the financial services of Pakistan Post (Pakistan Post Savings Bank) and the CNDS, which is the institution managing the government borrowing from the general public in the form of national savings scheme. However, this does not result from a risk analysis undertaken by the authorities. Pakistan notes that the proposed amendments to the AMLO intend to bring Pakistan Post under the AML/CFT requirements.

##### **3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

###### **3.2.1. Description and Analysis**

495. Legal Framework: The Anti-Money Laundering Ordinance does not set out obligations on the financial sector related to the preventive measures, except for the suspicious transaction reporting obligations. Most of the customer due diligence had actually been defined before the enactment of the AMLO, by the financial sector supervisors, on the basis of their rule-making powers on prudential issues.

496. The general framework for supervision, and the legal basis for the financial sector supervisors to issue rules and regulations, is described in further details under the supervision section of this report. In essence, this regulatory framework – for the legislative part - has not been amended since the enactment of the AMLO, but provides a sound basis for regulators and supervisors to fully integrate AML/CFT in the prudential remit. Prudential regulations are amended on a regular basis – and SBP issued a major revision to the CDD regulation on March 9<sup>th</sup>, 2009, to some extent as a result of the on-site visit and related discussions with the SBP. SECP issues a similar regulation on April 28<sup>th</sup>, 2009 for NBFCs.

As a result, the relevant legal framework for preventive measures / customer due diligence is as follows:

- For the institutions regulated and supervised by the State Bank of Pakistan (banks – conventional and Islamic, micro-finance banks, development finance institutions – DFIs, Exchange companies):
  - Prudential regulations (PR) M1 to M5 essentially for banks and DFIs
  - Circulars for Exchange companies
- For the institutions regulated and supervised by the Securities and Exchange Commission of Pakistan (securities markets, non-bank financial companies, insurance), the various relevant regulations and circulars are more fragmented and diverse. Some of them are not issued by the SECP, but by the Stock Exchanges directly. In the document as a whole, Non-Banking Finance Company includes Modarabas, Leasing Companies, Housing Finance Companies, Investment Banks, Discount Houses, Asset Management Companies and Venture Capital Companies.
  - Securities markets. Each Stock Exchange has defined its own Regulations. Given the size of the market, and the indications by the Lahore and Islamabad Exchanges have used it as a reference, the assessment team has focused on the Karachi Stock Exchange and relied on the associated documentations and materials. As far as CDD is concerned, the cornerstone of the requirements are found in the General Regulations of the Stock Exchange, and in particular in article 74 which requires the members of the Exchange to use a “standardized account opening form” (SAOF) for new account opening, and to bring into conformity existing operating accounts by March 31<sup>st</sup>, 2004.
  - Insurance. No regulation relevant to AML/CFT has been issued by SECP.
  - NBFCs – the relevant legal basis is the “non-banking finance companies and notified entities regulations, 2008”, issued on November 20, 2008, and in particular its article 9 “prevention of NBFCs involvement in money laundering and other illegal trades”. On April 28<sup>th</sup>, 2009 (i.e. after the cut-off date for this assessment, SECP issued a “Customer Due diligence (CDD)/Know Your Customer (KYC)” Circular. It is the assessors’ understanding that Modarabas are covered by this Circular.
  - Modarabas specific regulations and circulars. On the issues relevant to AML/CFT, the Modarabas Regulations do not add to the NBFCs Regulations, which explicitly apply also to the Modarabas.

#### *Laws, regulations and other enforceable means*

497. The Pakistani financial sector supervisory agencies rely on their general supervisory and enforcement compliance powers – as described in the “supervision” section of this report – to regulate and supervise preventive measures. This approach is in line with their practice before the enactment of AMLO, as they had already taken action to set up such preventive measures. As a result, the authorities have not inserted provisions on the supervision of compliance by financial institutions with their AML/CFT obligations in AMLO, but agreed that SBP and SECP would continue to issue regulations in consultation with the FMU.

498. Against this background, the assessors have reviewed whether this recourse to the general regulatory powers of the two financial supervisors could be challenged. This review also took into consideration the High Court decision relative to the freezing powers of the SBP described in relevant section of this report. It is worth noting that the High Court decision did not challenge as such the regulatory powers of SBP on AML/CFT issued, but rather noted that the process chosen by the Federal Government then was not in line with the UN Act itself. All in all, the assessors are satisfied that the reliance on the general regulatory powers of the SBP and SECP provides a legal basis sound enough to consider that their respective regulations are in force and enforceable. They also note that several sanctions have been imposed on this basis, which were not challenged before Court.

499. Under Pakistan hierarchy of norms, these regulations are considered as secondary legislation. As described later in this report, both SBP and SECP have the related relevant enforcement and sanctioning powers. Furthermore, the relevant “apex” act for SBP and SECP set out their legal capacity to issue circulars and to enforce them. As a result, the assessors are satisfied that the regulations do meet the criteria to be deemed “laws and regulations” under the Methodology.

500. Neither SBP nor SECP have to date issued guidelines relevant to AML/CFT, which could complement the circulars/prudential regulations. SBP uses the “compliance forum” to provide guidance to the financial institutions it regulates. SBP also indicates that such guidelines will be prepared in consultations with the professionals and FMU.

501. SBP issued new CDD regulations on March 9<sup>th</sup>, 2009 (together with two amendments to the AML/CFT regulations). SECP issued its CDD Circular on April 28, 2009. As indicated at the outset of this report, the cut-off date for this assessment is March 26<sup>th</sup>, 2009. As a result, the SBP regulations were fully taken into account in the report, both in the analysis and in the ratings. The SECP one is described in the relevant sections, but as it falls outside the review period, it is not factored in the ratings. In line with the Methodology and practice with other assessments, the assessors have described the preventive regime that was in place at the time of the on-site mission. This allows a better understanding of the steps taken by the authorities after the on-site visit. This also allows an analysis of implementation and effectiveness of a regime that had been in place for several years. As far as effectiveness is concerned, the assessors are neutral on the new SBP Regulation, but draw lessons from the previous regime in their review.

502. Insurance. The assessment team was not provided documentation that would amount to any regulation, circular or guideline relative to CDD for the insurance sector, including life insurance. As indicated in the general section, the insurance market as a whole, and even more so the life insurance one, is very limited in Pakistan. There are very few players on the life insurance market, which is dominated by a public company. The authorities seem to consider this as a comforting element (which is not the view of the assessment team), and note that in their view, the life insurance sector is both *de minimis*, and not specifically subject to ML/FT risks. In this report – except in some instances in the supervision related recommendations, the assessors have not given weight to the insurance sector, and have on purpose not gone in details in the analysis of this sector. As indicated below in the recommendations sections, they advise the authorities to put in place meaningful and effective preventive measures in life insurance.

*Prohibition of Anonymous Accounts (c. 5.1):*

503. Pakistan has developed a mechanism for the issuance of identity cards for all its adult citizens, managed by NADRA (see general presentation). NADRA indicates that to date, 85 percent of the adult population has received such ID. Strong incentives have been put in place by the authorities to ensure an increasing coverage of the NADRA ID, notably by forbidding access to several public services in the absence of it. However, NADRA considers that it will not be able to reach a much higher coverage, within intrinsic limitations in poor and remote areas.

504. NADRA indicated that the security features of these cards result in a low level of counterfeiting or ID fraud – and law enforcement agencies didn’t report ID related difficulties. The assessors note

however that the accuracy of the system developed by NADRA relies significantly on the ID checks when a first-time ID card is issued. NADRA indicated that several checks and cross-checks are then undertaken, including of family relationships, but indicated that birth certificates are not systematically used in this context.

505. Several estimates presented by the authorities indicate that more than 3 million illegal migrants live in Pakistan. In order to clarify their situation, the authorities have created NARA in 2000, mandated to provide identification cards to these migrants. These cards provide rights equivalent to those of the CNIC, except the right to vote and to obtain a passport. NARA issues such cards to all illegal immigrants which apply, even if they can not present any identification documents. The submission are checked with NADRA and other relevant agencies (including law enforcement), and biometric identification is retained in NARA database. No further information is required from the applicant. So far, NARA has issued 150.000 identification cards. Despite the security measures in place, the assessors are seriously concerned that NARA cards could easily be obtained under fictitious names, and uses to establish business relations in financial institutions.

### **SBP**

506. The authorities indicated that the concept of numbered accounts also does not exist in Pakistan. As far as anonymous accounts are concerned, old Prudential Regulation M1 specified (section 8.A ii) that “for all bank clients/customers including depositors and borrowers, banks/DFIs shall obtain the attested copies of CNICs by December 31, 2008”. The new PR M1 is even more specific, as it indicates in article 5 (a) that “Banks/DFIs should not open and maintain anonymous accounts or accounts in the name of fictitious persons”.

507. In addition, the new PR-M1 requires that “(a) For customers / clients whose accounts are dormant and an attested copy of account holder’s Computerized National Identity Card (CNIC) is not available in bank’s / DFI’s record, banks / DFIs shall not allow operation in such accounts until the account holder produces an attested copy of his / her CNIC and fulfill all other formalities for activation of the account and (b) For all other customers / clients including depositors and borrowers, banks / DFIs shall obtain the attested copies of CNICs by June 30, 2009. Banks / DFIs shall discontinue relationship with such customers who fail to submit a copy of their CNIC by the above deadline.” This last requirement will imply that any potential existing account where identification was not undertaken in line with the current identification document – and therefore the new NADRA card for citizens - would be closed.

### **SECP**

508. SECP issued a circular dated February 21, 2003 to all Non Banking Finance Companies (NBFC), stating that “all Non Bank Financial Institutions shall accept deposits from an investor only after ensuring that an account has been opened in the investor’s name using an account opening form, which will be developed by the respective industry associations in consultation with the Commission”. All deposit-taking after this circular therefore required identification of the investor – including for business relationships established prior to this circular. NBFCs were then given several months to comply with this requirement, and since, SECP indicated that it checked the identification of customers in the context of its supervision. The information provided to the assessors on the status of implementation of this requirement, and how it was monitored, was unclear. Only the securities industry and Modarabas have approved a Standardized Account Opening Form (SAOF).

509. Article 9-2-a of the NBFC Regulations replicates word by word this requirement. It is further added that a NBFC shall “determine the true identity of the prospective customer”. Further, NBFCs are required to ensure that “care shall be taken to identify ownership of all accounts and those using safe custody”. Finally, article 9-2-c requires NBFCs to “establish effective procedures for obtaining identification from new customers and devise a policy to ensure that business transactions are not conducted with persons who fail to provide evidence of their identify”.

510. In addition, article 9-2-e requires NBFC to “establish effective procedures for monitoring of borrower accounts [...], checking identities and bonafide of remitters and beneficiaries of transactions”.

511. As far as Modarabas are concerned, a similar clause (clause 4) appears in the Modaraba Prudential Regulation Part IV which states that “Modarabas shall establish specific procedures for ascertaining customer status and his sources of earning for monitoring of accounts on a regular basis for checking identities and bonafides of remitters and beneficiaries [...]”.

512. There is therefore only partial coverage of the types of customers by NBFCs as the full range of CDD (as prescribed by the Regulations) only applies in situations where the NBFCs is *accepting deposits* – which is only a limited subset of the potential range of business relationships. Article 9-2-b and 9-2-c are broader in their coverage (“all accounts”, “business transactions”) however. The absence of a clear and direct requirement to identify all customers is however noticeable and un-explained – even if a reading of all subsequent requirements combined would seem, all in all, to cover all regular business transactions (but *not* walk-in customers). It is the authorities’ views that the business of NBFCs do not lend itself to walk in customers.

513. It is worth noting however that only the Modarabas industry (and the securities industry – see below) has developed a standardized account opening form. At the time of the assessment, all other NBFCs therefore did not have standardized requirements to follow when undertaking CDD.

514. Given the limited coverage of the requirement to determine the “true identity” of the customer, as well as the absence of standardized account opening forms (except for Modarabas) since 2003, it is highly possible that accounts and/or business relationships exists within NBFCs with either anonymous customers or fictitious names.

515. The CDD/KYC Circular issued end of April 2009 will allow addressing some of these issues as far as NBFCs are concerned, as it clarifies what information is needed for each type of customer. In addition, article 3.b states that “for all existing customers including depositors and borrowers, NBFCs shall obtain the copies of the CNICs and all required information/documents latest by September 30, 2009”.

516. Securities. The Standardized Account Opening Form (SAOF), forming part of the General Regulations of the stock exchanges, lay out the requirements of identifying the customer. Per its very name, this SAOF is focused on account opening – and therefore does not cover situations where transactions could occur without establishing a business relationship or opening an account. However, the Karachi Automated Trading System (KATS) Regulations, revised in December 2008, require that for every bid and offer through the KATS, members use a Unique Identification Number (UIN) for their clients (this requirement is in place since June 2006). The UIN is a single identification number for each client regardless of operation through any broker/ exchange, which would also be necessary for clients without an account with a member. All orders are required to be mapped to the designated UIN. The Group Account Facility for shares owned beneficially by investors and maintained by participants in the Group Account of the Central Depository System (CDS) has also been abolished in 2005 to enable identification of clients. Due to UIN the client is not only identifiable by a broker but can also be identified by the trading systems available at exchanges.

517. However, per the definition of UIN in this Regulations (article 2, definition), there are situations where the UIN is not specific to the client, but to the Exchange member acting for the client (for instance, foreign institutional investor, mutual funds...). In such situation, the capacity to identify who is the underlying client – or the beneficial owner of the transaction – will ultimately rely on the Exchange members’ internal CDD.

*When is CDD required (c. 5.2):*

## **SBP**

518. Old PR-M1 (section 4) specified that “copies of the CNIC [...] shall invariably be verified before opening the account”. As far as occasional customers (walk-in customers) were concerned, PR-M1 (section 9) required that banks and DFIs ‘undertake CDD, including identifying and verifying the identity of walk-in customers conducting transactions above an appropriate limit to be prescribed by the banks/DFIs themselves’. SBP had not provided guidance on the maximum amount it would deem acceptable, but has indicated to the assessors that it would review the institutions’ specific threshold to ensure they are commensurate with their activities.

519. As far as funds transfers (including wire transfers) are concerned, PR-M2 (section 1 c) requires that “meaningful and accurate originator information (name, address and account number)” be included in the transfer. It further indicates that “if satisfied, [bank/DFI may] substitute the requirement of mentioning address with CNIC, passport, driving license or similar information number for this purpose”.

520. None of the KYC-related sections of the old PR M1 required financial institution to undertake CDD when there was suspicion of money laundering or terrorism financing, regardless of any threshold. The only references in the old PR to situations where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data appeared in old PR-M1 (section 8 i and ii respectively), which stated that a) for clients whose accounts are dormant and an attested copy of the CNIC is not on file, no transaction should be allowed until a CNIC is provided and all other activation formality are fulfilled and b) “banks/DFIs shall discontinue relationship with such customer which fail to submit a copy of their CNIC” by December 31, 2008. These requirements reflected the overall approach under the KYC-related requirements under the PR, i.e. that the CNIC is systematically deemed reliable and adequate (for natural persons). It is worth noting in that respect that none of these requirements was drafted in the perspective of customers being legal persons.

521. The new PR-M1 is now much more comprehensive and specific, as article 4 essentially mirrors the FATF standard. The new paragraph so indicates that CDD must be undertaken when “(a) establishing business relationship; (b) conducting occasional transactions above rupees one million<sup>13</sup> whether carried out in a single operation or in multiple operations that appear to be linked; (c) carrying out occasional wire transfers (domestic / cross border) regardless of any threshold; (d) there is suspicion of money laundering / terrorist financing; and (e) there is a doubt about the veracity or adequacy of available identification data on the customer.”

#### **ECs:**

522. In the case of currency exchange, the ECs are required to obtain name, address and ID/Passport Number of the customer for currency exchange exceeding US\$10,000 (or equivalent in other currencies) as per para. 23 of the Rules and Regulations for ECs issued under the Foreign Exchange Circular No.09 (July 30, 2002). In 2008, Foreign Exchange Circular No. 2 was issued requiring ECs to submit information on transaction above US\$5,000 (or equivalent in other currencies) when the transaction relates to sale or purchase of foreign currencies, or outward remittances. The SBP provides a form which requires information on name of the customer, CNIC number, address, amount and denomination of the currency sold to the customer, amount and denomination of currency purchased from the customer. There is no specific requirement to undertake CDD when there is a suspicion of money laundering or terrorist financing, or when there are doubts about the veracity or adequacy of previously obtained customer identification data.

523. In the case of remittances, as per the Rules and Regulations (para. 24), ECs are required to obtain name, address, and other particulars of both the remitter and beneficiary regardless of the amount involved. “Other particulars” are not specified by the SBP. The information on outward remittances above US\$5,000 must be submitted to SBP with the following information: name of the remitter, CNIC or

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13. One million Rs equals \$ 10,000.



passport number of the remitter, address of the remitter, name and address of beneficiary, account number of beneficiary abroad, amount and currency of the outward remittance, and the account number of Exchange Company used for remittance. Ambiguity remains as to what “other particulars” needs to be obtained when the transactions are inward remittances of all amounts and outward remittances of less than US\$5,000. Similarly, there is no specific requirement to undertake CDD when there is a suspicion of money laundering or terrorist financing, or when there are doubts about the veracity or adequacy of previously obtained customer identification data.

524. Further, ECs are required to take prior approval of SBP before effecting sale of foreign currencies to the customers and undertaking outward remittances of US \$50,000 or above (or equivalent in other foreign currencies) as per Foreign Exchange Circulars No. 6 and 7 of 2008.

### **SECP**

525. SECP indicates that all NBFCs, Modarabas and Mutual funds have been asked to ensure that an account has been opened in the investor’s name before undertaking any business transaction with the customer. As indicated above, this is indeed the requirement for NBFC when there is deposit taking by the NBFCs – but other types of business relationships are not covered that directly. Many situations foreseen under Recommendation 5 for Customer Due Diligence are therefore not considered for NBFCs (see earlier comment on the SECP views regarding walk in customers). It is worth noting however that NBFCs are not allowed to conduct any cash transactions (receiving or making payment) above Rs 50,000 (\$500 equivalent) – but there is no requirement that would cover the situations of related cash transactions (smurfing).

526. For the securities market, as indicated above, the Exchanges member have to identify the customer before opening an account, using the SAOF. There is no mention of occasional customers (and no mention that was provided to the assessors that transactions can only occur if an account has been opened). The authorities consider that even occasional customer would have to open an account and to be registered with a UIN – and that it is the responsibility of the broker to ensure that a client’s transactions are done only through his own account / client code registered against his UIN. However, the team has not been able to identify an explicit requirement not allowing “walk-in” customers, who would not be required to open an account.

### *Identification measures and verification sources (c. 5.3):*

### **SBP**

527. Old PR-M1 (section 3) required financial institution to « determine the true identity of every prospective customer”. SBP distinguished between the “correct identity” (proper identification of a natural or legal person based on accurate identification documentation) and the “true identity”, which amounted to the establishment of a customer profile (see below).

528. The new PR-M1 is more complete and detailed, as article 5 (b) states that “all reasonable efforts shall be made to determine identity of every prospective customer. For this purpose, minimum set of documents to be obtained by the banks / DFIs from various types of customers / account holder(s), at the time of opening account, as prescribed in Annexure-VIII of the Prudential Regulations for Corporate / Commercial Banking. While opening bank account of “proprietorships”, the requirements laid down for individuals at Serial No. (1) of Annexure-VIII shall apply except the requirement mentioned at No. (3) of the Annexure. Banks / DFIs should exercise extra care in view of the fact that constituent documents are not available in such cases to confirm existence or otherwise of the proprietorships.”

529. In addition, the new PR-M1 now explicitly distinguishes between the identification and the verification of identity, and article 6 states that “verification is an integral part of CDD / KYC measures”.

The same article goes on stating that “copies of CNIC wherever required in Annexure-VIII are invariably verified, before opening the account, from NADRA through utilizing on-line facility or where the banks / DFIs or their branches do not have such facility from the regional office(s) of NADRA”.

530. Annexure VIII of the PR defines the acceptable identification documentation for each type of customer, with the following categories: individuals; partnership; Joint Stock Company; clubs, societies and associations; agent accounts; trust account; executors and administrators. Agent accounts have been abolished in the meantime by the SECP. In addition to these requirements, notes to the annexure define specific acceptable circumstances under which alternative identification mechanisms may be used by banks and DFIs, which is a limitative definition of these. For instance, if the customer uses a NARA card instead of the CNIC, the bank account can then only be opened in Rupees (while other documentation issued by NADRA might be used for customers opening accounts in both local and foreign currency). This Annexure has not been modified with the issuance of the revised PR-M1 on CDD.

### **ECs**

531. As stated earlier, ECs are required to obtain, in the case of foreign exchange transactions, name, address and ID/Passport Number of the customer (para. 23 of the Rules and Regulations for ECs, Foreign Exchange Circular No.09 issued on July 30, 2002), and in the case of remittances, name, address, and other particulars of both the remitter and beneficiary regardless of the amount involved (para. 24 of the same Rules and Regulations for ECs).

532. The para. 23 of the Rules and Regulations for ECs requires “due verification” of customers for foreign exchange transactions, however, it is not explicit in the case of remittance transfers. In practice, ECs require government issued ID cards from customers, such as CNIC, NARA, Passport, etc.

### **SECP**

533. As described above, the key requirement is article 9 of the NBFCs regulations (see text above for the relevant clauses). In addition to being too restrictive in its coverage, article 9 does not set out a distinction between the identification of the customer and the verification of the identity of the customer. There is no requirement that reliable, independent source documents, data or information.

534. The Modaraba Association of Pakistan (MAP) has also developed two sets of account opening forms (individual and investors) with the help of SECP and the approved forms are being used for all *deposit taking* activities. According to the account opening forms, it is mandatory for all investors to provide an attested copy of the National Identity Card for verification to the bank branch at the time of presenting an application for subscription of shares of a company. The attested photocopy, after verification, is retained along with the application.

535. The April 2009 SECP Circular provides for a more detailed approach, as article 2 (“minimum information/documents) lays out the information that NBFCs shall require for each category of customer (individual, sole proprietorship, partnership account, joint stock company, club societies and association, trusts and executors and administrators). The Circular also distinguishes between identification and verification of identity. In a nutshell

536. In the securities markets, the information to be provided per the SAOF are:

- For natural persons: national identify card number (or passport number for non-residents)
- For legal persons, registration number, certified copy of the Board Resolution; certified copies of the Memorandum and Articles of Association; list of authorized signatories and list of nominated persons allowed to place orders.

*Identification of Legal Persons or Other Arrangements (c. 5.4):*

## **SBP**

537. As indicated earlier, Annexure VIII of the PR details the identification documents required for legal persons and other arrangements. On substance, the requirements are to identify the persons purporting to act on behalf of the customers are verified through documents like Board of Director's resolution in case of company and authority letter/ power of attorney in other cases, as well as constituent documents. For joint stock companies, it is further required that attested copies of the identity cards of all the directors be provided. In parallel, old PR-M1 (section 3) specified that the documents relevant for the identification of natural persons must be used when opening an account for proprietorships, and that "extra care [be applied] in view of the fact that constituent documents are not available in such cases to confirm existence or otherwise of the proprietorships". As indicated earlier, new PR-M1 re-states this attention. Finally, old PR-M1 (section 6) defined specific and equivalent requirements to open an account operated by an officer of the Federal, Provincial or Local Government.

538. The new PR-M1 builds on the same Annexure. In addition, in its article 9 listing high risk situations triggering enhanced due diligence, the new PR-M1 lists "legal persons or arrangements including non-governmental organizations (NGOs) / not-for-profit organizations (NPOs) and trusts / charities." This approach therefore requires any legal person or arrangement to be subject to additional CDD – which content is however not prescribed by the PR-M1. The only definition of the content of the required enhanced due diligence requirement under new PR-M1 relates to Politically Exposed Persons (see Recommendation 6). SBP also indicates that it plans to issue guidance to help banks and DFIs to implement these requirements.

## **ECs**

539. ECs are only allowed to accept natural persons as customers. Thus, no legal persons can go to ECs for currency exchange or remittance transfers. However, there is no mechanism for ECs to know when an individual comes to ECs on behalf of legal persons if the individual requests the transactions in that capacity. Authorities claim that the nature or purpose of transaction required to be disclosed would generally prevent business transactions by individuals as such transactions would tend to be for higher amounts and mostly to businesses as beneficiaries or recipients.

## **SECP**

540. As indicated earlier, on the Modarabas associations have designed a SAOF, as well as the Stock Exchanges. In both cases (the requirements are the same), the information required from legal entities cover proof of incorporation, legal form, address and provisions on the powers to bind the legal person. There is no requirement on information relative to the directors. There is a requirement to determine whether the customer is acting on behalf of another person, and if the case, to identify the customer (no requirement to verify the identity). There is no specific provision in case the account holder is a trust. Separate account opening forms are in place for corporate entities, individuals and Modarabas as indicated above.

541. The April 2009 Circular for NBFCs, as indicated above, is now much more specific on the documents to be provided for legal persons, and on substance aligns the regime with the SBP one. "Non-legal persons and arrangements including non-governmental organizations (NGOs)/not-for-profit organizations (NPOs) and trusts / charities" are deemed high-risk customers (article 4), subject to enhanced due diligence.

*Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):*

## **SBP**

542. Para 6 of old PR-M1 required that "Bank / DFI and their branches shall obtain satisfactory evidence duly verified / authenticated by the branch manager which shall be placed on record in respect

of (i) the true identity of the beneficial owners of all accounts opened by a person, entity etc, (ii) the real party in interest or controlling person/entity of the account(s) in case of nominee or minors account.”. As indicated above, the definition by SBP of true identity did not amount to beneficial ownership per FATF. PR-M1 (section 6) referred to “beneficial ownership”, but this notion was not defined in the PR, and none of the requirements set out by the PR was to be understood as equivalent to the identification and undertaking of reasonable measures to verify the identity of the beneficial ownership of business relationships. By the same token, the reference to the “real party in interest or controlling person/entity” was not defined as covering beneficial ownership, and was anyway limited to specific business relationships (SBP indicated that nominee account refers to group accounts, which has been suppressed).

543. At best, the provision under old PR-M1 (section 5) were understood as requiring financial institutions to determine whether the customer is acting on behalf of another person, and to then identify this third party.

544. None of the requirement under the old PR called for financial institutions to understand the ownership and control structure of the customer and to determine the natural persons that ultimately own or control the customer. The various documents required for the identification, as laid out in the Annexure VIII, did not provide the financial institutions with such information. As for trust accounts, Annexure VIII required financial institutions to collect “attested photocopies of identity cards of all the trustees” and “certified copies of ‘instrument of trust’ or trust deed”. Even if such “instrument of trust” or trust deed were to contain information on the settlors and beneficiaries of the trust, the PR did not require their identification, nor reasonable steps to be taken to verify their identity.

545. The new PR-M1 goes into much more depth in that respect. Beneficial ownership is not defined itself (even though the new PR-M1 makes an explicit mention to the FATF 40 + 9 Recommendations), but article 5 (e) prescribes the following: “for customers that are legal persons or for legal arrangements, banks / DFIs are required to take reasonable measures to (i) understand the ownership and control structure of the customer (ii) determine that the natural persons who ultimately own or control the customer. This includes those persons who exercise ultimate effective control over a legal person or arrangement.” This is de facto the equivalent of the beneficial ownership definition under Recommendation 5.

546. The requirements regarding beneficial ownership under new PR-M1 are now specific:

- Article 5 (c) requires banks / DFIs to “identify the beneficial ownership of accounts/transactions by taking all reasonable measures”
- Article 5 (e) specifies this requirement for legal persons and arrangements (see above)
- Article 6 (b) requires that “the identity of the beneficial owner is verified using reliable information/ satisfactory sources”. There is no definition of what constitutes “reliable information / satisfactory source”. The authorities consider that banks and DFIs have enough benchmarks and understanding of what would be deemed reliable, and note that the absence of such definition maintains on the banks and DFIs the need to satisfy the supervisor that they have fully in substance the requirement, and not simply adopt a box checking approach.

547. The new PR-M1 sets up substantive obligations regarding identification and verification of identify of beneficial owners, as well as understating of the ownership and control structure of legal entities and legal arrangements. However, article 5 (b) and (e) fall short of the requirements to identify the beneficial owner in all instances, as the “reasonable measures” flexibility applies to the identification, and not only to the verification requirement.

## **EC**

548. In remittance transactions, the Exchange companies are required to obtain particulars of both the remitter and beneficiary regardless of the amount. However, this does not appear to extend to the identification of beneficial ownership, nor it is clearly stipulated in the Rules and Regulations and various circulars issued thereafter.

### **SECP**

549. Under the Prudential Regulations of Modaraba as well as NBFC & Notified Entities (NE) Regulations 2008, financial institutions have been advised to bring into place proper procedures that would entail checking identities of the beneficiaries of any business transaction. There are requirements to determine whether the customer is acting on behalf of another person, and then to identify that person (but not to take reasonable steps to verify his/her identity) in the SAOF. The account holder at the time of opening the account is required to provide details regarding the person who will be operating the account i.e. either the account holder himself or any other person authorized to operate and execute transactions jointly or severally. There is no requirement for the financial institutions to verify this information. In case of corporate clients, the SAOF requires that a Board Resolution be provided, authorizing and empowering representative(s) either singly/jointly for the broker on all matters pertaining to the maintenance and operation of the Account.

550. As indicated above, article 9-2-b requires from NBFCs that “care shall be taken to identify ownership of all accounts and those using safe custody”.

551. None of the regulations require (or even refer to the concept) identification of the beneficial owner, and reasonable steps to be taken to verify the identity of the beneficial owner.

552. The April 2009 NBFCs Circular sets up requirements that are on substance aligned with the new PR-M1 issued by the SBP – and the actual language is very similar. Article 2.b requires that “NBFCs should determine whether the customer is acting on behalf of another person, and should then take reasonable steps to obtain sufficient identification data [...] to verify the identity of the beneficiary”. Article 2.c states that “for customers that are legal persons or legal arrangements, NBFCs are required to take reasonable measures to (i) understand the ownership and control structure of the customer, (ii) determine that the natural persons who ultimately own or control the customer. This includes those persons who exercise ultimate effective control over a legal person or arrangement.” As indicated earlier, there is also now a stand-alone article on verification.

553. The requirements in the securities market do not cover beneficial ownership.

### **SECP**

554. Same as 5.5.

*Information on Purpose and Nature of Business Relationship (c. 5.6):*

### **SBP**

555. As indicated above, SBP considers under old PR-M1 that the notion of “true identity” amounts to the definition of customer profile. There is however no direct requirement to obtain information on the purpose and nature of the business relationship. PR-M1 (section 7 ii) only sets out a requirement that banks/DFIs “put in place a system to monitor the accounts and transactions on a regular basis”. In parallel, PR-M2 (section b) requires that “transactions which are out of character/inconsistent with the history, pattern or normal operation of the account, involving heavy deposits / withdrawals / transfers should be viewed with suspicion and properly investigated”. Indirectly, this requirement sets out a requirement close to that of establishing a customer profile (history, pattern and normal operation the account), even if it later on only focuses on large transactions - therefore excessively limiting the scope of the requirement.

556. On this issue also, new PR-M1 is more specific. Article 13 de facto requires information on the “on purpose and intended nature of business relationship”, as banks and DFIs are instructed not to open the account or business relationship if they are not satisfied by the related information they received.

### **SECP**

557. There is no requirement on NBFCs or Exchange members to obtain information on the purpose and intended nature of the business relationship. The April 2009 NBFCs circular adopts the same approach as the new PR-M1, through the combination of article 6 and 7.

#### *Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):*

### **SBP**

558. PR-M1 (section 7 ii – see above) requires monitoring of the accounts and transactions, while section 7 ii requires banks and DFIs to “update customer information and records, if necessary, at reasonable intervals”. In addition, PR-M2 (section b) requires that banks and DFIs set up “specific procedures [...] for ascertaining customer’s status and his sources of earnings, for monitoring accounts on a regular basis”.

559. The new PR-M1 notes in the opening paragraph of its article 8 that “CDD / KYC is not a onetime exercise to be conducted at the time of entering into a formal relationship with customer / account holder. This is an on-going process for prudent banking practices” and then goes on by detailing the related requirements that banks / DFIs should respect, including “(b) put in place a system to monitor the accounts and transactions on regular basis and (c) update customer information and records, if any, at reasonable intervals”.

### **SECP**

560. There is no direct and explicit requirement on on-going due diligence in the various regulations relevant for NBFCs. The NBFCs regulations however requires (article 9-2-e) the set up of effective procedures for monitoring of *borrower* accounts and (article 9-3) that “all transactions into or from the account maintained with the NBFC which are not usual transactions shall be thoroughly scrutinized and properly investigated by the NBFC”. Clause 4 of Modaraba Prudential Regulation Part IV states that Modarabas shall “establish specific procedures [...]for monitoring of accounts on a regular basis [...].The transactions, which are out of character with the normal operation of the account involving high deposits, withdrawals and transfers, shall be viewed with suspicion and properly investigated.’

561. These two latter requirements provides a partial and limited basis for on-going monitoring, but the requirement assumes that the NBFC would be able to identify the unusual transactions – which would suppose the existence of a “customer profile”, which is not an obligation as indicated above.

562. There is no explicit requirement in the NBFCs regulations that CDD be regularly updated and kept relevant.

563. There is no requirement on keeping the CDD information up-to-date and relevant, or to undertake on-going due diligence in the securities market.

564. The new SECP circular now contains a whole article on “record updation”, which language mirrors the SBP Regulation one (“CDD/KYC is not a onetime exercise to be conducted at the time of entering into a formal relationship with customer / account holder. This is an on-going process and this is end, NBFCs are required [...]”. The specific requirements are the same as those defined in article 8 of the new PR-M1.

#### *Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):*

## **SBP**

565. PR-M1 (section 8) required the development of guidelines that include “the description of the types of customers that are likely to pose a higher than average risk to a bank/DFI”. It indicated that the following factors “should be considered”: “customer background, country of origin, public or high profile position, nature of business, etc.” It further identified situation that enhanced due diligence be applied to five categories of business relationships: with customer from certain countries (lax KYC and ML regulations, links with off-shore centers); customers in cash-based businesses in high-value items and high net worth customers with no clearly identified source of income; customers for which the banks/DFIs “have reason to believe that [they have] been refused banking facilities by another bank/DFI; correspondent banks’ accounts; non face-to-face customers.

566. The notion of “enhanced due diligence” was not defined, and the drafting of this section did not make it totally clear that the enhanced due diligence requirement applied both to the types of customers presenting certain characteristics to be “considered” by banks/DFI and the five categories of business relationships – however, a common sense reading of the article led to this conclusion.

567. Out of the four examples of higher risk categories, two were not relevant in Pakistan’s context (no private banking, no nominee shareholders or shares in bearer form). Non-resident customer were not covered by the PR. Trusts were covered. One important benefit of the PR was that it added categories of business relationships that seem relevant in the context of Pakistan.

568. The new PR-M1 goes much further regarding higher risk categories of customers or business relationships. Article 9 of the new PR-M1 requires that enhanced CDD be applied in explicit situations, which include “high-risk customers, business relationships or transactions”, which include (the PR-M1 list is not presented as exhaustive): “i) non-resident customers; ii) private banking customers; iii) legal persons or arrangements including non-governmental organizations (NGOs) / not-for-profit organizations (NPOs) and trusts / charities; iv) customers belonging to countries where CDD / KYC and anti-money laundering regulations are lax; v) customers with links to offshore tax havens; vi) customers in cash based businesses; vii) high net worth customers with no clearly identifiable source of income; and viii) customers in high-value items etc. “. Here again, some categories do not seem most relevant in the context of Pakistan (but are in line with Recommendation 5), while others are better tailored to the local situation.

## **ECs**

569. There is no specific requirement for ECs to undertake enhanced due diligence for high-risk customers. However, there are various controls in place. For example, sender and beneficiary for remittance transfer should be identified regardless of the amount. Remittance transactions above US\$3,000 (or equivalent in other foreign currencies) should be sent through banks, making it a bank-to-bank transfer where the remittance is deposited into a bank account of the beneficiary. Foreign currency transactions and outward remittances above US\$5,000 (or equivalent in other foreign currencies) should be reported to SBP along with the information on customers. The same transactions above US\$50,000 (or equivalent in other foreign currencies) require a prior approval from SBP.

## **SECP**

570. The NBFCs regulations do not define high risk situations and do not require enhanced due diligence for higher risk categories of customers, business relationships or transactions. The situation is the same for the securities market.

571. The recent NBFCs Circular now defines categories of high-risk customers and business relationships, with a specific paragraph dedicated to this issue. The categories substantially mirror the ones defined by the new SBP PR-M1. NBFCs are required to conduct enhanced due diligence on these customers, business relationships or transactions.

*Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9) / Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10) / Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11) / Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):*

### **SBP**

572. Until March 2009, SBP had adopted a uniform approach to CDD, without reduced or simplified CDD measures.

573. The new PR-M1 now opens the door for simplified due diligence, as article 11 states that “Where there are low risks and information on the identity of the customer and the beneficial owner of a customer is publicly available, or where adequate checks and controls exist, banks / DFIs may apply simplified or reduced CDD / KYC measures”. How the CDD requirements can be simplified or reduced is left to the financial institutions. A list of possible situations where such simplification may occur is provided as purely indicative (“following cases may be considered”), and is limited to: “(a) Financial institutions provided they are subject to requirements to combat money laundering and terrorist financing consistent with the FATF recommendations and are supervised for compliance with those requirements; (b) Public companies that are subject to regulatory disclosure requirements and such companies are listed on a stock exchange or similar situations ; (c) Government administrations or entities.”. Article 12 requires that such simplified or reduced CDD do not apply when there is risk of ML or FT, or when the customer resides in a country not applying satisfactorily the FATF Recommendations (no such list of countries has been officially provided by SBP to the banks/DFIs). SBP has not issued guidelines to banks/DFIs on the extent of the CDD measures on a risk-sensitive basis. It indicates that implementation issues would be dealt with in the context of regular discussions with the banks and DFIs professional associations.

### **SECP**

574. The NBFCs regulations do not allow for simplified or reduced CDDs in case of proven low risk. It is the same in the securities market.

575. The new NBFCs Circular now creates the possibility for simplified or reduced CDD/KYC requirements “where there are low risks and information on the identity of the customer and the beneficial owner is publicly available, or where adequate checks and controls exist”. The Circular goes on giving examples of situations where reduced or simplified CDD may apply (FIs subject to satisfactory preventive measures and supervised, publicly listed entities).

*Timing of Verification of Identity—General Rule (c. 5.13):*

### **SBP**

576. As indicated earlier, identification must occur before establishing the business relationship. The maximum limit available for *verification* of documents is five days, within which the verification from NADRA of the documents has to be completed. When the customer is a legal person or arrangement, there is no timeline set out for the bank/DFIs to verify the documents with the relevant registrars. The issuance of the new PR-M1 has not modified this timeline. The authorities indicate that banks and DFIs would not allow operations with legal persons to occur as long as the verification has not taken place, and that absent provisions of the relevant documentation for verification, the relationship would end up terminated.

### **ECs**



577. The Rules and Regulations for ECs (para. 23, Foreign Exchange Circular No.09 issued on July 30, 2002) requires identify of customers to be verified before transaction in the case of currency exchange, however, the Rules and Regulations are silent pertaining to verification of customer identify requirement and its timing of verification in the case of remittance transfers. Nevertheless, as stated earlier, in practice, ECs require government issued ID cards from customers, such as CNIS, NARA, Passport, etc, and this is done before effecting the transactions.

### **SECP**

578. The NBFC regulations (taken as a whole, as indicated earlier) indicate that the identification must take place before engaging into the transaction or the business relationship. However, as the notion of verification of the identity is not foreseen, there is no time requirement in that respect. The authorities point out article 9 of the 2008 NBFCs Regulation as setting a requirement regarding the verification of identity – however, the assessors consider this article to only refer to identification, and not verification of identity (see earlier for the content of this article).

579. The Exchange Regulations, as quoted above, indicate that identification of the account holder has to take place before undertaking any transaction (and the UIN requirement indicates a similar approach). In most securities markets, the market pressure to realize the transactions usually does require separating between the identification and the verification of identity. This is not done in Pakistan – making it likely that transactions are undertaken without proper identification. More fundamentally, there is no requirement to verify the identification requirement, at any time. The authorities are of a different view, and consider that the identification requirements amount to a verification requirement.

580. The 2009 NBFC Circular now clarifies this situation, as it now explicitly separates identification and verification of identity, under two different articles. Article 3 (on verification) focuses on the identification through NADRA (“copies of CNIC wherever required are invariably verified”), and explicitly requires this verification to take place “before opening the account”. This article does not cover the verification in case of legal entities.

*Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):*

### **SBP**

581. The PR does not foresee such exceptional situations as such. However, both the old and the new PR-M1 indicate that the CDD records and documentation must “indicate, in writing, if any exception is made in fulfilling the CDD / KYC measures”.

### **SECP**

582. SECP states that financial Institutions under its purview are not allowed to undergo any business transaction or to establish any business relationship before proper identification of the customer or legal entity (see above).

583. However, for all FIs under the ambit of the SECP, there is no requirement to verify the identity of the customer or account holder. The new Circular does not consider possible exceptional circumstances.

*Failure to Complete CDD before commencing the Business Relationship (c. 5.15), Failure to Complete CDD after commencing the Business Relationship (c. 5.16):*

### **SBP**

584. The old PR-M1 (section 8A ii) required that banks/DFIs “discontinue relationship with such customers who fail to submit a copy of their CNIC by the above deadline”. PR-M1 (section 4) required that banks/DFIs “invariably” verify the CNIC. However, it should be noted that these requirements focused on situations where the customer is a natural person, and did not envisage failure to complete CDD for a legal person. They did not envisage either situation where the natural person would be a walk-in customer, as they contain language associated with account opening. There was no indication in the PR main text itself requiring banks/DFIs to consider filing an STR in such cases. However, Annexure IX to the PR (characteristics of financial transactions that may be a cause for increased scrutiny under PR-M5) contained an example (A (4)) dealing with a customer not providing the information required by the bank/DFI.

585. The new PR-M1 is more complete and direct, as it states that “in case banks / DFIs are not able to satisfactorily complete required CDD / KYC measures including identity, beneficial ownership or information on purpose and intended nature of business relationship, account should not be opened or any service provided and instead reporting of suspicious transaction be considered. Similarly, relationship with existing customers should be terminated and reporting of suspicious transaction be considered if CDD / KYC is found unsatisfactory.”

### **ECs**

586. The Rules and Regulations for ECs are silent as to what course of actions should be taken when satisfactory CDD cannot be established. In practice, ECs told the assessors that they do not perform transactions under such a circumstance.

### **SECP**

587. The NBFC regulations state in article 9-2-c that NBFCs should be able to ensure that “business transactions are not conducted with persons who fail to provide evidence of their identity”. This requirement only concerns business transactions (and not accounts or relationships), and does not impose on NBFCs to consider making a suspicious transaction report in such cases. The authorities consider (see above) that the UIN requirement would cover situations not captured by “business transactions”.

588. The 2009 NBFC Circular contains language in its article 8 on measures to be adopted in case the CDD is not completed satisfactorily – with the same drafting as the SBP PR-M1.

589. There is no requirement covering the securities market.

*Existing Customers—CDD Requirements (c. 5.17) / Existing Anonymous-account Customers – CDD Requirements (c. 5.18):*

### **SBP**

590. Per old PR-M1 (section 8A ii), the identification with the new NCIC of all customer was mandatory by December 2008, and SBP collected regular updates of compliance. In addition, the existing customers were subject to on-going CDD as required under Para 7 of PR-M1 which provided that KYC/ CDD is not a onetime exercise to be conducted at the time of entering into a formal relationship but an on-going process. Indications received both from the regulator and the private sector was that significant efforts had to be made to push towards the identification of all customers, particularly in more remote areas.

591. The new PR-M1 further clarifies the issue – but also lengthens the deadline to June 30, 2009 – in its article 7. This article deals with three different issues – dormant accounts, existing customers and awareness raising. As far as existing customers are concerned, article 7 (b) requires the following: “for all other customers / clients including depositors and borrowers, banks / DFIs shall obtain the attested copies of CNICs by June 30, 2009. Banks / DFIs shall discontinue relationship with such customers who fail to submit a copy of their CNIC by the above deadline.” The last paragraph of article 7 of the new PR-M1 encourages banks to undertake awareness raising towards existing and prospective customers. It also “advises” banks and DFIs to report back to SBP on their compliance with the June 30, 2009 deadline.

### **SECP**

592. SECP indicates that at the time where the new identity cards were issued, it has directed NBFCs to regularly update the record of existing customers on a periodic basis. The legal document stating this requirement has not been shared with the assessment team. In addition, the assessors did not receive indication on a requirement to identify all existing customers at any point in time, either with specific deadlines or guidance on risks and materiality. In the view of the assessors and on the basis of the information provided, NBFCs therefore have not been required to apply CDD to existing customers on the basis of materiality and risks. As indicated earlier, the April 2009 NBFC circular now clarifies the legal requirement, with a deadline for completion as of September 30, 2009.

593. For the securities market, article 74 of the General Regulation seems to imply that all existing customers shall have been identified by end of March 2004. No clear indication was given to the assessors on how this process was undertaken and supervised – in a context where the UIN, as indicated earlier, do not seem to cover all possible cases of identification.

*Foreign PEPs—Requirement to Identify (c. 6.1):*

### **SBP**

594. As indicated above (high risk categories of business relationships), old PR-M1 (section 8) required banks/ DFIs to develop description of high-risk customers, which include “public or high profile position” – which criteria “should be considered” by banks/DFIs in defining risk profiles. This requirement was for banks/DFIs to have in place risks management systems to determine whether a customer holds a high profile position.

595. The absence of differentiation between domestic and foreign “public or high profile position” customer is welcome. As indicated earlier, the provision did not make an explicit link between high risk business relationships and enhanced due diligence, and these were not spelt out.

596. Most important, the approach elicited by SBP presented the following difficulties:

- There was no definition of “public or high profile position” – there was therefore no assurance that banks/DFIs would cover the scope of PEPs as defined by FATF;
- When the customer held a “public or high profile position”, this as a factor to be considered by the bank/DFIs, this was not a mandatory requirement to apply enhanced due diligence.

597. The new PR-M1 is now more specific and detailed on the PEPs requirements. Article 9 (b) now establishes a mandatory link between enhanced due diligence and “politically exposed persons or customers holding public or high profile positions”, as the introductory paragraph of the article states that “banks/DFIs shall conduct due diligence when dealing [with PEPs]”.

598. In addition, article 10 (b) of the new PR-M1 requires banks and DFIs to set up “appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person/ holder of public or high profile position”

599. However, there is no definition in new PR-M1 of a PEPs, and not mention in the PR that the enhanced due diligence must also apply to business relationships with family members or close associates of PEPs. It is also noteworthy that the requirement under article 9 applies when the PEP is the customer, while article 10 considers the situation where the PEP is the beneficial owner of the transaction, account or business relationship. All in all, the assessors are satisfied that this covers all situations where a PEP is the beneficial owner.

#### **ECs**

600. ECs are not specifically required to pay special attention to PEPs.

#### **SECP**

601. There is no PEP requirement for any of the financial institutions within the purview of the SECP. The April 2009 NBFC Circular now lays out PEPs requirements that are close to with the new SBP PR-M1 ones.

*Foreign PEPs—Risk Management (c. 6.2; 6.2.1):*

#### **SBP**

602. The old PR-M1 did not create such a requirement.

603. The new PR-M1 also defines (only for PEPs, customers holding public or high profile positions, not for the other categories of customers or business relationships) what is the expected minimum content of the enhanced due diligence. Article 10 requires financial institutions to seek senior management approval to open or maintain business relationships with PEPs or with customer who become PEPs.

#### **SECP**

604. There is no PEP requirement for any of the financial institutions within purview of the SECP. The language in the April 2009 NBFC Circular is the same as in the new PR-M1.

*Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3) /*

#### **SBP**

605. The PR does not require such determination. The old PR-M2 (section b) created a general requirement for all customers to ascertain “source of earnings”, which was narrower than source of wealth. There was no additional related due diligence for PEPs, or any other category of high-risk customers.

606. The new PR-M1 provides with significant steps forward, as article 10 (b) requires banks and DFIs to set up “appropriate risk management systems [...] to determine the sources of wealth /funds of customers, beneficial owners for ongoing monitoring on regular basis.” This combines with the general requirement for on-going due diligence. There is however no requirement for enhanced on-going monitoring of the business relationship. The authorities indicated that would engage banks and DFIs as needed should guidance be needed on this.

#### **SECP**

607. There is no PEP requirement for any of the financial institutions within the purview of the SECP. In its April 2009 NBFC Circular, SECP has adopted a requirement that is different, as the requirement is that “the sources of wealth/funds for such customer, shall be monitored on a regular basis” – which is different from determining their source.

*Foreign PEPs—Ongoing Monitoring (c. 6.4):*

**SBP**

608. All business relationships are to be subject to on-going monitoring (see above).

**SECP**

609. The April 2009 NBFC Circular now sets out a requirement for on-going monitoring for all business relationships.

*Domestic PEPs—Requirements (Additional Element c. 6.5):*

**SBP**

610. The current SBP requirement does not restrict the PEPs requirements to foreign customers holding public or high profile functions.

**SECP**

611. The SECP April 2009 NBFC Circular does not make distinction between domestic and foreign PEPs.

*Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):*

612. Pakistan has ratified the UN Convention against Corruption in 2007.

***Recommendation 7***

613. Legal Framework: The Prudential Regulations for Corporations and Foreign Exchange Circular Letter No. 5 govern banks' correspondent relationships. SBP Foreign Exchange Circular Letter No. 1 of 2009 governs Exchange Companies' correspondent relationships.

614. Securities brokers do not have correspondent relationships. Foreign investors must establish a bank account and a trading account in Pakistan to trade securities listed on the Islamabad or Karachi stock exchanges.

*Gathering information about respondent institution and assessment of AML/CFT Controls in Respondent Institution (c. 7.1 and c. 7.2):*

**SBP**

615. The SBP requires that banks entering into correspondent relationships perform due diligence on respondent institutions. Paragraphs 1 and 4 of Prudential Regulation M-4 require banks to pay particular attention to respondent banks' KYC and AML/CFT programs. Paragraph 1 of Prudential Regulation M-4 lays out eight factors banks should learn when entering into correspondent relationships:

- Know your customer policy (KYC)
- Information about the correspondent bank's management and ownership
- Major business activities

- Their location
- Money laundering prevention and detection measures
- The purpose of the account
- The identity of any third party that will use the correspondent banking services (i.e. in case of payable through accounts)
- Condition of the bank regulation and supervision in the correspondent's country.

### **ECs**

616. Foreign Exchange Circular No. 1 of January 2009 requires ECs to follow detailed guidelines when selecting foreign entities for home remittances to ensure that the respondent institution is effectively supervised and has a physical presence and is affiliated with a regulated financial group. It also requires ECs to pay particular attention when continuing relationships with respondents operating in jurisdictions that have poor KYC standards or have been "identified by the Financial Action Task Force as being 'non-cooperative' in the fight against money laundering." Before signing an agreement, exchange companies must ensure the respondent is licensed in its home jurisdiction and assess the respondent's KYC and AML programs.

*Approval of Establishing Correspondent Relationships (c. 7.3):*

### **SBP**

617. Per paragraph 6 of Prudential Regulation M-6, banks must obtain approval of senior management before entering into a correspondent relationship.

### **ECs**

618. Foreign Exchange Circular No. 1 of January 2009 specify due diligence of foreign entities in home remittance arrangement. According to SBP ECs must obtain SBP's prior approval before entering into a home remittance agreement with a foreign financial institution. SBP also indicates that the request to enter into such an agreement must bear the signature of the EC's chief executive. FE Circular No. 1 of January 2009 does not lay out these two specific requirements. The SBP also indicates that it must approve any amendments to the agreement, and it reserves the right to terminate the agreement.

*Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):*

### **SBP**

619. When establishing correspondent relationships, banks require each other to provide information about AML/CFT safeguards through a comprehensive questionnaire. This questionnaire is not in itself a regulatory requirement, but is the way FIs have chosen to achieve the substantive requirement. According to regulators, the questionnaire forms the basis for the documentation of each institution's AML/CFT responsibilities. It is the assessors' understanding that there is no regulatory requirement that the two financial institutions establish a clear understanding as to which institution will perform the required measures.

### **ECs**

620. When ECs enter into correspondent relationships, the contract must grant the Exchange Company “ownership rights” of all related records to the Exchange Company. The Exchange Company must maintain those records for five years. The foreign entity must also provide the Exchange Company with originator information for inbound remittances worth more than \$1,000.

*Payable-Through Accounts (c. 7.5):*

**SBP**

621. Paragraph 5 of Prudential Regulation M-4 requires that banks be satisfied that the respondent institution has performed CDD on those customers who may have direct access to the correspondent accounts. Paragraph 5 of Prudential Regulation M-4 also requires banks to ensure that their respondent is able to provide relevant customer identification data upon request to the correspondent bank.

**ECs:**

622. The concept of payable-through accounts does not apply for ECs. Foreign Exchange Circular No. 8 of 2006 prohibits ECs from maintaining correspondent accounts for or with foreign money remitters. All transactions must be processed through bank accounts, and ECs are prohibited from book clearing foreign transactions.

***Recommendation 8***

*Misuse of New Technology for ML/FT (c. 8.1):*

**SBP**

623. At the time of the on-site visit, regulators said that no banks are offering prepaid cards and that Internet banking is limited because of concerns about fraud. Regulators also said that some banks had initiated limited tests of mobile banking services. Automated Teller Machines (ATMs) are available at banks and some other locations.

624. The SBP has not issued regulations requiring banks to have policies in place to prevent the misuse of new technologies in money laundering or terrorist financing schemes. SBP has, however, issued a policy paper on “Branchless Banking.” The paper was intended to start the policy discussion on branchless banking, including mobile banking. The paper addresses difficulties in maintaining adequate internal controls when outsourcing some functions. It notes that relying on third parties to keep records might present money laundering and terrorist financing risks. The paper makes clear that the prudential regulations apply to transactions conducted through new technology.

625. Some banks have initiated limited mobile payments services. SBP regulators said that banks that wish to launch new services first need to seek their permission and that they assess banks’ planned AML/CFT safeguards in determining whether to grant permission. No banks are offering prepaid cards, and Internet banking is limited because of concerns about fraud.

**SECP**

626. At the time of the on-site visit, regulators said that no brokers or exchanges are offering online trading. During a visit to a stock exchange, however, the assessment team saw signs advertising the exchange’s new online trading services. In 2005, the SECP issued Internet Trading Guidelines that require brokers and exchanges to have policies in place to prevent the misuse of new technologies in

money laundering or terrorist financing schemes. Section 4, paragraph 4 states that service providers must “safeguard the integrity of the service including controls to prevent: non-compliance with laws, rules, regulations and guidelines issued by the Commission, leading to illegal transactions, fraud or malpractice.”

627. The SECP has not issued regulations or guidelines that require other NBFCs to take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. However, at the time of the on-site visit, no NBFCs were offering services that took advantage of new technologies.

*Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):*

### **SBP**

628. Paragraph 8 of old SBP Prudential Regulation M-1 lays out additional steps that banks should take during the KYC process for non-face-to-face account opening. But it does not require banks to undertake enhanced due diligence with respect to non-face-to-face transactions. Although banks have not yet adopted mobile banking or other cutting edge payment methods, banks do maintain ATM machines, which facilitate non-face-to-face transactions.

629. At least one non-bank financial institution, however, appears to be providing value transfer services via the Internet and mobile phones. Amaana indicates that customers can transfer funds and make payments via e-mail and mobile phone text messaging.

### **EC**

630. SBP has not issued guidelines or regulations pertaining to new technologies for ECs, However, according to the authorities, all EC customer transactions are conducted in person.

### **SECP**

631. The SECP’s “Internet Trading Guidelines” also do not specifically address the money laundering and terrorist financing risks associated with non-face-to-face business. Brokers who wish to offer Internet trading must submit their plans for offering the service. But when the SECP reviews the plan, its review is limited to ensuring that the proposed Internet service has “adequate controls and procedures in place to ensure confidentiality of information, integrity and availability of the service; together with contingency plans in the event of a loss of service.” SECP said that no exchange is offering Internet trading, but the assessors saw advertisements on the Islamabad Stock Exchange for an upcoming Internet trading system posted prominently in its offices, explicitly referring to non face-to-face account opening. The SECP has not issued guidance for NBFCs.

### ***Sum-Up***

#### **Recommendation 5**

632. Pakistan has made important progress on the core CDD requirements and the existence for several years of minimum CDD requirements as well as the roll out of the CNIC are key factors reducing the risk of remaining un-identified accounts. The legal framework, and the practice of the supervisors, makes it most likely that the number of accounts in fictitious names is limited. However, the strong limitation of the NARA, the still remaining gaps in the dissemination of the NADRA and the difficulties faced by SBP to ensure compliance in remote areas cannot allow the assessors to definitively conclude on the absence of un-identified accounts in the banking sector, even though this is likely to remain limited. As far as the securities sector is concerned, and despite the introduction of the UIN, the same reasons and the fact that the supervisory framework does not provide enough comfort in that respect (see section on supervision) lead the assessor to conclude that this risk appears higher. The September 2009 deadline for



completion of identification of existing customers under the new requirements per the April 2009 NBFC Circular is a step in the right direction.

633. With the enactment of the revised PR-M1 on March 2009, the CDD requirements for banks and DFIs are now overall in line with the requirements under the FATF standard. In that respect, the new PR-M1 represents a very significant (and welcome) step forward as far as the legal framework is concerned. On substance, the most important improvements are: the introduction of a clearer requirement to verify the identity of the customer; the new requirements on beneficial ownership; the clarification of the obligations regarding on-going monitoring and the introduction of requirements on enhanced due diligence for high risk customers, transactions and business relationships.

634. With the new PR-M1, the key remaining legal pitfalls for banks and DFIs are:

- The narrow scope of the identification requirements for legal persons and arrangements, as they do not extend to the identification of the directors (except for joint stock companies)
- There is no definition in the new PR-M1 of what enhanced due diligence in high risk scenarios should entail, and for instance, no cross-reference is made to the enhanced due diligence applicable to PEPs, as suggested by the Standard. The authorities rightly note that too prescriptive an approach may lead to “box checking behaviors” from banks and DFIs, and that it is more important to them that banks and DFIs define themselves their risk procedures and seek clarification from the regulator / supervisor on an on-going basis. The assessors see merit in this stance and agree that all details of the enhanced due diligence are not to be spelt out in regulations. However, it seems important to them, and it is required by the standard, that a minimum level of additional diligences be required by the regulator, on top of which banks and DFIs can define their own internal procedures.
- The conditions for simplification or reduction of the CDD requirements in low risk scenarios are too open ended, and not enough guidance has been provided to the financial institutions, or situations of proven low risk have not been sufficiently defined. There is no definition either of the minimum level of CDD to be then implemented. The authorities consider that their approach is sufficiently ring-fenced.

635. As far as the SECP is concerned, the current requirements are more basic, and the cornerstone of an effective CDD regime – i.e. obligations regarding beneficial ownership – are not present. The SECP related requirements (as evidenced by the SAOF where they exist) are focused on account opening, and on the identification of the customer and the collection of information through the CNIC, or registration information in case of legal persons. While important, these requirements however are very limited, and would not allow financial institutions to develop a genuine understanding of their customer, and to develop a customer profile on which on-going monitoring could be exercised.

636. The following issues are not adequately covered, in aggregate, by the SECP requirements:

- definition of the situations for identification of the customer outside the account opening or establishment of a business relationship (occasional customers, doubts about the veracity or adequacy of previously obtained customer data)
- requirement to verify the identity of the customer
- requirement to identify the directors or trustees of legal persons or legal arrangements

- requirement to identify beneficial ownership, and to take reasonable steps to verify the identity of the beneficial owner (except for situation where the customer is acting on behalf of another person)
- requirement to obtain information on the nature and intended purpose of the business relationship, and to conduct on-going due diligence
- requirements to perform enhanced due diligence for higher risks categories of customers, transactions or business relationships
- requirements – particularly relevant for the securities markets – on the timing of the verification
- requirements related to situations where CDD cannot be satisfactorily completed
- requirements on existing customers

637. As far as NBFCs are concerned, the April 2009 Circular goes a long way towards addressing these gaps, as described above for each criteria.

#### Recommendation 6

638. The SECP has not defined any requirement on PEPs, and the Exchanges have not filled this gap in the securities market. As indicated earlier, and for NBFCs, the April 2009 Circular addresses the bulk of the requirements.

639. Prior to the enactment of the new PR-M1, the SBP PEPs requirements for banks and DFIs were incomplete, and left excessive flexibility to financial institutions, as they were not considered higher risk on a systematic basis. In addition, there was no definition of the content of the enhanced due diligence requirements.

640. The new PR-M1 addresses these issues, but still does not define PEPs, and does not extend the enhanced due diligence requirements to family members or associates. There is no requirement for enhanced on-going due diligence on PEPs.

#### *Analysis of Effectiveness*

641. Assessing the effectiveness of the implementation of the CDD requirements is made difficult by the adoption in March 2009 of the revised PR-M1 by the SBP. The assessors were not in position to assess the effectiveness of implementation of this new regulation, and therefore adopted a neutral stance on it. However, the assessors focused their assessment on the implementation at the time of the on-site visit, based on the legal and regulatory framework then enforceable. While recognizing that this is not the legal framework against which the rating of the legal framework is conducted (see below), they considered that such review of effectiveness provided the needed indications on the reactivity of financial institutions to the legal requirements. They of course expect financial institutions to swiftly take measures to implement the March 2009 SBP Regulation and the April 2009 SECP NBFC Circular. They took note of the SBP statement that banks and DFIs have implemented CDD/KYC requirements for quite some time, and that SBP has pushed towards effective implementation of internal policies that contribute to effective CDD requirements.

642. As far as banks and DFIs are concerned, the main focus of SBP and of the financial institutions appeared to assessors as being on the identification of the customer and the collection of information through the NADRA system. The assessors of course noted that the legal requirements are more comprehensive than the reliance in the CNIC, but all interlocutors (particularly private sector ones) put

significant emphasis on this step. The loopholes in the identification systems have been described previously. However, in addition, the sense of the assessors was that both the supervisors and the banks and DFIs considered that their due diligences were on substance completed once the check with the NADRA database was done.

643. The assessors are mindful that the standard does not prescribe in any way what documents should be deemed reliable by the assessed country. However, it is their reading of the methodology that they should review the effectiveness of that choice. In that respect, the assessors are concerned by the almost single reliance on NADRA and NARA, and in particular on NARA, given their conclusion that some gaps remain in the reliance of issuance of NARA cards.

644. The information provided by SBP, as well as the statistics on sanctions (see supervision section) indicate that it took significant efforts to SBP to foster a satisfactory level of compliance with the requirements to identify customers with the NADRA / NARA cards, and that only a substantial increase in the level of fines led to meaningful improvements across the board. SBP notes that this progressive phase-in reflects cost consideration as it did not allow that costs related to the NADRA verification be passed on to customers. The assessors understand this concern, but still note, as indicated by the evolutions of fines (see section on Recommendation 17) that only when SBP significantly stepped up its pecuniary sanctions did financial institutions more aggressively implement CDD requirements. The assessors also note that the deadline for full identification of existing customer was postponed on several occasions, as it appeared that important weaknesses remained.

645. Another important indicator is the overall number of STRs submitted by banks and DFIs (which are the main providers of STRs). Even though the reporting obligation under AMLO is relatively new, other reporting obligations pre-existed, and had already translated in low levels of reporting. In the assessors' views, and given their assessment of the ML and TF risk in Pakistan, this is an indication that on-going due diligences remain insufficient in practice. Of course, this is only a rough measure of effectiveness of CDD/KYC, but given the AML/CFT risks in Pakistan, it appears to the assessors that it provides an additional indication of mixed effectiveness.

646. Finally, as far as banks and DFIs are concerned, there is a duality in the financial sector, and at times within financial institutions. Some banks and DFIs have set up overall sophisticated practices and internal controls or systems – at least for parts of their customer base – while other have yet to implement such practices. There is also a duality between the banking practices in cities, or in favor of the formal sector, and those in remote areas. The acquisition of internal systems is costly, and is clearly a burden for banks and DFIs, all the more so at a time where SBP is pushing for enhanced capital requirements.

647. As far as the institutions supervised by the SECP are concerned, it is the assessors' view that the focus on the collection of information out of the NADRA system is even more pronounced. The absence of SAOF beyond the modaraba and securities sector is also an evidence of a lack of effectiveness of the regulatory regime in place. The absence of STRs submitted by the NBFCs and the securities industry comforts this view.

648. In terms of enforcement, the information provided by the authorities does not reflect an active enforcement stance. Very few sanctions, if any, have been taken for lack of compliance with the existing framework. In the securities sector, the guidelines for audit reviews (see supervisory section) are minimal, and only focus on the use of the SAOF (and therefore do not cover any other of the existing CDD requirements).

649. It is worth noting however that several of the institutions met by the assessors did have systems and procedures going beyond the regulatory requirements – and the assessors' overall conclusion that the CDD requirements are not sufficiently effective does not reflect judgment on the practices of these institutions (which would anyway not be in the scope of this assessment). This conclusion reflects a

synthetic judgment, which also reflects the assessors' analysis of the ML and FT risk in Pakistan, and therefore confronting the financial sector.

650. As far as Recommendation 5 is concerned, the revision of the PR-M1 is a very significant step forward. The assessors have adopted a neutral view on the effectiveness of its implementation, given the date of its adoption. However, as required by the methodology, they factored in their conclusions on the effectiveness of the previous regime in their ratings for Recommendation 5. As a result, their rating under Recommendation 5 first results of an analysis of the legal framework (with the new PR-M1 factored in), to which is added their review of effectiveness based on their findings at the time of the on-site mission.

651. Overall, the new legal framework is significant improved by the new PR-M1, all the more as banks and DFIs represent a major share of the financial sector as a whole. However, the NBFCs and securities still account for a meaningful share too. Against this background, the assessors have given more weight to the situation in the banking sector, but have also reflected the relatively less positive situation outside the remit of the SBP. As a result, in terms of quality of the legal framework, the overall situation is downgraded by the important weaknesses outside banks and DFIs, and further by the overall lack of effectiveness of the regime, particularly given the existing risks.

652. As far as Recommendation 6 is concerned, the regime pre-existing the adoption of revised PR-M1 did not entail any of the key requirements. There are still substantial weaknesses under the new PR-M1, particular the absence of definition of who is a PEP and the absence of coverage of family and close associates of PEPs. The effectiveness of the implementation of the new PR-M1 cannot be assessed – but the issues related to the effectiveness of the implementation under Recommendation are likely to impact the implementation of Recommendation 6. In addition, even though PEPs requirements were reviewed prior to the issuance of the new PR-M1 as this topic was covered under the Inspection Manual, these reviews only covered the requirements in place before March 2009. It is noted that this contributed to raising awareness on PEPs issue in the banking sector. The assessors note that several of the banks (in particular big banks) met had CDD/KYC procedures and internal controls that indeed contained PEPs requirements, at times going beyond what the legal requirements were then. In particular, some of these internal controls and procedures did cover PEPs *and* their families and associates. However, even if parts of the financial sector decide on a voluntary basis to adopt a definition of PEPs more in line with the international standard, this would not allow the supervisor to take action. Here again, despite the importance of the banking sector, the absence of any requirement for the non-banking sector as whole has a negative impact on the overall rating.

653. Following the on-site visit, the authorities provided examples of enforcement action taken by SBP that is relevant to the effectiveness of the PEPs regime. Before the enactment of the March 09 new PR-M1, as indicated in paragraph 638, the requirement was to cover PEPs in the context of risk management systems for higher risk customers. SBP has provided the team with evidence of 13 enforcement actions, including towards big banks, on the basis of this requirement. It is worth noting that these enforcement actions can impact the risk rating of the concerned banks, with possible impact on the capital adequacy ratios or the possibility to open new branches. The assessors therefore consider them as credible and dissuasive. On this basis, the assessors consider that the authorities have taken positive action, and that the effectiveness of the regime; the existence of “drivers” issued by the banking supervisor; and the routine compliance monitoring by SBP supports the rating for R6.

### **3.2.2. Recommendations and Comments**

654. The authorities should:

- Address the remaining (small) gaps in the NADRA, and more importantly those related to NARA, to ensure that they are appropriate identification tools

- Lessen the exclusive reliance on NADRA (and NARA) identification cards as the cornerstone for identification and verification of identity
- Strictly enforce the deadline for identification of existing accounts by June 2009 for SBP and ensure that all existing accounts are properly identified for SECP by September 2009

For SBP:

- Enlarge the scope of the identification requirements for legal persons and arrangements, as they do not extend to the identification of the directors (except for joint stock companies)
- Clarify the minimum level of additional diligences for enhanced due diligence in high risk scenarios
- Specify the conditions for simplification or reduction of the CDD requirements in low risk scenarios, and provide guidance to the financial institutions on situations of proven low risks, as well as on the definition either of the minimum level of CDD to be then implemented
- Enforce the new and additional requirements under revised PR-M1
- Define PEPs, and extend the enhanced due diligence requirements to family members or associates
- Require enhanced on-going due diligence on PEPs, and their family members and associate
- In entering into correspondent relationship, require banks to establish a clear understanding as to which institution will perform the required measures.
- Clearly address the money laundering and terrorist financing risks associated with new technologies.

For ECs:

Amend the AML/CFT regulatory framework of ECs to include:

- Specifying “other particulars” that ECs need to obtain for inward remittances of all amounts and outward remittances of less than US\$5,000.
- Type of identification documents that should be used for verification of customers and the timing of verification of customers for remittance transfers.
- An obligation to conduct CDD on occasional customers when suspicion of ML or TF arises regardless of the value of the transaction or when there are doubts about the veracity or adequacy of previously obtained customer identification data.
- An obligation to identify and take reasonable measures to verify the identity of beneficial owners. Beneficial owners should be defined consistent with the standard.
- Defining the enhanced due diligence measures for high-risk customers.
- An explicit requirement as to what course of actions should be taken when satisfactory CDD cannot be established.
- Defining the enhanced due diligence measures required in relation to foreign PEPs.
- Obligation to require senior management to approve new correspondent relationship.

For SECP

- define the situations for identification of the customer outside the account opening or establishment of a business relationship (occasional customers, doubts about the veracity or adequacy of previously obtained customer data)

- require to verify the identity of the customer
- require to identify the directors or trustees of legal persons or legal arrangements
- require to identify beneficial ownership, and to take reasonable steps to verify the identity of the beneficial owner
- require to obtain information on the nature and intended purpose of the business relationship, and to conduct on-going due diligence
- require to perform enhanced due diligence for higher risks categories of customers, transactions or business relationships
- specify – particularly relevant for the securities markets – the requirement on the timing of the verification
- set out requirements related to situations where CDD cannot be satisfactorily completed
- set out requirements for PEPs
- specifically address the money laundering and terrorist-financing risks associated with new technologies and non-face-to-face transactions
- issue regulations or guidance on new technologies and non-face-to-face technologies for NBFCs other than brokers.

655. Regarding SECP, the assessors welcome the April 2009 NBFC Circular, and note that it goes a long way towards addressing the key gaps. They encourage SECP to ensure its effective implementation as soon as possible. They also note that weaknesses identified in sectors under the responsibility of the SECP which do not belong to NBFCs still remain to be addressed.

### 3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
<b>R.5</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ Lack of coverage of some financial institutions, particularly Pakistan Post</li> <li>▫ Excessive reliance on NADRA and NARA, without due consideration to the remaining weaknesses of these identification sources, particularly NARA</li> <li>▫ Excessive emphasis on NADRA and NARA cards as ultimate identification and verification of identity tools</li> <li>▫ Overall lack of effectiveness</li> </ul> <p><u>For SBP</u></p> <ul style="list-style-type: none"> <li>▫ The narrow scope of the identification requirements for legal persons and arrangements, as they do not extend to the identification of the directors (except for joint stock companies)</li> <li>▫ There is ambiguity on the minimum content of enhanced due diligence in high risk scenarios</li> <li>▫ The conditions for simplification or reduction of the CDD requirements in low risk scenarios are too open ended, and not enough guidance has been provided to the financial institutions, or situations of proven low risk have not been sufficiently defined. There is no definition either of the minimum level of CDD to be then implemented</li> </ul> <p><u>For ECs</u></p> <ul style="list-style-type: none"> <li>▫ Ambiguity as to “other particulars” that ECs need to obtain for inward remittances of all amounts and outward remittances of less than</li> </ul>

	Rating	Summary of factors underlying rating
		<p>US\$5,000.</p> <ul style="list-style-type: none"> <li>▫ Lack of clear guidance on the type of identification documents that should be used for verification of customers and the timing of verification of customers for remittance transfers</li> <li>▫ No obligation to conduct CDD on occasional customers when suspicion of ML or TF arises regardless of the value of the transaction or when there are doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>▫ No obligation to identify and take reasonable measures to verify the identity of beneficial owners.</li> <li>▫ No enhanced due diligence measures for high-risk customers.</li> <li>▫ No explicit requirement as to what course of actions should be taken when satisfactory CDD cannot be established.</li> </ul> <p><u>For SECP</u></p> <p>Absence of</p> <ul style="list-style-type: none"> <li>▫ definition of the situations for identification of the customer outside the account opening or establishment of a business relationship (occasional customers, doubts about the veracity or adequacy of previously obtained customer data)</li> <li>▫ requirement to verify the identity of the customer</li> <li>▫ requirement to identify the directors or trustees of legal persons or legal arrangements</li> <li>▫ requirement to identify beneficial ownership, and to take reasonable steps to verify the identity of the beneficial owner (except for situation where the customer is acting on behalf of another person)</li> <li>▫ requirement to obtain information on the nature and intended purpose of the business relationship, and to conduct on-going due diligence</li> <li>▫ requirements to perform enhanced due diligence for higher risks categories of customers, transactions or business relationships</li> <li>▫ requirements – particularly relevant for the securities markets – on the timing of the verification</li> <li>▫ requirements related to situations where CDD cannot be satisfactorily completed</li> <li>▫ requirements on existing customers, with a specific deadline</li> </ul>
<b>R.6</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ No requirement on PEPs for the financial institutions under SECP</li> <li>▫ No definition of PEPs, and no coverage of family members or associates, for financial institutions covered by SBP</li> <li>▫ No requirement for enhanced on-going due diligence on PEPs, and their families and associates, for financial institutions covered by SBP</li> <li>▫ Insufficient effectiveness</li> </ul>
<b>R.7</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>▫ Banks are not required to establish a clear understanding as to which institution will perform the required measures.</li> </ul>

	Rating	Summary of factors underlying rating
		□ .
<b>R.8</b>	<b>LC</b>	□ Banks are not required to have policies and procedures in place to address any specific risks associated with non-face-to-face transactions.

### 3.3. Third Parties And Introduced Business (R.9)

#### 3.3.1. Description and Analysis

656. Legal Framework: SBP Prudential Regulations require banks to perform customer due diligence and therefore exclude the possibility of third-party and introduced business. The SBP has made limited exceptions to this rule, and the assessment team also found that the requirement that Exchange Companies conduct wire transfers over \$3,000 through their bank accounts, which amounts to third-party business. The SECP's NBFC regulations hold NBFCs ultimately responsible for any activities that third parties conduct on their behalf, but those regulations do not thoroughly address the AML/CFT safeguards required for third-party and introduced business.

*Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1) and Availability of Identification Data from Third Parties (c 9.2):*

#### **SBP**

657. SBP said it does not permit banks to rely upon third parties to perform any elements of the CDD process or to introduce business but that it was aware of two cases in which banks relied on third parties to perform CDD. SBP said it permitted two banks to use an introducer located in a foreign country to perform CDD for Pakistanis working on contract in that country. In those cases, a foreign government agency was responsible for obtaining and immediately sending all CDD information, including the documents, to Pakistan.

658. The assessors examined whether the manner in which exchange companies use their bank accounts to conduct wire transfers on behalf of customers has aspects of introduced business. Exchange companies conducting wire transfers worth more than \$3,000 must do so through their bank accounts. When conducting those transfers, exchange companies are not required to provide information about the originator of the wire transfer. Banks are not required to demand information about the originator of the wire transfer, and they are not required to satisfy themselves that exchange companies can produce CDD documentation without delay. The assessment team concluded that this arrangement does not fall within the scope of Recommendation 9. The interpretive note to Recommendation 9 states that "This Recommendation also does not apply to relationships, accounts or transactions between financial institutions for their clients." As ECs are financial institutions with separate and independent AML/CFT requirements, the placement of funds in the bank is a transaction between financial institutions and not introduced business.

659. For exchange companies themselves, authorities said the concept of third part and introduced business does not apply. The person conducting the transaction is presumed to be the owner of the funds involved in the transaction.

#### **SECP**

660. The SECP's Prudential Regulations for NBFCs compel financial institutions that the SECP regulates to ensure that each customer fills out the account opening form before accepting deposits. The Prudential Regulations for NBFCs further state that "effective procedures shall be instituted for obtaining



identification from new customers and a policy shall be devised to ensure that business transactions are not conducted with customers who fail to provide evidence of their identity.” There is no express prohibition on the use of third parties to collect account-opening forms from customers or to verify customers’ identities, but the regulations make clear that the ultimate responsibility for customer due diligence lies with the NBFC. There is also no explicit requirement that NBFCs relying on third parties to satisfy themselves that copies of documents relating to the CDD process will be made available by the third party without delay or to satisfy themselves that the third party is regulated and has measures in place to comply with the CDD requirements set out in R.5 and R.10.

*Regulation and Supervision of Third Party (applying R. 23, 24 & 29, c. 9.3), Adequacy of Application of FATF Recommendations (c. 9.4) and Ultimate Responsibility for CDD (c 9.5):*

661. When SBP allowed the banks to rely on a foreign government to perform CDD, SBP ensured the foreign government observed FATF standards. SBP made clear to the participating banks that the ultimate responsibility for CDD remained with the bank. Likewise, the SECP regulations make clear that NBFCs are responsible for making “efforts to determine the true identity of the customer before extending its services.” At the time of the assessment, the SECP did not require NBFCs take into account whether introducers are located in countries that apply FATF standards. On April 28, 2009, the SECP issued a circular requiring NBFCs to consider introductions made by counterparties in countries that do not adequately apply the FATF standards as high risk.

### 3.3.2. Recommendations and Comments

662. The SECP should set forth specific requirements concerning third-party and introduced business for entities it regulates. Specifically, it should require financial institutions to immediately obtain the necessary information concerning certain elements of the CDD process, to satisfy themselves that supporting documentation will be made available by the third party without delay, to satisfy themselves that the third party is regulated and has measures in place to comply with R.5 and R.10 and to satisfy themselves that third parties in other countries are in jurisdictions that apply the FATF standards.

### 3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
<b>R.9</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>▫ SECP does not require entities it regulates to immediately obtain from the third party the necessary information concerning certain elements of the CDD process.</li> <li>▫ SECP does not require entities it regulates to satisfy themselves that copies of documents relating to the CDD process will be made available by the third party without delay.</li> <li>▫ SECP does not require entities it regulates to satisfy themselves that the third party is regulated and has measures in place to comply with the CDD requirements set out in R.5 and R.10.</li> <li>▫ At the time of the assessment, SECP did not require entities it regulates to take into account whether countries in which the third party is based apply the FATF Recommendations.</li> </ul>

### **3.4. Financial Institution Secrecy or Confidentiality (R.4)**

#### **3.4.1. Description and Analysis**

##### *Inhibition of Implementation of FATF Recommendations (c. 4.1):*

663. Section 7(4) of the AMLO permits financial institutions to comply with STR requirements notwithstanding any other provision of law. Law enforcement agencies said they can compel financial institutions to produce relevant records and have not encountered undue difficulty in obtaining records from financial institutions. Section 40 of the Banking Companies Ordinance empowers SBP to inspect any banking company and its books and accounts. Section 31 of the Exchange Companies Rules and Regulations compels exchange companies to provide records to SBP upon demand. Section 282G of the Companies Ordinance empowers SECP to compel information from regulated entities.

664. No provision of law prohibits competent authorities from sharing information. SECP has an MOU with SBP to facilitate information sharing among regulators.

665. Section 33A of the Banking Companies Ordinance permits disclosure of information among financial institutions if it is in accordance with law, practice customary among bankers, necessary or appropriate.

666. Internationally, the SECP has signed MOUs with various multilateral and international organizations. Presently, MOUs have been signed with the Australian Securities and Investment Commission, the Royal Monetary Authority of Bhutan, the Securities and Exchange Commission of Sri Lanka and for the establishment of the South Asian Securities Regulators Forum. These MOUs generally cover matters of regulatory concern including sharing of financial and other supervisory information, technical expertise and inquiries for the purpose of effective regulation and prevention of illegal activities. During the year 2008, the SECP signed an MOU with the Securities and Exchange Board of India (SEBI) to establish framework for mutual assistance and to facilitate the exchange of information between both the authorities to enforce and ensure compliance with their respective securities and futures laws and other regulatory requirements.

#### **3.4.2. Recommendations and comments**

#### **3.4.3. Compliance with Recommendation 4**

	Rating	Summary of factors underlying rating
R.4	C	

### **3.5. Record keeping and wire transfer rules (R.10 & SR.VII)**

#### **3.5.1. Description and Analysis**

667. Legal Framework: SBP Prudential Regulations require banks to maintain records. For Exchange Companies, the obligation to maintain records flows from the Rules and Regulations for Exchange Companies. NBFCs, including Modarabas, are required to maintain records by the Prudential Regulations for NBFCs. Brokers are governed by the Brokers and Agents Registration Rules, by the Securities and Exchange Rules and by the rules of the stock exchanges of which they are member.

Federal government rules require Pakistan Post to maintain certain records. The office of the Auditor General of Pakistan oversees compliance with these rules.

668. Financial institutions with which the assessment met during the on-site visit said they maintained records in accordance with the law. Law enforcement agencies with which the assessment team met during the on-site visit said they found financial records to be complete.

*Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):*

### **SBP**

669. SBP Prudential Regulation M-3 requires banks to maintain transaction records for at least five years. The regulations states, “Banks/DFIs shall therefore maintain, for a minimum of five years, all necessary records on transactions, both domestic and international. The records so maintained must be sufficient to permit reconstruction of individual transactions.” In practice, law enforcement agencies reported that they have found that bank records have allowed them to reconstruct individual transactions. When the records relate to suspicious activity, banks must maintain the record until the SBP gives the bank permission to destroy it. Banks must also maintain records when the records are needed as evidence in legal proceedings.

### **ECs**

670. Rule 21 of the Rules and Regulations for Exchange Companies require exchange companies to maintain records required of all dealings between Exchange Companies and their customers for a time period specified SBP, but SBP has not specified the timeframe. When it relates to transactions with foreign entities under business agreements, record must be kept for 5 years as per the Foreign Exchange Circular No. 1 of January 2009. However, on a comprehensive basis, SBP has not clarified the time period for record keeping relating to all the transactions.

### **SECP**

671. Section 53 of the SECP’s NBFC regulations require NBFCs to maintain for 10 years:

- journals, cash books and other records of original entry forming the basis of entry in any ledger;
- ledgers (or other comparable record) reflecting assets, liabilities, income and expenses;
- ledgers (or other comparable record) showing at any time securities which are receivable or deliverable;
- record of transactions with the bank;
- register of transaction in securities; and
- record of the meetings of the board of directors.

672. Section 7 of the Securities and Exchange Rules (1971) require that every stock exchange prepares and maintains such books of account and other documents as will accurately disclose a true and fair picture of the state of affairs of the exchange at any point of time. The books of accounts and documents are required to be preserved for a period of not less than five years and include journals, cash book and any other records of original entry forming the basis of entries into any ledger; ledgers reflecting asset, liability, reserve, capital, income and expense ledgers (or other comparable record) showing the position in respect of each member as on the settlement day of the securities which the member had bought or sold

since the last preceding settlement day and which had been transferred through a Clearing House maintained by the stock exchange.

673. Section 7 of the Securities and Exchange Rules (1971) also require brokers to prepare and maintain for a period of not less than five years the daily record of all orders for purchase or sale of securities, all purchases and sales of securities, all receipts and deliveries of securities and all other debits and credits; ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts; ledgers (or other comparable records) reflecting securities in transfer, securities borrowed and securities loaned and securities bought or sold, of which the delivery is delayed; and record of balance of all ledger accounts, records of transactions with banks and the duplicates of memos of confirmation issued to customers.

#### **Pakistan Post**

674. Appendix 3, Section II, Paragraph 1(A) of the federal government rules require Pakistan Post to retain savings bank journals permanently.

#### *Record-Keeping for Identification Data, Files and Correspondence (c. 10.2):*

#### **SBP**

675. SBP Prudential regulation M-2 requires that banks maintain customer identification records for at least five years after terminating the business relationship. Banks must maintain copies of the documents upon which they based their initial due diligence. Banks must also maintain business correspondence for at least five years after terminating the business relationship.

#### **ECs**

676. The SBP has not required Exchange Companies to retain records of customer identification except in the case of home remittances transactions where all related records should be maintained for at least five years.

#### **SECP**

677. At the time of the on-site assessment, the SECP did not require NBFCs to maintain records pertaining to customer identification or to maintain business correspondence with customers. The regulations pertained only to transactions, not other types of business records. The SECP did, however, require stock exchanges and brokers to maintain business correspondence with customers and of customer identification data. On April 28, 2009, the SECP issued a circular that said NBFCs must maintain records pertaining to customer identification for a period of five years.

#### **Pakistan Post**

678. Pakistan Post considers customer identification records part of the ledger, and customer identification records are therefore permanently retained

#### *Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):*

### **SBP**

679. The SBP has not required banks to ensure that all customer and transaction records and information are available to law enforcement on a timely basis. Although the SBP Prudential Regulation M-3 contemplates requests by domestic competent authorities for records, it does not establish a timeframe in which banks must respond to such requests or require that banks provide the records on a timely basis.

### **EC**

680. The SBP has not required ECs to provide information to domestic competent authorities on a timely basis, although it does require that ECs provide information during compliance examinations, and it may examine ECs at any time. The regulations do not require ECs to provide information law enforcement on a timely basis

### **SECP**

681. Under the Companies Act, the SECP has the power to compel NBFCs to provide information. But the SECP's regulations do not require NBFCs to provide information to domestic competent authorities on a timely basis. The regulations do not require NBFCs to provide information to law enforcement on a timely basis.

### **Pakistan Post**

682. Section 152/1 of Pakistan Post's Miscellaneous Rules requires Pakistan Post to turn over records to law enforcement agencies in a timely manner upon demand.

*Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):*

### **SBP**

683. Para 1(c) of PR-M2 requires banks/DFIs to include accurate and meaningful originator information (name, address and account number) on funds transfers regardless of the amount. Banks/DFIs may, if satisfied, substitute the address with CNIC, passport, driver's license or similar identification number for this purpose. Because of the Foreign Exchange Regulations Act 1947, only bank account holders can send wire transfers across-borders. For domestic transfers, there appears no legal or regulatory prohibition with regards to wire-transfer services for walk-in customers, however, in practice, banks do not offer services to walk-in customers.

684. Para 1(b) of PR-M2 requires that specific procedures be established for ascertaining customer's status and his source of earnings, for checking identities and bonafides of remitters and beneficiaries, for retaining internal record of transactions for future reference, among others. The SBP requires that exchange companies conducting wire transfers worth more than \$3,000 must do so through their bank accounts. When conducting those transfers, exchange companies are not required to provide information about the originator who requests the wire transfer, nor banks are required to demand information about the originator of the wire transfer, and they are not required to satisfy themselves that exchange companies can produce CDD documentation without delay.

### **ECs:**

685. In case of ECs, the Rules and Regulations (Foreign Exchange Circular No. 09 issued in July 2002) require all remittance transaction receipts to contain name, address, and other particulars of both

the remitter and beneficiary (para. 24). In addition, all dealings between an EC and its customers shall be supported by official duplicate receipts, one to be given to the customer and the other to be kept record for a period to be specified by SBP. Every receipt should be sequentially numbered. There is no specific provision with regards to the requirement to verify identity of customers except an implicit requirement for outward remittances above US\$5,000.

686. There is no enforceable obligation imposed on Pakistan Postal Savings Bank with regards to wire transfer requirements.

*Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):*

**SBP**

687. Para 1(c) of PR-M2 requires the full originator information be obtained for all the wire transfers regardless of the amount, and the full originator information to remain with the transfer or related message throughout the payment chain.

**ECs**

688. While the Rules and Regulations (Foreign Exchange Circular No. 09) are explicit in obtaining the full originator information, it is not clearly stipulated whether the full originator information should be included in the message or throughout the payment chain.

*Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):*

689. The above requirement applies to all the wire transfers both domestic and cross-border in the case of banks/DFIs. The authorities informed the assessors that ECs are not allowed to undertake domestic remittances.

*Maintenance of Originator Information (c. VII.4):*

**SBP**

690. Para 1(c) of PR-M2 requires the full originator information to remain with the transfer or related message throughout the payment chain for all the wire transfers regardless of the amount. Authorities informed the assessors that banks/DFIs are not allowed to execute the wire transfers without the full originator information accompanying the transfers. Record keeping of all the transactions is required for 5 years under PR-M3, Record Retention.

**ECs**

691. The Rules and Regulations (Foreign Exchange Circular No. 09) para. 21 require the official receipts be kept for a period to be specified by SBP. SBP has not specified the time ECs should maintain transaction records, except in the case of incoming remittances through agreements with foreign entities.

*Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):*

**SBP**

692. After the on-site mission, SBP amended the PR M-2 to specify handling of wire transfers that lack complete originator information. This amendment was informed to banks/DFIs via a circular letter No. 07 issued on March 09, 2009. The revised PR M-2 requires beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. It advises that such wire transfers when seen with suspicion, may require

reporting to the FMU or terminating the transaction. It further advises banks/DFIs to remain careful and consider limiting or terminating business relationship when originating financial institutions do not comply with those requirements.

693. Authorities and banks have indicated to the assessors that banks do not credit the wire to the beneficiary when it is not accompanied by full originator information. Banks usually request full originator information from ordering banks, or in the event that the full originator information is still not obtained, banks reject the incoming wire transfer.

### **ECs**

694. As stated earlier, when ECs engage in remittances/transfers, they are required to mention the names, address, and other particulars of both the remitter and beneficiary on the duplicate receipts, one to be provided to the customer and the other to be kept with them. In addition, foreign Exchange Circular No.1 of January 2009 requires ECs to include in the agreement with the foreign entities for home remittances the originator information sent from the foreign entities. It states that “For transaction greater than USD1,000 the agreement should require foreign entity to provide address of senders in addition to his/her name. However, address may be substituted with any unique identification number/national identity number/customer identification number/date & place of birth.”

695. Beyond this, the Rules and Regulations or Foreign Exchange circulars are silent on how to handle the incoming remittances with incomplete originator information. In practice, incoming remittances are accompanied with name of beneficiary, reference number and other particulars, and ECs verify the identity of beneficiary in order to ensure that the remittance is paid out to the correct beneficiary.

*Monitoring of Implementation (c. VII.6):*

### **SBP**

696. SBP supervision department undertakes on-site examination and off-site monitoring of banks and DFIs for compliance against the prudential regulation on corporate and commercial banks which includes KYC and AML. Compliance with the wire transfer requirements specified in the PR-M2 is assessed within this context. The same supervision department also undertakes on-site examination of ECs at a minimum, on an annual basis. Findings of the on-site inspection are forwarded for further action by the Foreign Exchange Policy Department which is responsible for making the rules and regulations governing ECs.

*Application of Sanctions (c. VII.7: applying c.17.1 – 17.4):*

697. The SBP has a range of power and tools available to sanction banks/DFIs against non-compliance with regulations. The administrative enforcement powers includes but not limited to removal of managerial persons, suspension of board of directors, prohibition of certain activities, imposition of monetary penalties and cancellation of license. These enforcement powers are also complemented by the availability of criminal sanctions (see supervision section for more details).

698. On the other hand, the SBP does not have a range of sanctions that are effective, proportionate and dissuasive when it comes to ECs. Power granted to SBP with regards to sanctions against ECs under the Foreign Exchange Regulation Act, 1947 (amended in 2002) is the right to suspend or revoke license. SBP may take any other actions as deemed necessary but it is not clear what the other actions might be. At the time of the on-site mission, six licenses of ECs have been suspended or revoked by the SBP. The violation of the Foreign Exchange Regulation Act is also punishable with criminal sanctions.

*Additional elements: elimination of thresholds (c. VII.8 and c. VII.9) (c. VII.8 and c. VII.9):*

699. The PR M-2 requires all the outgoing wire transfers including those cross-border wire transfers below EUR/USD 1,000 to contain full and accurate originator information. In the case of ECs, receipts of all remittance transfers, both incoming and outgoing, should include name, address, sequenced number, together with other particulars of both remitter and beneficiary.

### 3.5.2. Recommendations and Comments

700. The authorities should consider the following recommendations.

- The SBP and SECP, as appropriate, should require banks, exchange companies and NBFCs to provide information to domestic competent authorities on a timely basis. While examiners have the authority to demand data during an examination, there is no legal requirement that banks or exchange companies provide information to law enforcement on a timely basis.
- The SBP should require exchange companies to maintain records of customer identification for at least five years after the termination of a business relationship.
- The SECP should require NBFCs to maintain records of customer identification for at least five years after the termination of a business relationship.
- The SECP should require NBFCs to maintain correspondence between the business and the customer for five years.
- Authorities should bring Pakistan Postal Savings Bank within the AML/CFT regime.

701. With regards to wire transfers conducted by ECs, SBP should issue:

- an explicit requirement that full originator information should accompany the wire transfer; throughout the payment chain.
- an explicit requirement to verify identify of originator;
- a specific time period for which ECs should maintain all the transaction records (not just incoming remittances) and client information. This time period should not be less than 5 years.
- an explicit set of requirements supported by sanctions for the handling of incoming wire transfers that do not contain full originator information.

In addition, when ECs use their bank accounts to conduct wire transfers on behalf of their customers, banks should be required to obtain information on the originator who requests the wire transfer through ECs, and exchange companies should be required to maintain and produce without delay supporting documentation for the CDD process.

### 3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
<b>R.10</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ The SBP has not through law or regulation required that banks or exchange companies provide information to domestic competent authorities on a timely basis.</li> <li>▫ The SBP has not defined the time period for which Exchange Companies must maintain records.</li> <li>▫ The SECP has not through law or regulation required that NBFCs provide information to domestic competent authorities on a timely basis.</li> <li>▫ The SECP has not through law or regulation required that NBFCs</li> </ul>



		<p>maintain records of customer identification for at least five years after the termination of a business relationship.</p> <ul style="list-style-type: none"> <li>▫ The SECP has not through law or regulation required that NBFCs maintain records of correspondence with customers for at least five years after the termination of a business relationship.</li> <li>▫ The SBP has not through law or regulation required that exchange companies maintain records of customer identification for at least five years after the termination of the business relationship.</li> <li>▫</li> </ul>
<b>SR.VII</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>▫ No clear obligations for ECs with regards to verification of the identify of originator, handling of incoming wire that lacks full originator information, and sending full originator information throughout the payment chain.</li> <li>▫ Banks are not required to obtain originator information or documentation from ECs conducting wire transfers on behalf of third parties.</li> <li>▫ Pakistan Postal Savings Bank is not subject to the wire transfer requirements when they engage in wire transfers/remittances.</li> </ul>

### 3.6. Monitoring of Transactions and Relationships (R.11 & 21)

#### 3.6.1. Description and Analysis

702. Legal Framework: AMLO makes indirect reference in s7 (1) (c) to transactions that “has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction”. Indirect reference is also made to record keep in s7(3) but only where a STRs or CTRs have been made then records have to be kept for a period of five years subsequent to termination of its business relationship. S7 AMLO overall deals with the actual reporting of STRs as opposed to unusual transaction systems and controls.

703. The Money Laundering Regulation 2008 s.4 (2) makes indirect reference to transaction that have “no apparent lawful purpose” when giving examples of suspicious transactions. The purpose, again, within the Regulations is for the making of STRs and not as a ‘control mechanism’ for the reporting entities.

*Special Attention to Complex, Unusual Large Transactions (c. 11.1) & Examination of Complex & Unusual Transactions (c. 11.2):*

704. The principal framework regarding the monitoring unusual transactions for SBP supervised institutions is in SBP prudential regulations PR-M2. Para 1(b) provides that specific procedures be established for ascertaining customer’s status and his source of earnings, for monitoring of accounts on a regular basis, for checking identities and bona fides of remitters and beneficiaries, for retaining internal record of transactions for future reference. The transactions, which are out of character/inconsistent with the history, pattern, or normal operation of the account involving heavy deposits / withdrawals / transfers, should be viewed with suspicion and properly investigated.

705. And PR-M5 Para 1 provides that banks / DFIs should pay special attention to all complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help the relevant authorities in inspection and investigation.

706. The SECP has only issued relevant regulations for Modarabas. Regulation 8 of NBFC and Clause 4 Prudential regulations concerns record keeping and transaction that are out of character be scrutinized.

707. Discussions with private sector representatives during the on site visit indicated that banks, by and large, have systems to detect complex, unusual, patterns of transaction and threshold indicators. Modarabas also had some systems but not as refined as those of the banks. Whilst these systems were in place banks and Modarabas showed little understanding of risks posed by ML or TF which would indicate 'rules' used within the systems were probably not advanced as they could be.

708. Other reporting entities (outside banks and Modarabas) showed little or no signs of having either manual or automated systems in place to identify complex, unusual transaction.

709. Banks and Modarabas did have systems to examine transaction identified by their systems; the degree of examination varied by institution and was in the main based on the general understanding of ML and TF which is generally quite weak.

710. In other institutions the lack of identification de facto means there is no examination.

#### *Record-Keeping of Findings of Examination (c. 11.3):*

711. S. 7(3) AMLO requires record keeping regarding unusual transactions but only where and STR (and CTR) has been made. "Every financial institution shall keep and maintain a record of all STR and CTRs filed by it for a period of five years subsequent to termination of its business relationship with the particular client whose transaction was reported."

712. Record keeping from the Companies Ordinance 1984 which is overarching for all companies; financial institutions fall within the definition of a company: s230(6) mandates the keeping of records but is limited to specific documents: books, accounts etc for a period of not less than 10 years. This however does not all records in relation to findings regarding unusual transactions.

713. Prudential regulations issued by SPB and SECP mandate the keeping of records for a period of 5 years. But no specific time period has yet been determined for ECs.

714. The assessors were informed by the SPB, SECP (and other officials) as well as law enforcement officers that day-to-day records were generally kept for the required period (5 years) and were available for inspection. This reference was to general record keep and was not specific when it came to records in relation to unusual transactions and their examination were also being kept. Whilst AMLO does provide for such record keep it is narrow in its scope in that it only requires the maintenance of such records where a STR or CTR has been made but such records are not required where an unusual report had been generated within the institution but was not reported to FMU.

#### *Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):*

715. Foreign Exchange Circular No. 1 of 2009 requires Exchange Companies entering into correspondent relationships to ensure that the respondent institution, to ensure that the respondent institution is effectively supervised and has a physical presence and is affiliated with a regulated financial

group and to pay particular attention when continuing relationships with respondents operating in jurisdictions that have poor KYC standards or have been “identified by the Financial Action Task Force as being ‘non-cooperative’ in the fight against money laundering. Before signing an agreement, exchange companies must ensure the respondent is licensed in its home jurisdiction and assess the respondent’s KYC and AML programs.

716. SBP Prudential Regulation M1 - 9(e), amended after the onsite visit and during the review period, requires Banks and DFIs to conduct enhanced due diligence when establishing business relationships or realizing transactions with counterparts in countries not sufficiently applying FATF recommendations. At the time of the on-site visit, there was no evidence that systems allowing the implementation of these enhanced due diligences were in place, prior the issuance of the revised PR-M1, and in particular whether the SBP had provided any indication of which would be those countries. To support their argument that they have taken action, the authorities note that SBP has circulated to banks and DFIs the names of Iranian banks – but didn’t specify whether this action was taken as a result of United Nations requirements, or concerns on Iran’s AML/CFT regime.

717. SBP PR-M4 only requires banks / DFIs should pay particular attention when continuing relationships with correspondent banks located in jurisdictions that have poor KYC standards or have been identified by Financial Action Task Force as being “non-cooperative” in the fight against money laundering. The requirement, within this regulation does not go beyond the correspondent relationship.

*Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):*

718. As no rules and regulations or systems are in place covering this specific issue therefore no examinations is taking place.

*Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):*

719. None of the supervisory bodies have any specific rules, policies or procedures in place to address this issue. In line with their analysis (see Recommendation 23) of the very broad prudential remit of SBP, the assessors note that SBP is likely to be in position to require banks and DFIs to apply counter-measures (at least several of those described by the FATF). The assessors note however that SBP has not taken such action thus far.

### **3.6.2. Recommendations and Comments**

720. The authorities should consider the following recommendations.

- Banks and Modarabas have implemented a system to monitor for unusual transactions. Beyond those sectors, there is virtually no implementation due to a lack of clear regulation to other sectors. Work needs to be undertaken by the supervisory bodies to strengthen the systems within banks and Modarabas and across all other area implement such systems.
- The generally low level of understanding of the risks posed by ML and TF do not aid the examination of transaction (within banks and Modarabas) to determine legitimacy or otherwise of the transactions. Training and awareness raising based on a national risk assessment covering ML and TF (which currently does not exist) would greatly assist in this area.
- The legal and regulatory framework for monitoring transactions emanates solely from prudential regulations affecting only those supervised by SBP. Its effective implementation is weak in

relations to banks and in other sectors non-existent. Consideration should be given to incorporating all the principals of: monitoring; examination; record keeping; and systems for dealing with countries not applying FATF standards in an amendment to AMLO. This should then be underpinned with more detailed regulations from the supervisory bodies that reflect the different business areas covered by the supervisors.

- Record keeping requirements are generally fragmented and inconsistent across different laws and regulations, situation which affects the ability of financial institutions have records available regarding unusual transaction. AMLO is not specific in relation to the keeping records relating to internal unusual reports. AMLO should be amended to explicitly deal with record keeping in relation to unusual reports generated within a financial institution whether they are reported to the FMU or not.
- Requirements under Recommendation 21 should be laid out outside the banking sector (SECP)

### 3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
<b>R.11</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ Outside banks and Modarabas there are no legal or regulatory requirements or systems dealing with monitoring or examination and therefore no controls within other institutions to deal with monitoring or examination of transactions.</li> <li>▫ Effectiveness of the ability for banks and Modarabas to examine transactions is impeded by a generally poor understanding of the ML and TF risks faced by Pakistan or internationally.</li> <li>▫ Record keeping in relation to the examination of internal unusual reports not sent to FMU is not explicit. Effectiveness in relation to record keeping for unusual reports that formed STRs was not evidenced.</li> </ul>
<b>R.21</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ Despite recent progress for financial institutions supervised by SBP, there are no rules or regulations for all other types of FIs</li> <li>▫ Pakistan is not in legal position to implement counter-measures for non-bank financial institutions</li> </ul>

## 3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

### 3.7.1. Description and Analysis

*Legal Framework and Requirement to Make STRs on ML and TF to FIU (c.13.IIV):*

721. Section 7(1) AMLO requires every ‘financial institution’ to make STRs (including attempted transactions) to the FMU no later than 7 days after of forming the suspicion that transaction: (a) involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of

crime; (b) is designed to evade any requirements of this section; or (c) has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction.

722. The requirement to report covers all ‘predicate crimes’ for ML and TF as listed in the Schedule to AMLO, however, this Schedule does not cover all predicate crimes covered under Recommendation 1 (see Recommendation 1).

723. SBP has issued Prudential Regulations, PR-M5, which date back to 2005 to give guidance on ‘suspicion’ and required reporting of STRs. These regulations only cover institutions supervised by SBP and did not extend to SECP-regulated entities.

724. The FMU issued, under the AMLO, Money Laundering Regulations to *all* reporting entities in January 2009. They further reinforce the requirement to make STRs. Annex 1 of the Regulations includes *guidance* on identifying suspicion and examples of suspicious transactions related to both ML and TF. Section 13 of Annex 1 gives specific guidance on TF related STRs and is based on the FATF’s *Guidance for Financial Institutions in Detecting Terrorist Financing*.

*STRs Related to Terrorism and its Financing (c. 13.2 and SRIV):*

725. There is no direct mandatory obligation to file an STR when there are reasonable grounds to suspect that funds are linked to, related to, or are to be used for terrorism, terrorist acts or terrorist organizations.

726. Offences under the ATA are included as predicate crime for the purpose of AMLO. However, the test for suspicion is focused on funds derived from illegal activities and actions to hide or disguise proceeds of crime, rather than transaction related to TF, which may involve legitimately derived funds. Funds derived from terrorism or terrorist financing offences would be covered by the AMLO provision. Section 7 (1) AMLO (the legislative reporting requirement) does not directly mention TF:

*Every financial institution shall file with the FMU, to the extent and in the manner prescribed by the FMU, Suspicious Transaction Report conducted or attempted by, at or through that financial institution if the financial institution knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):*

- (a) involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of crime;*
- (b) is designed to evade any requirements of this section; or*
- (c) has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction.*

727. On the basis of S 7, the STR obligation therefore covers proceeds of crime derived from terrorist financing. Similarly, the obligations would cover suspicious transactions related to proceeds of crime which may be terrorist funds. It is however not a straight and direct reporting obligation on terrorism financing.

728. In relation to TF reporting: s7 AMLO only mandates reporting from ‘financial institutions’ to the FMU, however, s11L ATA has a general reporting requirement to a police officer of all offences under the ATA (which includes TF) from all persons, not just ‘financial institutions’, which potentially creates a separate obligation to file a report of suspicion of TF. No statistics were provided to demonstrate that any reports have been made to the police under section 11L of the ATA that relate to TF.

*No Reporting Threshold for STRs (c. 13.3)*

729. The reporting requirements under s7 AMLO are wholly suspicion based, regardless of value; the requirement also includes attempted transactions being reported.

*Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):*

730. Reporting requirements for STRs are suspicious based and although fiscal offences are not predicate offences in AMLO, STRs are required to be filed regardless of the possible involvement of tax matters.

*Additional Element - Reporting of All Criminal Acts (c. 13.5):*

731. Section 7 of AMLO meets the additional elements to report all criminal acts.

*Protection for Making STRs (c. 14.1):*

732. S. 12 AMLO provides for protection for making STRs: “No civil or criminal proceedings against banking companies, financial institutions, etc., in certain cases.- Save as otherwise provided in section 7, the financial institutions, non-financial businesses and professions, intermediaries and their officers shall not be liable to any civil, criminal or disciplinary proceedings against them for furnishing information required under this Ordinance or the rules made hereunder.”

*Prohibition Against Tipping-Off (c. 14.2):*

733. s34(1) AMLO The directors, officers, employees and agents of any financial institution, non-financial business or profession or intermediary which report a suspicious transaction or CTR pursuant to this law or any other authority, are prohibited from notifying any person involved in the transaction that the transaction has been reported. (2) A violation of the sub-section (1) is a criminal offence and shall be punishable by a maximum term of three years imprisonment or a fine of rupees one hundred thousand or both. (3) Any confidential information furnished by a financial institution, non-financial business and profession, intermediary or any other person under or pursuant to the provisions of this Ordinance, shall, as far as possible, be kept confidential by the FMU, investigation agency or officer as the case may be.

*Additional Element—Confidentiality of Reporting Staff (c. 14.3):*

734. See comments above regarding s 34(3) AMLO.

## **Recommendation 19**

*Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1)*

735. S 12 AMLO s2(c) AMLO defines “CTR” as meaning a report on currency transactions exceeding such amount as may be specified by the National Executive Committee. This threshold has not yet been set so CTR reporting is not yet in force.

736. S 7(2) AMLO envisages the reporting of CTRs “to the extent and in the manner prescribed by the FMU, be filed by the financial institutions with the FMU immediately, but not later than seven working days, after the respective currency transaction”.

737. The Money Laundering Regulations s5 also layout out provisions for the making of CTR but, as yet, does not provide the threshold required for reporting. The assessors were informed that this was a policy decision in order that they may strengthen the STR reporting regime and also have adequate IT systems prior to implementation the CTR regime.

*Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2)*

738. Cash and currency transaction reporting has not been introduced. If the threshold for CTR reporting was mandated (by Regulation) there would not be any database application suitable to store or make the information available to competent authorities. CTR reporting would be consider, the assessors are informed, when such an application was available to the FMU.

*Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):*

739. No such system is yet in place.

*Guidelines that will assist financial institutions and DNFBP (c 25.1):*

740. The Money Launder Regulations 2008 (issued Jan 2009) circulated to all “financial institutions” contain indicators of suspicious behavior. These Regulations, however, contain predominantly examples of M/L and concentrate mainly on banking sector activities.

741. Prudential Regulation - PRM5 - issued by the SBP issued to financial institutions they supervise, since 2005 and updated, also contain similar guidance to the regulations.

742. SECP and other supervisory bodies had not issued any such guidance to the institutions they supervise but have now circulated the Money Laundering Regulations.

*FIU to Provide Adequate and appropriate feedback (c 25.2)*

743. No examples were provided to the assessment team that demonstrated that feedback was provided, at a general level; statistics etc; or at the specific level. Indeed it is the view of the FMU that AMLO does not mandate this form of feedback so they are not required to provide it. The only evidence of minor feedback was acknowledgement of receipt of STR usually because they are hand delivered. It is not conceivable that hand-receipt / acknowledgment can realistically continue as the reporting sector grows.

*Analysis of Effectiveness:*

744. As the Regulations were only issued on January 6<sup>th</sup> the effectiveness of the ‘new’ reporting requirement was not able to be fully assessed as STRs had not started to appear in the newly mandated format. The reporting requirements prior to these regulations were not effective as they required the FMU calling for additional information / documents from reporting entities to assist in analysis to the expected standards as opposed to the correct information of documents being made available in the reports.

745. However, a suspicious reporting regime existed in relation to institutions supervised by the SBP by way of prudential regulations which date back to 2005 (these are still applicable today) and by obligations in the NAO. The previous requirements resulted in poor levels of reporting and only from banks.

746. Since enactment of AMLO in December 2007, the combined effect of AMLO and these prudential regulations had at the time of the on-site assessment only produced 170 STRs in 2008 and 350 STRs in the period January – April 2009, and those were received exclusively from the banking sector. Even taking into account the small number of reporting banks together with the size and complexity of their banking products this number was still surprisingly low. This does not represent good effective and adequate reporting across the whole of the banking sector nor does it take account of any effective implementation in other financial institutions. The enforcement of the long standing prudential reporting requirements has been weak and non-existent in other areas. See additional comment in Section 2.5 FIU.

747. There was no indication provided to the assessors that any reports had been received specifically in relation to TF during the review period. The authorities indicated that they have received since a limited number of additional STRs that, prima facie, seem to be related to TF.

748. Financial Institutions felt there was a requirement to go beyond the forming of a mere suspicion and that they needed to ‘evidence’ that suspicion.

### 3.7.2. Recommendations and Comments

749. The authorities should consider the following recommendations.

- The list or predicate offences required to be reported for the purpose of ML needs to cover all predicate crimes covered under Recommendation 1.
- There should be a direct mandatory obligation to file an STR when there are reasonable grounds to suspect that funds are linked to, related to, or are to be used for terrorism, terrorist acts or terrorist organizations.
- The inconsistencies within the reporting requirements regarding TF need to be explicitly addressed by an amendment to AMLO.
- Further encourage improved reporting, both in terms of quality and quantity. Care should be taken thought not to encourage defensive reporting or reporting for the ‘sake of numbers’. Training and then an effective feed-back combined with enforcement action, where necessary, needs to be considered.
- FMU should further engage SBP and SECP to devise an integrated approach to foster reporting. This approach should be based on the potential risk posed by the different sectors
- Deepen the training of staff in financial institutions, taking into account (i) possible ‘loopholes’ created by the non-reporting of tax matters and explain how this can be used to cover transactions that are otherwise suspicious and should be reported and (ii) that whilst transactions should be properly reviewed by an institution before making an STR the ‘burden’ on the institution did not amount to the institution have to evidence a suspicion.
- Revise the reporting Guidelines (i) incorporate different examples covering sectors other than banking and (ii) provide more Pakistani based examples.
- FMU needs to address the whole issue of the lack of feedback as a matter of urgency. If there is a perceived or real prohibition (the assessors see no legal prohibition) regarding the provision of feedback this needs to be also addressed urgently.
- The maintaining of confidentiality by the FMU and other investigative bodies is potentially undermined by language used in s34 (1) (3) AMLO which states “shall, as far as possible, be kept confidential by the FMU...”. This does not determine when or where such confidentiality may be broken.

### 3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
<b>R.13</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ Not all predicate crimes in Rec 1 are covered.</li> <li>▫ Whilst AMLO covers reporting across all financial institutions only banks have reported and in very low numbers.</li> <li>▫ The overall STR regime is not working effectively.</li> </ul>



<b>R.14</b>	<b>C</b>	□
<b>R.19</b>	<b>C</b>	□
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>□ Guidelines are only predominately banking orientated; no account is taken of other reporting entities. Examples shown are also generic international examples with little or no local context.</li> <li>□ There is no effective feedback being offered via the FMU or other competent body.</li> </ul>
<b>SR.IV</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>□ There is no direct mandatory obligation to file an STR when there are reasonable grounds to suspect that funds are linked to, related to, or are to be used for terrorism, terrorist acts or terrorist organizations.</li> <li>□ TF STR obligations are limited to proceeds of terrorism</li> <li>□ Emphasis on reporting requirements are biased towards ML and not TF.</li> <li>□ Despite the prevalence of terrorism in Pakistan, implementation of the obligation to report TF related STRs is very weak.</li> <li>□</li> </ul>

### **Internal controls and other measures**

## **3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)**

### **3.8.1. Description and Analysis**

750. Legal Framework: SBP Prudential Regulations require banks to establish internal controls. For Exchange Companies, the obligation to establish internal controls flows from the Rules and Regulations for Exchange Companies. NBFCs are required to establish internal controls by the Prudential Regulations for NBFCs. Modarabas have additional obligations under the Prudential Regulations for Modarabas. Brokers are governed by the Brokers and Agents Registration Rules, by the Securities and Exchange Rules and by the rules of the stock exchanges of which they are members. The regulatory regime does not cover Pakistan Post when it provides financial services.

751. Financial institutions with which the assessment team met during the on-site visit had established compliance departments and had designated compliance officers at the management level. However, at the time of the assessment, the regulatory regime was missing key elements, such as internal audit and training requirements for certain sectors.

*Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):*

### **SBP**

752. Banks must establish and maintain internal controls to prevent money laundering and terrorist financing. SBP Prudential Regulation M-1 requires banks to establish a compliance unit with a full-time head of compliance, to put in place systems to detect unusual activity and to maintain proper records of

customer identification. Compliance officers have timely access to account files, which contain customer identification data, other CDD information, transaction records and other relevant information.

753. Banks must have policies and procedures in place to ensure records are properly maintained. SBP Prudential Regulation M-3 requires banks to maintain all transaction records for at least five years and to maintain records relating to suspicious activity until the bank gets permission from SBP to destroy the records. SBP Prudential Regulation M-3 requires banks to retain CDD records for at least five years after terminating a business relationship. CDD records are kept with the account files, to which compliance officers have timely access.

### **ECs**

754. ECs are required, as per Rules and Regulations (para. 33) issued under the Foreign Exchange Circular No.09 (July 30, 2002) to “adopt proper techniques of internal control such as internal audit.” This requirement is not specific to AML/CFT and does not address detail of the internal control system in terms of coverage. The SBP is taking a gradual approach to regulating ECs, and therefore has not yet required exchange companies to appoint compliance officers. Anticipating this requirement, many ECs have appointed compliance officers at the management level.

### **SECP**

755. NBFCs, including Modarabas, regulated by the SECP are also required to establish internal controls to prevent money laundering and terrorist financing. The NBFC rules issued in 2003 require NBFCs to appoint at the management level a compliance officer who is responsible for reporting the status of compliance to the SECP. The Prudential Regulations for Modarabas have a similar, overlapping requirement to establish an anti-money laundering program, including the appointment of a compliance officer at the senior management level.

756. At the time of the on-site visit, the NBFC rules also required institutions regulated by the SECP to maintain all transaction records for at least 10 years and to monitor transactions for suspicious activity but did not specify the period for which NBFCs must retain the records related to customer identification. On April 28, 2009, the SECP issued a circular requiring NBFCs to maintain records related to customer identification.

757. The stock exchanges in Islamabad and Karachi have required brokers to develop policies and procedures to maintain records, including CDD documentation, for five years. But they have not required brokers to appoint a chief compliance officer or to monitor for suspicious activity.

### *Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):*

### **SBP**

758. Banks must maintain adequately resourced independent audit functions. Prudential Regulation G-6 requires banks to establish a separate department “to conduct audit of the bank’s / DFI’s various Divisions, Offices, Units, Branches etc. in accordance with the guidelines of the Audit Manual duly approved by the Board of Directors.” The regulations require the internal auditors to report directly to the board of directors’ internal audit committee. Annexure VII-B of the Prudential Regulations states that key executives may not head more than one functional area that would result in a conflict of interest within the organization. “For example the departments of Audit and Accounts cannot be headed by the same person,” Annexure VII-B says. The regulation does not require sample testing.

### **ECs**

759. Exchange companies must also establish an internal audit function. Paragraph 33 of the Rules and Regulations for Exchange Companies states: “The company shall adopt proper techniques of internal control such as internal audit.” Although the regulation does not require independent and resourced audit function or specify reporting lines, SBP has encouraged exchange companies to ensure the auditor has sufficient autonomy. The regulation does not require sample testing.

## **SECP**

760. Part I, Paragraph 5 of the Prudential Regulations for NBFCs requires NBFCs to maintain adequately resourced independent audit functions. The regulations states: “An NBFC shall have an Internal Audit Department whose head shall report to the board of directors of that NBFC directly and shall, inter alia, be responsible for compliance with these Regulations and for establishing an effective means of testing, checking and compliance with the policy and procedures established by it.” Modarabas have a similar, overlapping internal audit requirement under Part IV of the Prudential Regulations for Modarabas.

761. The securities exchanges in Islamabad and Karachi have not required brokers to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls.

*Ongoing Employee Training on AML/CFT Matters (c. 15.3):*

## **SBP**

762. Banks are required to establish ongoing employee training programs. SBP Prudential Regulation M-1 requires banks to develop a plan to provide periodic training to employees on initial and ongoing customer due diligence. In addition, SBP Prudential Regulation M-2 requires banks to inform employees of their personal responsibility to implement effective AML/CFT safeguards and to train employees.

## **ECs**

763. There is no specific provision that requires ECs to undertake ongoing employee training on AML/CFT matters.

## **SECP**

764. At the time of the on-site visit, NBFCs, including Modarabas and securities brokers were not required to provide ongoing employee training programs. On April 28, 2009, the SECP issued a circular require NBFCs to establish ongoing training programs for their workers.

*Employee Screening Procedures (c. 15.4):*

## **SBP**

765. Banks are required to put in place screening procedures to ensure high standards when hiring employees. SBP Prudential Regulation G-1 requires banks to “develop and implement appropriate screening procedures to ensure high standards and integrity at the time of hiring all employees, whether contractual or permanent.”

## **EC**

766. SBP must approve Exchange Companies’ chief executives. Exchange Companies are not required to put in place screening procedures to ensure high standards when hiring employees.

## **SECP**

767. Securities brokers are required to be registered with the SECP. People who have been convicted of fraud or breach of trust are ineligible for registration, as are partners of brokerage firms or directors of brokerage companies that have been convicted of an offense. Similar disqualifiers apply to people who

want to register as agents of registered brokers. Brokers hiring agents must certify that the agent is fit and proper per criteria established in Members Agents and Traders (Eligibility Standards) Rules of 2001. Therefore, the hiring broker must de facto have in place screening procedures to ensure that the agents meet high standards.

768. Screening, however, does not apply for all employees of securities brokers, nor does it apply to all employees of other NBFCs, including Modarabas. Only executives of other types of NBFCs, including Modarabas, are required to be subject to screening procedures to ensure high standards.

*Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2)*

### **SBP**

769. SBP Prudential Regulation M-5 requires Pakistani branches of foreign bank and foreign branches of Pakistani banks to comply with SBP regulations or the relevant regulations of the relevant foreign jurisdiction, whichever are more exhaustive. SBP regulators are of the view that banks that are unable to comply with an SBP regulation because of differences between AML/CFT regimes would inform SBP of the problem, but there is no legal requirement that banks inform SBP when a foreign branch is unable to observe AML/CFT measures because of a conflict of laws in the host country.

### **ECs**

770. ECs are not allowed to open foreign branches or subsidiaries.

### **SECP**

771. The NBFC Regulations (2008) require NBFCs to obtain SECP's approval before establishing operations outside Pakistan. Authorities said no NBFCs have asked for approached SECP about establishing foreign operations. As a result, SECP has not issued a rule requiring NBFCs to inform then when a foreign branch is unable to observe AML/CFT measures because of conflict of laws in the host country

#### *Analysis of Effectiveness:*

772. The SBP has strong credibility as a banking supervisor and has used its power to foster compliance. But as far as the securities market is concerned, the assessors are not satisfied with the effectiveness of the regulatory or supervisory regimes. For NBFCs, the SECP is better equipped, but its examination manual is too narrow in scope. It does not cover key requirements, such as STRs or ongoing due diligence. (See Section 3.1 for details). SECP indicates that it will revise its examination manual to reflect its new CDD circular, issued in April 2009.

773. Training concerning ML and FT trends, techniques and methods cannot be fully effective absent a comprehensive risk assessment. Pakistan has yet to provide a comprehensive risk assessment to financing institutions, nor has it conducted private sector outreach on illicit finance risks.

### **3.8.2. Recommendations and Comments**

774. The authorities should consider the following recommendations.

- The FMU should assist banks in identifying ML and TF trends so that banks tune their internal controls and ongoing training programs to address better the ML and TF risks in Pakistan.

- The SBP should expand its internal control requirements for exchange companies to require the appointment of a compliance officer and establish and maintain strong internal policies and controls. The SBP should also embody its recommendation that the auditors be independent in a formal rule.
- The SECP has required NBFCs to establish ongoing training programs for their employees.
- The SECP should require NBFCs to implement screening standards to ensure all their employees meet the highest ethical standards. The SECP should also extend the requirement to all beneficial owners of NBFCs.
- Brokers should be required to designate chief compliance officers and to establish and maintain an adequately resourced independent internal audit function.

### 3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
<b>R.15</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ The SECP does not require NBFCs to establish initial and ongoing training programs to make their employees aware of the AML/CFT obligations or of ML and TF trends.</li> <li>▫ The SECP does not require all NBFCs to implement screening standards to ensure all their employees meet the highest ethical standards.</li> <li>▫ Brokers are not required to designate compliance officers, to have an adequately resourced independent internal audit function or to monitor for suspicious activity.</li> <li>▫ The SBP does not require exchange companies to appoint compliance officers, nor it requires exchange companies to develop and maintain sufficient internal controls to prevent ML/TF</li> <li>▫ The SBP does not require exchange companies to establish an independent audit function.</li> <li>▫ The regulatory regime does not cover Pakistan Post when it provides financial services.</li> <li>▫</li> </ul>
<b>R.22</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>▫ The SBP has not issued a regulation requiring financial institutions to inform SBP when foreign branches cannot observe AML/CFT measures because of a conflict of laws in the host country.</li> </ul>

## 3.9. Shell Banks (R.18)

### 3.9.1. Description and Analysis

775. Legal Framework: Capital requirements and licensing procedures as well as Para.3 of Prudential Regulation M-4.

*Prohibition of Establishment Shell Banks (c. 18.1):*

776. Regulators said that Pakistan’s capital requirements and licensing process discourage anyone from establishing a shell bank in Pakistan. Regulators said they have not licensed any shell banks, nor have they allowed any shell banks to operate in Pakistan. SBP has the legal capacity to deny licensing to any potential or actual shell bank.

*Prohibition of Correspondent Banking with Shell Banks (c. 18.2); Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):*

777. Paragraph 3 of Prudential Regulation M-4 prohibits banks from entering into or continuing a correspondent relationship with a shell bank. The regulation also requires banks to guard against entering into correspondent relationships with foreign financial institutions that permit their accounts to be used by shell banks.

### **3.9.2. Recommendations and comments**

### **3.9.3. Compliance with Recommendation 18**

	Rating	Summary of factors underlying rating
<b>R.18</b>	<b>C</b>	

## **Regulation, supervision, guidance, monitoring and sanctions**

### **3.10. The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 23, 29, 17 & 25)**

#### **3.10.1. Description and analysis**

778. Legal Framework: There are mainly two regulators for the financial sector in Pakistan:

- State Bank of Pakistan (SBP) regulates and supervises the banks (of all forms, except investment banks), DFIs and Exchange Companies.
- The Securities and Exchange Commission of Pakistan (SECP) regulates all Non-Bank Financial Institutions (including investment banks). In addition, the SECP is the regulator / supervisor for the Company Law, and several of its powers for its supervision of non-bank financial institutions are defined in this Act. It is worth noting that provisions of the Companies Act (and related sanctions) can be used towards banks, DFIs, and ECs – and are then to be enforced by the SECP. Finally, as far as securities markets are concerned, most of the regulatory and supervisory powers are shared between the SECP and the Exchanges – which are the front-line supervisors – and are de facto solely exercised by the Exchanges.

779. The assessment team was also advised that Pakistan has launched a significant revision of several of the key acts governing the financial sector, including the banking law and the SECP law. They were also informed that these revisions may entail a new division of labor between the SBP and the SECP, as the former may see its remit expanded.

780. Even if not as complex as some other countries, the assessors have however noted that overall, the legal framework for financial supervision is rather complex and fragmented, as the various powers (in particular of the SECP) are scattered across various laws and regulations – and in particular between the “general laws” governing the regulator / supervisor (apex laws) and the ones specific to certain categories of entities.

781. As a consequence, the assessors – with the help of the authorities – have prepared Tables 16 and 17 in order to make it easier for the reader to identify the relevant legal basis.

**Table 16: State Bank of Pakistan**

	<b>Power to regulate</b>	<b>Power to issue guidance</b>	<b>Power to license / register</b>	<b>Power to supervise</b>	<b>Power to access information</b>	<b>Power to conduct on-site inspections</b>	<b>Power to sanction</b>
Apex legislation	SBP Act 1956	BCO 1962	BCO 1962	SBP Act 1956 BCO 1962	BCO 1962	BCO 1962	BCO 1962
Banks / DFIs	SBP Act 1956	BCO 1962	BCO 1962	SBP Act 1956 BCO 1962	BCO 1962	BCO 1962	BCO 1962
Exchange companies	FERA, 1947	FERA, 1947	FERA, 1947	FERA, 1947	FERA, 1947	FERA, 1947	FERA, 1947

**Table 17: Securities and Exchange Commission of Pakistan**

	<b>Power to regulate</b>	<b>Power to issue guidance</b>	<b>Power to license / register</b>	<b>Power to supervise</b>	<b>Power to access information</b>	<b>Power to conduct on-site inspections</b>	<b>Power to sanction</b>
Apex legislations							
NBFCs	Companies Ordinance, 1984	Section 282 B	Section 282 C	Section 20 of SECP Act and part VIII A of the Companies Law	Section 282 G	Section 282 I	Section 282 J & K
Modarabas	Modaraba Companies and Modaraba (Floatation & Control) Ordinance, 1980 read with SECP Act	A specific power to make regulations by the Commission is ending enactment in the Ordinance. However The federal Government	Part II Section 4 to 6	Section 20 of the SECP Act and the Modaraba Ordinance.	Section 32 of SECP Act Section 21 of the Modaraba Ordinance during investigations	Section 21 of the Modaraba Ordinance and section 29 -31 of the SECP Act	Section 31 and 32 of the Modaraba Ordinance these are the specific section however, there are various section that empower



	<b>Power to regulate</b>	<b>Power to issue guidance</b>	<b>Power to license / register</b>	<b>Power to supervise</b>	<b>Power to access information</b>	<b>Power to conduct on-site inspections</b>	<b>Power to sanction</b>
		can make rules under section 41 of the Ordinance. Further the Commission may make Regulations, etc. under the SECP Act.					SECP to impose sanctions
Securities Markets	Securities and Exchange Ordinance, 1969 (SEO 69) Read with: SECP Act	Section 33 of SEO 69 for Rule making by the Federal Government and section 34 of SEO 69 for Regulation making	Section 4 to Section 5 A of SEO 69	Section 20 of SECP Act SEO 69	Section 6 and section 21 of SEO 69 Section 32 of SECP Act	Section 21 of SEO 69 read with section 29 - 31 of SECP Act	Section 22 and section 24 of SEO 69

782. The legal framework is further complicated by the fact that the AMLO is silent on the preventive measures beyond the suspicious transactions reporting requirements. It does not contain any reference to the preventive measures to be adopted by financial institutions in the context of AML/CFT. Article 44 refers to “power to make regulation”, and states “subject to the supervision and control of the national executive committee, FMU may, by notification in the Official Gazette, make such regulations as may be necessary for carrying out its operations and meeting the objects of this Ordinance”. Similarly, article 6, which defines the powers of the FMU, states that the FMU may “frame regulations in consultation with SBP and SECP for ensuring receipt of Suspicious Transactions Reports and CTRs from the financial institutions and non-financial businesses and professions with the approval of the National Executive Committee”, and “to perform all such functions and exercise all such powers as are necessary for, or ancillary to, the attainment of the objects of this Ordinance”. The authorities indicate that they plan to amend the AMLO to allow for the FMU to recommend to the regulatory authorities to issue regulations on CDD and ancillary record-keeping.

783. In practice, SBP and SECP had issued regulations relevant to the fight against money laundering and the financing of terrorism before the enactment of the AMLO, using their general supervisory powers. As the AMLO is silent on which body is in charge of the regulation / supervision of financial institutions on the AML/CFT preventive measures (except for the regulations related to STRs and CTRs), SBP and SECP have maintained the same practice as before September 2007 when AMLO was enacted. This approach has never been challenged in court, while sanctions have been issued both by SBP (and the Exchanges) on the basis of non-compliance with CDD requirements.

784. As far as regulation of the reporting obligation is concerned, the AMLO gives primacy to the FMU, in consultation with SBP and SECP (and as indicated in other sections of this report, FMU has

used this power). It is worth noting however, that SBP has also issued regulations covering the reporting requirements (PR-M2 and the annexure on “red flags” for reporting).

*Regulation and Supervision of Financial Institutions (c. 23.1) / Designation of Competent Authority (c. 23.2):*

785. There is at the moment no formal designation through the AMLO of the competent authorities having responsibility to ensure that financial institutions adequately comply with the requirements to combat money laundering and terrorism financing. Even as far as the reporting requirements are concerned, there is no authority designated in AMLO to control compliance. The only indirect mention appears in article 37 (liability for failure to file suspicious transaction report and for providing false information), which sets out a *criminal* sanction for failure to report any suspicious transaction (article 37-1). Article 37-2 then states that in case of conviction, SBP or SECP “may revoke [the] license or take any other administrative action, as it deems appropriate”.

786. As indicated above, SBP and the SECP (together with the Exchanges) are supervising the implementation of the AML/CFT related regulations that they have issued on the basis of their general regulatory powers.

### **SBP**

787. For banks and DFIs, the main provisions laying out the regulatory and supervisory powers of SBP are laid out respectively in article 40A (responsibility of State Bank), 41 (Power of the State Bank to give directions) and 40 (Inspection) of the Banking Companies Ordinance.

788. Article 40A states that “its shall be the responsibility and duty of the State Bank to systematically monitor the performance of every banking company so as to ensure that it is complying with the applicable statutory criteria and banking rules and regulations”.

789. Article 41 states that “where the State Bank is satisfied that (a) in the public interest; or (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company [...], it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions”

790. Article 40 gives power to SBP to inspect banking companies as follows: “the State Bank may, at any time, and, on being directed so to do by the Federal Government, shall, inspect any banking company and its books and accounts”.

### **ECs**

791. Foreign Exchange Regulation Act 1947 (amended in 2002) empowers SBP to regulate and supervise ECs, thus the SBP is the designated competent authority to ensure compliance of ECs with prudential requirements, which are deemed by SBP covering AML/CFT. Exchange Policy Department of SBP issue regulations, circulars, guidance, among others, to ECs while the banking inspection department of SBP is responsible for on-site inspections. The findings of the on-site inspections are shared with the Exchange Policy Department.

### **SECP**

792. The SECP has been empowered with the regulation, supervision and promotion of self regulatory organizations for ensuring their effective role in the development of a broad-based, vibrant and efficient capital market. Article 20 of the SECP Act includes powers to register and license, regulate, supervise and conduct investigations. In parallel, part VIII A of the Companies Act as amended defines the provisions relative to the establishment and regulation of non-banking finance companies – which comprise the following forms of business: investment finance companies, leasing, housing finance services, venture

capital investment, discounting services, investment advisory services and asset management services. Article 282 A to N define the range of powers granted to the SECP, which include the powers: to make rules and regulations; to register; to issue directions; to remove; to supersede the Board of Directors; to require to furnish information; to conduct special audit; to conduct inquiries; to impose penalties.

793. Article 282B (power to regulate) provides a very comprehensive basis for SECP to issue regulations (“such regulations may provide for any matter which the Commission deems fit for the effective regulations of NBFCs and notified entities and their business and activities”). Article 282D (power to issue directions) provides the SECP with the power to issue directions “when it is satisfied that it is necessary and expedient to do so (a) in the public interest”.

794. Several articles of Part IX of the SECP Act (article 40 – power to make regulations, article 40A – penalty for violation of rules and regulations, article 40B – power of the Commission to issue directives, circulars, guidelines, etc.) grant the SECP the classical regulatory and supervisory powers for all financial institutions under its remit.

795. For NBFCs, SECP has used its general supervisory powers to supervise and enforce AML/CFT related requirements, deriving either from the SECP Act, the Companies Act or the sector specific legislation.

796. SECP as the regulator of the capital market has been entrusted with the regulatory oversight of the three stock exchanges i.e. the Karachi Stock Exchange, the Lahore Stock Exchange and the Islamabad Stock Exchange; and the National Clearing Company and Central Depository Company.

797. The exchanges act as frontline regulators for their members, brokers, agents of brokers and listed companies. The stock exchanges through the implementation and enforcement of a comprehensive set of regulations, as the frontline regulators, ensure that the regulatees comply with essential requirements for increasing transparency and market integrity for enhancing investor confidence.

798. The powers of the Karachi Stock Exchange are defined in its Memorandum and Articles of Association of the Karachi Stock Exchange and include the powers to regulate and supervise, as well as to take follow-up action against its members (see article IV of the Memorandum – object of the exchange and articles 52 and 53 of the Articles of Association<sup>14</sup>).

799. The articulation and division of labor between the SECP and the Exchanges is laid out in the Securities and Exchanges Act, essentially in Chapter VI. It gives the Federal Government power to make rules (article 33), the Exchanges power to make regulations “subject to the prior approval of the Commission” (article 34-1) and the Commission power to direct the Exchanges to make regulation (article 34-4), and if the Exchange does not comply, the capacity for the Commission to substitute then.

800. The assessors’ understanding of the functioning of this two-level regulation and supervision of the securities markets (on the basis of the example of the KSE) is that regulations are prepared by the KSE, and issued after their clearance by the SECP. The licensing is a responsibility of the SECP, on the basis of due diligence undertaken by the KSE and completed by SECP. Inspections and examinations (called special audits – see below) are mandated by the KSE, which outsources most of them to audit companies. Reports on special audits are then received by the KSE, which can take action on this basis.

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14. The Directors may, from time to time, pass and bring into effect rules and regulations as may be considered in the interest of or conducive to the objects of the Exchange; and they may in like manner at any time and from time to time rescind or vary or add to or delete any of the rules and regulations for the time being in force. The rules and regulations for the time being in force shall be binding on all the members and officers of the Exchange, and all persons claiming through or against the members and officers of the Exchange shall respectively observe and conform to the rules and regulations for the time being in force.

These reports are also transmitted to the SECP, together with the follow-up action by KSE. SECP can decide to either give additional directions to the KSE, or decide to take action on its own.

*Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):*

### **SBP**

801. State Bank is enforcing comprehensive Fit and Proper criteria through Circular No. 4 April, 2007. This circular has been adopted by reference to Regulation G1 (corporate governance / board of directors and management) of the Prudential Regulations for corporate / commercial banking. Part A of this Regulation G1 requires banks and DFIs to provide information for clearance by SBP of appointments of President, Chief Executive and Directors, which all need to meet the fit and proper tests.

802. The Fit and Proper Test is applicable on the sponsors (both individual & companies) who apply for a commercial banking license, the investors acquiring strategic/controlling stake in the banks/DFIs, major shareholders of the banking companies and for the appointment of Directors, CEO, and Key Executives of the banks/DFIs. Amended to the circular itself is a comprehensive document laying out the fit and proper tests and their coverage.

803. The coverage of the fit and proper test is large:

- Key executives include the CEO; any executive acting as second to the CEO including Chief Operating Officer, deputy Managing director; chief financial officer; head of internal audit; head of compliance; head of operations.
- Major shareholder “means any person holding 5 percent or more of the share capital of a bank / DFI individually or in concert with family members”
- Sponsor shareholder “means an individual, company or any other person whose shares are held in safe custody with SBP [...]”
- Substantial ownership / affiliation “means beneficial shareholding of more than 20 percent by a person and/or by his dependent family members, which will include his/her spouse, dependent lineal ascendants and descendants and dependent brother and sister”.

804. The fitness & propriety will be assessed on the following broad elements:

- a. Integrity, Honesty & Reputation
- b. Track Record
- c. Solvency & Integrity
- d. Qualification & Experience
- e. Conflict of Interest
- f. Others

805. The three first criteria are applicable to all categories of individuals – while strategic investors and sponsors are assessed against the “criteria for setting up of a commercial bank” issued by SBP and the Code of corporate governance issued by SECP (see below).

806. Each of the criteria is then made explicit, and under “integrity, honesty and reputation”, it is required that the individuals “have not been convicted / involved in any fraud/forgery, financial crime etc., in Pakistan or elsewhere, or is not being subject to any pending proceedings leading to such a conviction”.

807. The “guidelines and criteria for setting up of a commercial bank” have been issued by SBP in reference to its powers to issue/authorize commercial banking licenses (section 27 of the Banking Companies Act). Per its title, this document provides for guidelines described as drafted “for the ease of different stakeholders and general public”. SBP indicated that all reviews of applications for commercial banking licenses (but not Islamic commercial banks, covered by separate guidelines) are conducted according to these guidelines and criteria. Article 5 (fit and proper criteria for sponsor directors) disqualifies sponsor director who would have “been convicted on account of any criminal or financial irregularity whatsoever” or “been associated with any illegal activity concerning banking business deposit taking, financial dealing and other business”.

808. None of the applicable laws, regulations or guidelines make mention of the beneficial owners of banks and DFIs, and their submission to the fit and proper tests. However, the comprehensive definition of sponsors, substantial shareholders and major shareholders added to the practice of SBP which makes its best efforts to identify the beneficial owners when reviewing licensing application are satisfactory in the eyes of the assessors. SBP indicates that the current revision of the Banking Companies Ordinance should address this issue.

### **ECs**

809. The Rules and Regulations for ECs (para. 15) set requirements for directors of an EC as follows: director should possess appropriate knowledge to carry out the exchange business; should not have been convicted of any offense involving moral turpitude; shall not have failed to honor liabilities towards banks, tax authorities or other government agencies; and shall not have been declared bankrupt nor have been subjected to attachments of their assets by the courts. There is also a limitation on directorship where directors of ECs are not allowed to hold the director’s office in more than one EC, nor they are allowed to borrow or avail credit or defer payment with EC in any form (para 16).

### **SECP**

810. Market entry is strictly governed under the NBFC rules which provide an extensive fit and proper criteria to be followed to ascertain that any person holding a management position or controlling interest in the NBFC is not only capable of managing the affairs of the NBFC but also has a clean credit history as well as criminal record. It is ascertained that the proposed director/ key executive of the company has not been convicted of any criminal record.

811. For NBFCs, the fit and proper criteria and scope are defined in Schedule VIII of the NBFC regulations, and their content and scope are similar to those applicable to banks and DFIs. Article 282C of the Companies Ordinance requires that all NBFCs receive a license issued by the SECP before engaging in business. In addition, article 9 of the NBFCs Regulations requires prior approval by the SECP for the appointment of directors and chief executives.

812. As far as the securities markets are concerned, article 5a of the Securities and Exchanges Ordinance requires registration of brokers and agents. Article 4 of the “brokers and agents registration rules” requires that to be eligible as a broker, a person must not have “been convicted of an offence involving fraud or breach of trust”. Registration can be cancelled in case of conviction for a criminal offence. The assessors were not provided with a definition of “breach of trust

813. As far as agents are concerned, the eligibility criteria set out in these registration rules do not set out fit and proper tests, and the form to be submitted for application does not contain requests for information on past criminal conduct.

814. As for the SBP, the definition of sponsors, significant and major shareholders (which are close to those of SBP, with slight differences in the thresholds) do not refer explicitly to beneficial ownership. As far as the market intermediaries are concerned, the information received by the assessment team indicates that there is no active verification of the beneficial owners.

*Application of Prudential Regulations to AML/CFT (c. 23.4):*

815. As AML and CFT measures and requirements are considered as full part of the prudential regime by SBP and SECP, all regulatory and supervisory measures apply similarly (licensing and structure, risk management, on-going supervision and global consolidated supervision).

*Licensing or Registration of Value Transfer/Exchange Services (c. 23.5):*

816. Apart from licensed banks, ECs and Pakistan Post Savings Bank offer value transfer/exchange services. SBP regulates, supervises, and issues license to ECs under the Foreign Exchange Regulation Act 1947 (amended in 2002). Before applying for license, ECs have to incorporate under the Companies Ordinance 1984 and register with SECP. Opening of each business location also requires prior approval of SBP (Ref: FE Circular No. 9 of 2002, Circular Letter No. 9 of 2004 and Circular Letter No. 17 of 2005).

817. Pakistan Post is a government department under the Ministry of Postal Services. It is expected that the regulation and supervision of the Pakistan Post Savings Bank will be transferred to SECP.

*Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):*

818. Foreign Exchange Regulation Act 1947 empowers SBP to regulate and supervise ECs. The power for supervisors to monitor ECs is detailed in rules and regulations for ECs that “[t]he company shall fully abide by all the regulations, instructions, directives, circulars and other communications issued by the State Bank and subject its records and documents to the examination, inspection and supervision of the State Bank” (para. 31), and “[t]he State Bank reserves the right to inspect the activities of Exchange Company at any time it finds appropriate to ensure adherence to the regulations issued by the State Bank” (para. 32). The scope of AML/CFT preventive measures for ECs are very narrow and limited at this point, focusing mainly on basic customer due diligence. Pakistan Post Savings Bank is not subject to any AML/CFT measures. Suggested amendments to AMLO, however, intend to bring the Postal Savings Bank under the AML/CFT regime.

*Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):*

819. As indicated at the outset of the “preventive measures” section, the insurance sector (while regulated and supervised for prudential reasons) is covered by the AMLO as far as reporting requirements are concerned, but is not subject to any other AML/CFT requirements. It is also not being supervised for AML/CFT. As indicated earlier, it is the assessors’ view that the insurance sector does not present a significant ML/FT risk – but no risk assessment has been conducted, and there is therefore no proven low risk.

820. Microfinance institutions are regulated and supervised for prudential purposes, and are subject to some CDD requirements. They come under the SBP overall regulatory framework. It is however the assessors understanding that they are currently not supervised for AML/CFT purposes. The financial services of the Post are not regulated and supervised for AML/CFT purposes, nor the CNDS. The assessors do not deem these financial institutions face low risk, and that no risk assessment has been undertaken, thereby not providing the underlying argument of proven low risk.

*Guidelines for Financial Institutions (c. 25.1):*

821. State Bank has issued examples of red flags of potential transactions.

822. SECP has not provided guidelines for financial institutions on the implementation of the AML/CFT requirements.

*Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):*

### **SBP**

823. As indicated earlier, the Banking Companies Ordinance, 1962 empowers State Bank to regulate and supervise banks / DFIs. The regulations and other instructions issued through circulars are subsidiary legislation (and as mentioned, AML/CFT issues are deemed of prudential nature). Non-compliance of regulations and circulars carry sanctions like penalties and action against management.

### **ECs**

824. See c. 23.6.

### **SECP**

825. See above and below on the powers of SECP to monitor compliance.

*Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):*

### **SBP**

826. Section 40 of Banking Companies Ordinance, 1962 empowers State Bank to carry out inspection of banks and prepare reports. State Bank has a dedicated department namely – Banking Inspection Department (on-site). Inspection of banks/ DFIs is carried out in a structured way in accordance with the Manual of Inspection, which includes a specific Inspection Manual on “anti-money laundering”, issued in January 08. The procedure extends to review of policies, procedures, books and records. Given its large powers to access information set out in article 43A (power to call for certain information) as described below, SBP can use sample testing methods – and indicates doing so on a routine basis. Inspection findings of AML/ CFT component are recorded in a separate Annexure. BID is in the process of developing a more comprehensive Manual for AML/ CFT separately.

827. SBP indicated that its program of examination is based on a regular rotation of financial institutions examined, as well as targeted examination when SBP so deems necessary (including for risk-related reasons).

**Table 18: Supervisor Related Statistics – SBP – On-site Examinations involving AML/CFT component**

(Number of on-site examinations involving AML/CFT component. AML/CFT component is part and parcel of full scope inspections. Total number of monetary penalties imposed during the last 4 years: 396)

<b>Name of Regulator</b>	<b>Type of Institutions</b>	<b>2007-08</b>	<b>2007*</b>	<b>2006**</b>	<b>2005**</b>
State Bank of Pakistan	Public Sector Commercial Banks	4	4	4	4
-do-	Private Sector Commercial Banks	17	22	22	22
-do-	Foreign Banks	2	5	6	6
-do-	Specialized Banks	3	4	4	4
-do-	Microfinance Institutions	4	5	3	3
-do-	Islamic Banks	2	5	2	3
-do-	Foreign Exchange Companies	38	26	26	-
-do-	Others	4	9	7	4



*Notes:* \*Plan for six months as the inspection plan was aligned with the department's Business Plan and Performance Management Year. \*\*Full year plan i.e. Jan-Dec.

**Total number of monetary penalties imposed during the last 4 years: 396**

**EC:**

828. As stated in the criterion 23.6, the rules and regulations stipulates that “[t]he State Bank reserves the right to inspect the activities of Exchange Company at any time it finds appropriate to ensure adherence to the regulations issued by the State Bank” (para. 32). The banking inspection department of SBP is responsible for on-site inspections. The findings of the on-site inspections are shared with the Exchange Policy Department of the SBP which issues regulations, circulars, guidance, among others, to ECs. The SBP has undertaken inspection of all the ECs that are category A type (full-fledged ECs permitted for both currency exchange and remittances) while those of category B (only permitted for currency exchange operation) started only last year. Occasionally inspection was undertaken twice a year as per request from the Exchange Policy Department; otherwise, SBP conducts an annual inspection of ECs.

**SECP**

829. Article 282H of the Companies Act requires that “the Commission shall monitor the general financial condition of a NBFC or a notified entity and, at its discretion, may order special audit and appoint an auditor to carry out detailed scrutiny of the affairs of NBFC or a notified entity”. Article 282I allows the Commission to “cause an enquiry or inspection to be made [...] into the affairs of a NBFC [...] or of any of its directors, managers or other officers.”

830. The SECP is empowered to inspect a regulated entity under SECP Act (article 29 – investigations and proceedings by the Commission), Securities & Exchange Ordinance, 1969 (article 21) and rules made there under. In addition to legal powers of SECP stated in earlier sections, SECP Act 1997 (Sec-31) also empowers Investigation Officer forcible entry.

831. Article 29 of the SECP Act states that “the Commission may *suo moto* conduct investigations that is an Offence under this Act [...]”. Article 30 defines the powers of the “officer carrying out an investigation or inspection”. Article 31 states that “an investigative officer of the Commission may enter any place or building by force, if necessary”.

832. SECP indicated that it conducts its on-site examination of NBFCs on the basis of risks, and for instance, in 2007, inspected all deposit taking institutions.

833. Article 21 of the Securities and Exchange Ordinance gives the Commission (SECP) – either by its own decision or at the request of at least 10 percent of the members of an Exchange - power to “cause an enquiry to be made by any person appointed in this behalf into (a) the affairs of, or dealings in, any Exchange; or (b) the dealings, business or any transaction in securities by any broker, member, director or officer of an Exchange”. Section 3 of the same article gives “power to enter any premises”.

834. For the Exchanges’ members, the cornerstone of the on-site inspection is the “system audit”, which is set out in the “regulations governing system audit of the brokers of the Exchanges”. These audits are outsourced by the Exchanges to private audit companies, chosen in a selected panel. As far as AML/CFT is concerned, only three criteria are directly relevant (out of a 5 pages regulation): the one on the SAOF, the one on the identification of the person who gave the order and the one on record keeping. There is for instance no reference to internal controls, on-going monitoring, and STR requirement. The table below (under sanctions) describes the number of system audits undertaken, as well as the follow-up actions.

835. Overall, roughly 50 on-site examinations were directly conducted by SECP on 2006 and 2007 – which can focus as needed on a specific issue. SECP indicated in that respect that in 2007, these system

audits focused significantly on the implementation and compliance with the UIN requirements. In 2008, only the Exchanges undertook on-site examinations.

836. The Exchange can also conduct examinations on their own (Monitoring and Surveillance Department). The information provided to the assessors indicates that these examinations are very rare.

837. The Inspection Manual for Non Bank Financial Companies contains provisions related to AML/CFT (designation of compliance officer, implementation of CDD, existence of controls and procedures to detect suspicious transactions, training programs, checking of account holders against freezing lists

*Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):*

### **SBP**

838. The Banking Companies Ordinance, 1962 empowers State Bank to call or access any type of record of banks/ DFIs. Article 43A of the Banking Companies Act allows SBP to compel the production of information, documents or records, to search premises when “it appears to State Bank that a company, firm or any other person whatsoever the business of banking in contravention of subsection (1) of section 27”, which sets out the need to have a license to conduct business, and to then abide to the conditions and terms of this license.

839. On the same line section 40(4) requires that it shall be “the duty of every director or other officer of the banking company or any company or firm or person referred to in section 27A to produce to any officer, hereafter in this section called the inspecting officer, making an inspection under this section, all such books, accounts and other documents in his custody or power and to furnish him with such statements and information relating to the affairs of the banking company or any company or firm or person referred to in section 27A1 and within such time as the inspecting officer may require”. SBP powers to compel production of or access to such information are not predicated on a court order. The inspection teams examine and analyze the efficacy of banks’ procedures and controls, including any analysis to detect unusual or suspicious transactions.

### **ECs**

840. SBP has the power to access records and documents of ECs under the Foreign Exchange Regulation Act as well as the Rules and Regulations for ECs 2002, para. 31.

### **SECP**

841. The Commission is empowered to require all NBFCs to furnish any information under the powers conferred to it by section 282 G of the Companies Ordinance, 1984, which reads as follows: “(1) The Commission may, at any time, by notice in writing, require NBFCs generally, or any NBFC in particular to furnish it within the time specified therein or such further time as the Commission may allow, with any statement or information or document relating to the business or affairs of such NBFC or NBFCs (including any business or affairs with which such NBFC or NBFCs is or are concerned) and without prejudice to the generality of the foregoing power, may call for information, at such intervals as the Commission may deem necessary”.

842. Article 21 of the Securities and Exchange Ordinance define the inspection powers of the SECP (see above). It contains provision that impose to “furnish such information and documents [...] relating to or having a bearing on the subject-matter or the enquiry as the person conducting the enquiry may require”, and allows the person conducting the enquiry to “compel[ing] the production of documents”. Article 22 prescribes penalties for refusal to communicate the required information (with a sanction up to 50 M Rs, and a daily penalty rate of 200.000 Rs in case of continued contravention).

843. Rule 3 of the Stock Exchange Members (Inspection of books and Records) Rules, 2001 “(the Inspection Rules)” stipulates that the Commission may order inspection of books and record required to be maintained by a member of stock exchange.

844. The Brokers’ “code of conduct”, which is annexed to the Brokers and Agent Registration Rules, requires in section D-2 that brokers provide information to the Commission or to the Stock Exchange on books, special returns, correspondence, documents and papers – as required. Failure to respect this requirement can lead to suspension of registration.

*Powers of Enforcement & Sanction (c. 29.4):*

#### **SBP**

845. The Banking Companies Ordinance provides range of enforcement actions and sanctions which can be taken against banks if any of the provision of the said Ordinance or rules/ regulations there under are violated. The enforcement powers includes but not limited to removal of managerial persons, supersession of board of directors, prohibition of certain activities, imposition of monetary penalties and cancellation of license.

#### **ECs**

846. SBP has the power to suspend or revoke license from EC at any time or take other necessary actions as deemed necessary, as per the Foreign Exchange Regulation Act sub-section (5) of section 3AA and the Rules and Regulations for ECs 2002 (para. 42).

#### **SECP**

847. As for the other powers of the SECP as supervisors, its powers of enforcement and sanction are described in the same set of laws and regulations.

*Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1) / Designation of Authority to Impose Sanctions (c. 17.2):*

848. Sanctions for non-compliance with AML/CFT requirements are set out both in the AMLO (for the reporting requirement) and in the various prudential laws and regulations governing the financial sector. Article 33 of the AMLO creates a criminal liability for failure to file STRs and to provide false information (“whoever willfully fails to comply with the suspicious transaction reporting requirement [...] or give false information shall be liable for imprisonment for a term that may extend to three years or with fine which may extend to one hundred thousand rupees or both”). As noted earlier, criminal conviction for failure to report can also lead to the revocation of license or adoption of administrative action by the SBP and SECP. As SBP and SECP have also incorporated the reporting obligation within their prudential requirements, the sanctions for failure to comply defined under these prudential rules would also be applicable.

849. Article 37 of the AMLO (offences by companies) also prescribes that in case of contravention with any of the provisions of AMLO or any rule set under AMLO by a company, any person who was responsible for this failure “shall be deemed guilty of the contravention and shall be liable to be prosecuted against and punished accordingly”, “provided that nothing contained in this sub-section shall render any such person liable [...] if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention”.

#### **SBP**

850. Sanctions under the Banking Companies Ordinance are defined in part V of the Ordinance, and are composed of a mix of criminal and administrative sanctions, including penalties. In addition, the authorities refer to section 41D of BCO which allows the State Bank to refer for prosecution directors, chief executives or other officers of banking companies “who, in its opinion has knowingly acted in a

manner causing loss of depositors' money or of the income of the banking company". An explanatory note to this article indicates that "for the purpose of this section a director or chief executive or other officer shall be deemed to have acted knowingly if he has departed from normal banking practices and procedures or circumvented the regulations or related credit restrictions laid down by the State Bank of Pakistan from time to time". It is the assessors' view that this last provision seems not applicable to AML/CFT issues however. SBP indicates that specific AML/CFT provisions have been incorporated in the current draft of the revised Banking Act.

851. State Bank, being the regulator of banks/ DFIs is empowered to apply monetary and penalties in case of violations. However, if the contravention /violations fall under an offence, action is taken through a specialized court of law, including imposition of fines. Only SBP can refer a case to the special court.

### **ECs**

852. As stated above, SBP has the power to suspend or revoke a license from EC at any time, or take other measures as deemed necessary. The violation of the Foreign Exchange Regulation Act is also punishable with imprisonment for a term which may extend to two years or with fine or with both. In addition, any currency, security, gold or silver, or goods or other property in respect of which the contravention has taken place may be confiscated. The range of administrative sanctions available to SBP is not delineated, nor the amount of fines that can be imposed under the Foreign Exchange Regulation Act specified. Revocation or suspension of license is the only sanction taken against ECs to date. While not specified in the FERA and associated rules and regulations, SBP claims that in the absence of monetary penalty, it resorts to regulatory actions like issuance of warning letters, suspending the business operations from particular locations, suspension of a particular business activity, etc. SBP is currently pursuing introduction of monetary penalties against ECs. The current sanction regime and in particular, the implementation of the sanction regime against ECs do not seem to the assessors as proportionate, dissuasive and effective.

### **SECP**

853. As far as NBFCs are concerned, the Companies Ordinance provides the SECP with the powers to remove the chairman, directors chief executives or any other officers (art, 282E), to supersede the Board of Directors (art. 282F) and the power to impose penalties "for failure, refusal to comply with, or contravention of any provision of this Part" (art. 282 J). Art. 282J covers contravention to the Act as well as "the rules or regulations made under section 282B or regulation, circular or directive or any direction or order passed by the Commission", and the sanction can apply to the NBFC "or its officers". Art. 282 J also contains a refusal of the burden of the proof for "every director, manager or other officer or person responsible for the conduct of its affairs", who "shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed of the commission of the offence". Sanction under art. 282 J include fines "up to 50 million Rs" against (\$ 650.000) the legal entities and their directors, managers and officers, as well as power to suspend or cancel licenses. As indicated earlier, the SECP can also issue directions.

854. The SECP Act also grants the SECP power of enforcement and sanction, in art. 20 ("conducting investigations in respect of matters related to this Act") and in Part IV (enforcement and investigation), as described earlier. Article 40 A (penalty for violation of rules and regulations), states that "any rule made under section 39 or regulation made under section 40 may provide that a contravention thereof shall be punishable with a fine which may extend to ten millions Rs and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand Rs for every day after the first during which such contravention continues".

855. The Securities and Exchange Ordinance provides for the cancellation of registration of the Exchange (art.7) and penalties for contravention (provision of documents, refusal to comply with any order or direction, contravention or failure to comply with the Ordinance or rules and regulations) against

any person (art. 22). The penalties under art. 22 are fines, up to fifty million Rs, and daily two hundred thousand Rs fines in case of continuing contraventions. As persons designates either natural or legal persons, the provision of art. 22 can apply to directors or officers of market intermediaries.

856. The Regulations governing system audit of the brokers of the Exchange lay out (article 7) the fines available in case of defaults or non compliance which can be imposed by the Exchange. The maximum amount per default is 25.000 Rs (\$ 310). The broker himself can be fined. Article 7 allows for the Commission to take action on its own if it is not satisfied by the follow-up to the penalty, and it can also be mobilized by the Exchange. The Exchange can also initiate disciplinary proceedings against the broker, as per the Articles of the Exchange (the Board can institute disciplinary action against members of the Exchange – i.e. suspension or cancellation of membership).

*Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3):*

**SBP**

857. The sanctions available in relation to banks can extend to any person, being the chairman, director, chief executive or an officer of a bank as provided under sub-sections 1A and 1AA of section 83.

858. SBP can under section 41A remove directors and managerial persons from office (under very wide circumstances “association [...] likely to be detrimental to the interests of the banking company or its depositors or otherwise undesirable”; “public interest”; “to secure the proper management of any banking company”).

**ECs**

859. The sanction regime against ECs does not specify that sanction can be taken against directors and senior management of ECs.

**SECP**

860. As far as NBFCs are concerned, the Companies Ordinance provides the SECP with the powers to remove the chairman, directors chief executives or any other officers (art, 282E), to supersede the Board of Directors (art. 282F).

*Range of Sanctions—Scope and Proportionality (c. 17.4):*

**SBP**

861. Article 42 of the Banking Companies Ordinance sets out the powers of SBP to follow-up on findings of inspections and examinations. These include the possibility to issue directions or orders or calling on meetings of directors.

862. Under article 83 (5), the general pecuniary section for non compliance can extend to 200.000 Rupees (\$ 2500) and the possibility to top it up to daily additional 10.000 Rupees (\$ 125) in the contravention is a continuing one.

863. The range of penalties defined under article 83 of the Banking Companies Ordinance is rather comprehensive, and allows for sanctions both towards the legal entities and their management (see for instance article 83 (5), which is the catch-all clause addressing failure to comply with any provision of the Ordinance or order, rule or direction adopted under the Ordinance.

864. In parallel, special courts have been created to consider a range of offences under the Banking Companies Ordinance, as defined in article 84 of the Ordinance. Only a complaint by an officer of State Bank can initiate such a trial. The only provisions which can be criminal sanctions and are relevant to AML/CFT related to the refusal to provide information to SBP as required, or to obstruct SBP officials' access to information.

865. As far as compliance with AML/CFT related regulation is concerned, SBP provides the following information on fines imposed for non-compliance:

**SBP Penalty Table: Penalties Imposed on Banks/DFIs during the Last Four Years on Violations of Prudential Regulation M1 to M5 (amount in Rupees)**

Inspection Report Cut-off Year	M-1			M-2			M-3		
	Penalty Amount	Cases	No. of Times Reported	Penalty Amount	Cases	No. of Times Reported	Penalty Amount	Cases	No. of Times Reported
<b>Total</b>	413,894,895	444,797	358	23,950,000	1,212	19	444,000	26	6
<b>2003</b>	251,270	21	5	—	—	—	—	—	—
<b>2004</b>	21,472,425	2,426	45	840,000	42	3	—	—	—
<b>2005</b>	225,450,000	23,852	114	5,550,000	292	9	330,000	18	2
<b>2006</b>	150,971,800	384,610	125	16,180,000	809	5	4,000	2	2
<b>2007</b>	15,749,400	33,888	69	1,380,000	69	2	110,000	6	2
<b>Total</b>	413,894,895 Approx US \$5.2 million	444,797	358	23,950,000 Approx US \$300,00	1,212	19	444,000	26	6

Inspection Report Cut-off Year	M-4			M-5			Total		
	Penalty Amount	Cases	No. of Times Reported	Penalty Amount	Cases	No. of Times Reported	Penalty Amount	Cases	No. of Times Reported
<b>Total</b>	—	—	—	9,560,000	500	13	447,848,895	446,535	396
<b>2003</b>	—	—	—	—	—	—	251,270	21	5
<b>2004</b>	—	—	—	—	4	2	22,312,425	2,472	50
<b>2005</b>	—	—	—	7,080,000	366	6	238,410,000	24,528	131
<b>2006</b>	—	—	—	2,140,000	107	3	169,295,800	385,528	135
<b>2007</b>	—	—	—	340,000	23	2	17,579,400	33,986	75
<b>Total</b>	—	—	—	9,560,000 Approx US \$120,000	500	13	447,848,895 Approx US \$5.6 million	446,535	396

*Note:* It may be noted that after revising the KYC regime by SBP during 2003 specific regulatory violations reported in inspection reports witnessed an increase. However, an increased amount of penalty imposed on banks during 2005 forced the banks to improve their behavior towards compliance with these regulatory requirements and as such SBP highlights a decrease in penalties imposed after 2005.



## ECs

866. SBP does not have a range of sanctions available against ECs. SBP has the power to suspend or revoke license and take other measures as necessary but it is not clear what these “other measures” might be. As stated earlier, SBP claims that it resorts to actions like issuance of warning letters, suspending the business operations from particular locations, suspension of a particular business activity, etc. SPB also stated that it issued letters to ECs for them to rectify weakness found during the inspection. Monetary penalty is not currently available and SBP is currently seeking this sanction power against ECs in this regard as SBP acknowledges the lack of the range of sanctions against ECs. At the time of the on-site mission, SBP suspended or revoked 6 licenses of ECs. It is also worth noting that SBP has referred some of these cases to law enforcement. While the assessors welcome the SBP enforcement actions, they also note that success in its efforts to formalize Alternative Remittance Systems will also depend on setting the right incentives – and forceful enforcement action could send mixed signals in that respect. Thus it is critical that SBP has and uses a range of powers before swiftly moving to the revocation of a license although the assessors acknowledge that at times situations may warrant such an action.

## SECP

867. In 2008, 628 violations were identified through the system audit in the securities industry (Table 19). On 24 of them led to penalties, while 48 follow-up letters were sent. In 2007, 150 controls had been undertaken, identifying 573 violations, leading to 46 penalties. SECP indicated that in several occasions, it had to exercise pressure on the Exchange to increase the impact of the sanctions – and therefore their dissuasiveness. The significant variation in the amount of penalties over years is striking in that respect – all the more as the assessors understand that 2007 was the year where the SECP exercised pressure on the Exchange to increase the level of penalties. The very low ratio violations / penalties or even warning letter issues is of concern for the assessors in terms of credibility of the supervisory process. The following statistics relate to the whole coverage of the system audits – of which only a couple of requirements relate to AML/CFT.

**Table 19: SECP Statistics—Total System Audit (all requirements together)**

Years	Number of Brokers whose System Audit have been conducted during the Year	Number of Violations	Number of Penalties	Amount of Penalties	Rectified	Warning letter issued
2008	150	628	24	80,000	193	40
2007	150	573	46	1,895,000	289	56
2006	71	311	23	233,500	174	30
TOTAL	371	1512	93	2,208,500 Approx US \$28,000	656	126

868. The assessors were not provided with equivalent information on the supervision of NBFCs. SECP currently does not conduct any system audit of NBFCs, but states that NBFCs are subject to detailed inspections and that follow-up enforcement actions and penalties are adopted. The assessors were not provided related statistical information.

### *Resources of the financial supervisors*

869. State Bank is autonomous body with regulations and supervision of financial institution in its preview as its one of the core functions. SBP considers that its supervisory departments are overall well

funded, staffed and trained to enable them to perform their functions with sufficient operational autonomy and free from interferences.

870. New SBP staff is hired through a rigorous process of written examination followed by group discussions and interviews. The new entrants are required to provide two reliable references and are also subject to clearance from Police. Additionally, new staff is required to sign confidentiality undertaking which remains part of the personal record of the staff concerned.

871. Besides entry level training, relevant staff of supervisory departments is provided necessary training in AML/ CFT. A large number of officers have received foreign training as well. The objective is to equip the staff with necessary skills to combat money laundering and terrorist financing.

872. SBP has set up a dedicated unit on AML issues in its regulatory division. The main responsibilities of the Unit include:

- To formulate, process and issue necessary instructions/ regulations to the banking sector on AML/CFT in coordination with FMU;
- To prepare briefs, status reports and other information concerning AML/CFT issues for competent authorities;
- To address issues emanating from domestic and international AML/CFT bodies like Ministries in Pakistan, APG, FATF & UN Monitoring Committees;
- To issue instructions for freezing of bank accounts under UNSC Resolution e.g. 1267;
- To call and maintain records of accounts frozen under UNSC Resolutions;
- To conduct seminars and workshops for compliance officers of banks;
- To respond queries of banks and provide guidance and assist them on AML/CFT issues; and
- To coordinate and liaise with FMU and supervisory departments of SBP on AML/ CFT issues

873. The examination / supervision department covers all the institutions under SBP ambit. It is staffed with 120 examiners (covering 77 institutions: 46 banks and micro-finance banks; 8 DFIs and 23 ECs). They have received training on AML/CFT issues.

### **SECP**

874. SECP enjoys high level of autonomy and is almost free to take policy decisions in the areas of its jurisdiction.

875. SECP is organized and staffed with a team of high caliber professionals in its various divisions / departments. These professionals have in-depth knowledge of their respective fields. SECP is staffed with high skilled professionals who meet the ethical requirements of professionalism, integrity, honesty, confidentiality and also with the standards set by the SECP.

876. SECP provides on-the-job training to its officers in their relevant field. Various officers of SECP have been accredited as “Certified Anti-Money Launderers” by the Association of Certified Anti-Money Launderers (ACAMS) of United Kingdom. Further, it has organized various seminars / conferences for generating awareness of money laundering issue among its regulatees.

877. SECP has also organized other in house training programmes on the AML related issues.

878. The enforcement divisions of SECP (on-site and off-site) that cover *all* companies (under the Companies Ordinance) comprise 35 staff. The NBFCs enforcement team is set up with 23 staff (7

dedicated to off-site supervision, 15 to on-site supervision and one to the Modarabas). The inspection team in SECP for the securities sector as a whole comprises between 5 and 7 staff.

879. As indicated earlier, most of the enforcement actions of the Exchanges are outsourced to audit firms. No specific staffing indications were provided overall, but the KSE only has one or two staff in-house and the Islamabad Exchange virtually none.

### *Sum-Up*

880. Overall, the regulatory and supervisory framework under the SBP and the SECP is rather comprehensive and sound. As indicated earlier, the coverage of the AML/CFT regulatory and supervisory framework is however too narrow – either because some financial institutions are not covered, or because the extension of the prudential framework to AML/CFT is incomplete (insurance sector for instance). The fragmentation of the legal basis for SECP to exercise its regulatory and supervisory powers is however striking. If the assessors have not identified major inconsistencies, the rationale behind such a number of layers of laws and regulations remains unclear to them. As far as securities markets are concerned, this fragmentation and complexity is compounded by the existence of two regulators and supervisors, the SECP and the Exchange – with lots of overlaps and very likely different (if not diverging) objectives. As indicated below in the effectiveness section, the challenge in the regulation and supervision of the securities sector is not theoretical. SECP indicates that a new Securities Act is under preparation, which would aim at addressing the fragmentation and layering described above.

881. The assessment team has thoroughly analyzed the absence of formal designation of competent authorities for the regulation and supervision of the compliance of financial institutions with their AML/CFT requirements. There is no requirement under the standard that the AML Statute itself formally sets out which is/are the competent authority(ies) for regulation and supervision. In the specific case of Pakistan, the scope of the mandates of the SBP and SECP appear to the assessors as large enough to encompass AML/CFT requirement as integral parts of the prudential ones – step which has in addition allowed SBP and SECP to set out such requirements even before the enactment of AMLO. As only AMLO introduces the STR requirement, it should however be noted that, at least for SBP, this obligation has also been added into the prudential obligations. It would be worthwhile for SECP (as well as the Exchanges) to take similar action. The only remaining ambiguity relates to the monitoring of compliance with this reporting obligation – it would be a duplication to confer any mandate in that respect to the FMU.

882. The fit and proper test for banks and DFIs and for NBFCs (including Modarabas) is in line with the Standard. As far as securities market intermediaries are concerned, the assessors are convinced that “moral turpitude” would provide a satisfactory basis to prevent criminal and their associates. Two weaknesses remain however – there is no satisfactory fit and proper requirements for agents in the securities market, and the assessors are not satisfied that in practice, SECP (and the Exchanges) do conduct the fit and proper test on the beneficial owners in the financial institutions they regulate.

883. The supervisory powers available in law for the SBP and the SECP are comprehensive and satisfactory.

884. Whether the sanctions available are proportionate, dissuasive and effective is more complex. The analysis of effectiveness below is important to this overall analysis. In terms of legal status, the range of sanctions available to the SBP is satisfactory, as administrative sanctions, except the case of ECs. The complementary existence of criminal sanctions, which are used, strengthens this analysis. The pecuniary sanctions available to the SBP appear very low on paper, and therefore do not seem dissuasive. This said, the maximum amount of these fines only refers to single instances: SBP indicates that it can impose total fines much higher by multiplying this total amount by its estimations of the number of occurrences of the contravention. SBP also indicated that when the failure stems from a weakness in the procedures or internal controls, it would extrapolate an estimation of the number of occurrences taking into account the

customer base. This aggregation approach has in the past allowed SBP to impose significant fines to individual institutions for failure with AML/CFT requirements, in particular on CDD requirements (see below on effectiveness). However, the assessors are not satisfied that SBP could effectively apply this method in the case of systemic failure, as linking such a systemic failure to specific occurrences would likely be very difficult, and subject to challenges by the penalized institution. For instance, they are not convinced that such a process would allow SBP to sanction a systemic failure in the detection of suspicious transactions.

885. As far as NBFCs are concerned, the situation on pecuniary sanctions used to be similar, but the recent significant increase in the pecuniary sanctions that can be imposed by the SECP has obviously enhanced the deterrence incentives.

886. As far as securities markets are concerned, the range of sanctions available to the Exchanges is not proportionate, dissuasive and effective. The level of the fines available is in the views of the assessors too limited to achieve this objective, and the existence of more stringent sanctions, such as suspension or removal from the Exchange, does not appear to them as credible enough (and used enough) to compensate for this weakness. That the SECP can act on its own in case of non-compliance (and now has stronger fines available to do so) does not sufficiently mitigate this weakness, essentially for reasons linked to effectiveness, as described below.

#### *Analysis of Effectiveness*

887. The analysis of effectiveness of the regulatory and supervisory regime for AML/CFT in Pakistan requires differentiating between the sector covered by the SBP and those covered by the SECP.

888. Four major issues need to be taken into account when assessing the effectiveness of the actions taken by the SBP:

- As indicated above, the legal framework is overall satisfactory. In addition, the various tools available are used by the SBP, in terms of enactment of regulations, inspections and examinations and follow-up. That SBP acted quickly after the assessment team's on-site visit is one revealing evidence. The existence of a rather comprehensive inspection manual covering all main AML/CFT requirements is also evidence that SBP has taken steps to foster implementation. The full integration of the examination of AML/CFT requirements in all prudential examination is also, in the context of Pakistan, a positive element.
- SBP has at its disposal the financial and human resources necessary to undertake its mission, and has a strong credibility as a supervisor – as evidenced by the comments by the various financial institutions met. Training of staff in SBP on AML/CFT issues is satisfactory, and all staff met (either regulators or supervisors) clearly displayed a very good understanding of AML/CFT requirements and challenges – both for banks and DFIs and ECs.
- SBP has used its powers to foster compliance, as evidenced by the fines imposed on AML/CFT specific regulations.

889. Despite all these positive elements, the main pitfall in terms of effectiveness is in the views of the assessors the excessive focus on the recourse to NADRA/NARA identification tools. SBP indicated having exercised very strong pressures on this requirements, both through moral suasion, pressures on the compliance officers and imposition of fines. The table above summarizing the fines imposed on Banks and DFIs confirms this stance. Discussions with the financial institutions, including on the time and resources needed to phase in the implementation of IT systems to undertake effective on-going monitoring, lead the assessors to conclude that the monitoring of compliance on other key AML/CFT requirements has been less systematic and in-depth. Another evidence of this is the very low overall level of STRs, and their strong concentration on a very limited number of banks.

890. While agreeing with Pakistan that enforcement of the CDD requirements is a pre-requisite for the effectiveness of the AML/CFT prevention and detection measures, the assessors however note that these requirements have now been in place for long enough to justify a much higher level of enforcement for the other requirements.

891. As far as the securities markets are concerned, the assessors are not satisfied of the effectiveness of the regulatory and supervisory regimes. Powers to regulate have not been sufficiently used. The basis for examination (SAOF essentially, through the system audits) is much too narrow. Sanctions adopted are not dissuasive, effective and proportionate. The Exchanges do not have the human and financial resources to conduct effective supervision.

892. For NBFCs, more efforts have been made by the SECP, and overall, the SECP is better equipped. On the other hand, the level of details of the regulations remains insufficient – and no enforcement has taken place on the SAOF outside Modarabas. The inspection manual for NBFCs for the AML/CFT requirements has too narrow a scope, and does not cover key requirements (for instance in STRs, on-going monitoring...). Training of inspectors includes AML/CFT, but only at a high-level, without specific training on how to inspect on and enforce AML/CFT requirements. The sanctions for lack of compliance have not been used.

893. Finally, SBP seems equipped to undertake its roles as far as AML/CFT is concerned. The staff seems well trained – and discussions with the assessment team clearly evidence their in-depth understanding of the issues. Given the number of institutions under its supervision and the overall risks to the banking sector, the assessors consider that the current resources for SBP are still short. SECP is clearly understaffed, and not in position at the moment to dedicate staff to AML/CFT as needed. While the understanding and knowledge of AML/CFT is good at the theoretical level, there is obviously a need for more practical training and more direct engagement on practical implementation of AML/CFT preventive measures. The Exchanges do not have the needed trained and experienced staff to effectively conduct their missions on AML/CFT.

### **3.10.2. Recommendations and Comments**

894. The authorities should take action to:

- Expand to all financial institutions (per FATF definition) the AML/CFT regulatory and supervisory requirements (market entry, regulation, supervision, compliance monitoring)
- As a whole, enlarge to all CDD and STR reporting requirements (i.e. beyond compliance with the NADRA obligation) the proactive compliance monitoring, and follow-up actions. This should be a priority for SECP, including in its division of labor with the Exchanges
- Clarify the roles of the financial sector supervisors and the FMU in terms of regulatory and guidance on the one hand, and compliance monitoring on the other hand for the suspicious transaction reporting obligations. The assessors consider that the mandated coordination between the FMU and SBP and SECP for regulations is satisfactory, but that it should be made clearer that compliance monitoring rests with the financial sector supervisors
- Develop “hands-on” training on the supervision of compliance with AML/CFT requirements for examiners
- Increase the resources available to SECP, and SBP to a lesser extent, and as needed, the Exchange to fulfill their supervision mandate on AML/CFT

## SBP

- Amend the sanction regime to ensure that effective, dissuasive and proportionate sanctions are available to foster compliance in case of systemic compliance failure
- Expand the range of sanction power available for non-compliance of ECs.

## SECP

- Enforce the requirement for all professions to adopt a form for establishment of the business relationships, and enlarge the scope of the existing ones, with a view to allow financial institutions to have effective customer profiles
- Set up a “fit and proper” requirement for agents in the securities markets
- Expand the fit and proper tests to beneficial owners of financial institutions regulated by the SECP
- Strengthen the pecuniary sanctions available to the Exchanges – or step in on a regular basis for significant compliance failures, in order to use the more dissuasive, proportionate and effective range of sanctions directly available to the SECP
- Strengthen the coverage of system audits as far as AML/CFT requirements are concerned
- Enlarge the coverage and depth of the compliance manual on AML/CFT for NBFCs

### 3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
<b>R.17</b>	<b>PC</b>	<ul style="list-style-type: none"><li>▫ Overall insufficient effectiveness of the sanctioning regime, and its application</li></ul> <p>SBP</p> <ul style="list-style-type: none"><li>▫ Weaknesses in the sanction regime to ensure its effectiveness, dissuasiveness and proportionality</li><li>▫ range of sanction power available for non-compliance of ECs too narrow</li></ul> <p>SECP</p> <ul style="list-style-type: none"><li>▫ Insufficient pecuniary sanctions available to the Exchanges</li></ul>
<b>R.23</b>	<b>LC</b>	<ul style="list-style-type: none"><li>▫ limited coverage of financial institutions (per FATF definition) subject to AML/CFT regulatory and supervisory requirements (market entry, regulation, supervision, compliance monitoring)</li><li>▫ Ambiguities in the roles of the financial sector supervisors and the FMU in terms of regulatory and guidance on the one hand, and compliance monitoring on the other hand for the suspicious transaction reporting obligations.</li></ul>

	Rating	Summary of factors underlying rating
		<p>SECP</p> <ul style="list-style-type: none"> <li>▫ Lack of recourse to the regulatory powers to press all professions to adopt a satisfactory form for establishment of the business relationships</li> <li>▫ Absence of “fit and proper” requirement for agents in the securities markets</li> <li>▫ Non application of the fit and proper tests to beneficial owners of financial institutions</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Insufficient guidance provided by the financial sector supervisors</li> </ul>
<b>R.29</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ Compliance monitoring insufficiently proactive on CDD and STR reporting requirements beyond compliance with the NADRA obligation</li> <li>▫ Insufficient “hands-on” training on the supervision of compliance with AML/CFT requirements for examiners (for SBP for ECs, and for SECP as a whole)</li> <li>▫ Insufficient resources for SBP (for Exchange companies), SECP and as needed the Exchange to fulfill their supervision mandate on AML/CFT</li> <li>▫ Narrow coverage of system audits for the securities markets as far as AML/CFT requirements are concerned</li> <li>▫ Narrow coverage and depth of the compliance manual on AML/CFT for NBFCs</li> <li>▫ Insufficient effectiveness of the supervisory regime</li> </ul>

### 3.11. Money or Value Transfer Services (SR.VI).

#### 3.11.1. Description and Analysis (summary)

895. Remittances play an important role assisting households in Pakistan. *Worker’s remittances* have been steadily growing, reaching to US \$6.45 billion in FY08 from US \$3.87 billion in FY04. In recent years, a strong growth of 17.4 percent was recorded in FY08, following previous year’s 19.4 percent growth. Pakistan has become world’s 12<sup>th</sup> largest remittances recipient country in 2007.

896. Of this amount, the home remittances through Exchange Companies (ECs) stood at US \$ 1.59 billion in FY08, a substantial increase, in fact quadrupled from US \$ 392 million in FY05. These indicators of growth are more likely attributable to an increased flow of remittances through regulated sectors (banks and ECs), rather than an overall increase in remittances to Pakistan from overseas.

897. Use of hawala, although it appears to be much reduced, still exists and it remains to pose a challenge to authorities. The authorities acknowledge that it is still been used to transfer illicit proceeds abroad. It is important that the authorities continue to crack down on illegal operations through the use of hawala system. However, the focus has been on regulated entities that were providing parallel services. While this effort should not be understated, authorities should put more emphasis on going after those

who are yet to operate with a license. It is essential not to drive the formal sector players to underground or those operating underground to remain underground.

898. Legal Framework: In 2002, SBP took a major step to regulate informal money transfer services such as Hawala by creating Exchange Companies (ECs) that provide money transfer and currency exchange business. Previously, money changers were required to obtain a license from SBP but not money transfer service providers. Money transfers were only allowed through banks while Hawala operated illegally. The introduction of ECs (category A) brought an opportunity for Hawaladars to operate within the regulated framework while unlicensed operation (continuation of Hawala business as opposed to forming an EC) is illegal. Upon subsequent realization that the entailing capital requirements were an impediment, leaving many operators remaining outside the ECs discipline, EC of 'B' category was devised with lower capital requirements and operational scope limiting only to currency exchanges. It also mandated that at least 5 of such previous money changers licensed should pool resources to form an EC. Over 300 ex-money changers were as a result inducted into the formal ECs set up.

899. The main objective behind the establishment of ECs was to provide a proper corporate culture and financial discipline in the money changing / remittance business in the country, while ensuring that various types of risks associated with this business are properly addressed.

900. ECs have been established by SBP under the powers granted in Foreign Exchange Regulation Act 1947 and its amendments 2002.

901. Another entity that provides money transfer service in Pakistan is Pakistan Post Savings Bank. Currently only inward remittances are handled by the Post Savings Bank either through Western Union or Universal Postal Union. In 2008, they handled 24 billion Rupees (USD 300 million equivalent). Transaction value of more than 10,000 Rupee cannot be processed unless recipient has a savings account with the Post Savings Bank and is directly credited to the account. The Post Savings Bank is not subject to AMLO although the proposed amendments to AMLO aim to bring it under the AML regime.

#### *Designation of Registration or Licensing Authority (c. VI.1):*

##### **SBP**

902. Under the Foreign Exchange Regulation Act 1947, SBP is empowered to issue license to Exchange Companies. There are two types of Exchange Companies, namely full-fledged Exchange Companies and Exchange Companies of 'B' category. The full-fledged Exchange Companies are permitted to carry out both money changing and remittance business while the Exchange Companies of 'B' category are allowed only to deal in sale/purchase of foreign currencies (money change). The full-fledged ECs were introduced in 2002 while the ECs of 'B' category were introduced in 2004. ECs need to be incorporated under the Companies Ordinance Act, thus also need to register with SECP. Only after this process, ECs can apply for license from SBP. The process for obtaining a license and its requirements are stipulated in the Rules and Regulations for ECs (Ref: FE Circular No. 9 of 2002 for full-fledged ECs and Circular Letter No. 6 of 2004 for ECs of 'B' category). The list of licensed ECs is available on the SBP website. As of February 2009, license has been granted to 23 full-fledged ECs and 30 ECs of 'B' category.

#### *Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX) (c. VI.2):*

##### **SBP**

903. As stated in the preventive section, the AML/CFT obligations imposed on ECs are limited to basic customer identification requirement, record keeping, and suspicious transaction reporting. For remittance transactions, names, addresses and other particulars of both the remitter and beneficiary should



be mentioned on the receipts regardless of the amount. Information on outward remittances above US\$5,000 must be submitted to SBP with the following information: name of the remitter, CNIC or passport number of the remitter, address of the remitter, name and address of beneficiary, account number of beneficiary abroad, amount and currency of the outward remittance, and the account number of an exchange company used for remittance. Further, ECs are required to take prior approval of SBP before undertaking outward remittances involving US \$50,000 or above (or equivalent in other foreign currencies). Ambiguity remains as to what “other particulars” needs to be obtained when the transactions are inward remittances of all amounts and outward remittances of less than US\$5,000.

904. Transaction record must be kept for a period specified by SBP but SBP is yet to specify the duration. Suspicious transaction reporting requirement is in force but no report has been made by ECs to FMU.

905. Beyond these, there are no enforceable AML/CFT obligations imposed on ECs. SBP is taking a gradual approach, first focusing on bringing the money changers and remittance transfer service providers under the regulatory ambit. Then instituting compliance requirements focusing on basic AML/CFT obligations (KYC, record keeping, and reporting requirements). No guidance has been issued to assist ECs with implementation of obligations.

#### *Monitoring of Value Transfer Service Operators (c. VI.3):*

906. ECs are subject to monitoring and supervision by SBP (as per F.E. Circular No. 9 of 2002 and F.E. Circular No. 6 of 2004) although, as stated earlier, the scope of AML/CFT preventive measures for ECs is currently very limited. Annual on-site inspections which includes AML/CFT component, of all the full-fledged exchange companies started since 2006. Occasionally inspection was undertaken twice a year as per request from the exchange policy department of the SBP. The on-site inspection of the ‘B’ category ECs started in 2008. The findings of the on-site examination are shared with the exchange policy department for further actions.

#### *List of Agents (c. VI.4):*

### **SBP**

907. It is mandatory for ECs to take prior approval of SBP before opening any business location or entering into any agency/franchise arrangement. (Ref: FE Circular No. 9 of 2002, Circular Letter No. 9 of 2004 and Circular Letter No. 17 of 2005)

#### *Sanctions (applying c. 17.1-17.4 in R.17) (c. VI.5):*

### **SBP**

908. Sub-section (5) of Section 3AA of Foreign Exchange Regulation Act 1947 and rules and regulations of ECs empower SBP to suspend the authorization or revoke license or take any other action as deemed necessary by SBP on failure of ECs to comply with the terms and conditions, directions or instructions imposed, given or issued by SBP. At the time of the on-site mission, 6 licenses have been suspended or revoked due to non-compliance or engagement in unauthorized or illegal activities. The violation of the Foreign Exchange Regulation Act is also punishable with imprisonment for a term which may extend to two years or with fine or with both. In addition, any currency, security, gold or silver, or goods or other property in respect of which the contravention has taken place may be confiscated. Criminal investigations are undertaken by the FIA. At the time of the on-site mission, a criminal investigation of the largest EC was on-going and its license has been revoked by the SBP.

### **3.11.2. Recommendations and Comments**

909. The authorities should consider implementing the following recommendations.

- Recently authorities have taken tough enforcement actions against illegal or unauthorized operations of licensed ECs. This should send a signal to ECs to comply with their obligations and not to engage with illegal or unauthorized operations. At the same time, it is important not to send a signal that licensed ECs are unfairly targeted while unlicensed remittance service providers (Hawala) are still operating at large. In this regard, authorities should identify unlicensed operation of money service providers, raise awareness of the licensing requirement, and give reasonable time to apply for a license, then after that, crack down on continued non-licensed operation.
- In addition, SBP should develop effective, proportionate and dissuasive sanction regime against ECs.
- SBP should also extend the scope of the AML/CFT obligations which is too narrow at this point.
- Authorities should subject remittance services offered by the Postal Savings Bank to AML/CFT obligations in order to create a level playing field and also to impose key obligations such as STR reporting, in addition to CDD and other preventive measures that are partially now practiced by the Postal Savings Bank.

### **3.11.3. Compliance with Special Recommendation VI**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.VI</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ The current scope of preventive measures imposed on ECs is narrow.</li> <li>▫ Sanctions against ECs are not effective, proportionate and dissuasive.</li> <li>▫ No efforts have been made to identify unlicensed operation of remittance service providers (Hawala) although informal operators still exist especially in the provinces where SBP oversight is weak.</li> <li>▫ Pakistan Postal Savings Bank is not subject to AML/CFT obligations.</li> </ul>



#### **4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

910. The Application of AML/CFT preventive measures to DNFBPs: Article 2(n) of AMLO defines “non-financial businesses and professions” to mean “real estate agents, jewelers, dealers in precious metals, precious stones, lawyers, notaries, and other legal professionals, accountants, trust and company service providers and such other non-financial businesses and professions as may be notified by the Federal Government.” The definition of NFBPs is consistent with the FATF definition of DNFBPs. The Ordinance, however, does not contain any reference to DNFBPs beyond providing for this definition. The only preventive obligation contained in the Ordinance is the one pertaining to the filing of suspicious transactions reports under article 7 and this obligation is only imposed upon financial institutions and does not extend to the NFBPs defined in art.2 (n).

911. Discussions with the authorities and representatives of the defined professions revealed the extension of the scope of the Ordinance to these categories is contingent upon the issuance of Government notification to that effect. Such notification has not yet been issued and therefore the Ordinance does not yet extend to these sectors.

912. Worth noting that under section 5(7) of AMLO, the General Committee has been mandated to take measures as necessary for development and review of performance and training programs for non-financial businesses and professions relating to anti money laundering.

##### **4.1. Customer Due Diligence and Record-keeping (R.12)**

###### **4.1.1. Description and Analysis**

913. Legal Framework: The Ordinance does not contain any CDD requirements. The imposition of CDD requirements for the prevention of ML and TF is left to the competent supervisory authorities. Noting however that the Ordinance itself does not yet extend to DNFBPs in Pakistan as explained above.

###### ***Casinos***

914. As gambling is prohibited, there are no casinos in Pakistan.

###### ***Real Estate Agents***

915. There is no central law for registration of real estate agents in Pakistan. However, two provinces (Punjab and North West Frontier Provinces) and the Islamabad Capital Territory, which represent 80 percent of the total population, require registration of real estate agents under Punjab Real Estate Agents and Motor Vehicle Dealers (Regulation & Business) Ordinance, 1980; the North West Frontier Province Real Estate Agent and Motor Vehicle Dealer (Regulation & Business) Ordinance, 1983; and Islamabad Real Estate Agents and Motor Vehicle Dealers (Regulation & Business) Ordinance, 1984 respectively. In terms of real estate companies, they are required to register with SECP under the Companies Ordinance 1984.

###### ***Jewelers, Dealers in Precious Metals and Precious Stones***

916. Under SRO 391(I)/2001 dated 18 June 2001, all jewelers having turnover above a specified threshold are required to register with the Collector of Sales Tax having jurisdiction for registration under section 14 of the Sales Tax Act, 1990. Under SRO 266(I)/2001 dated 7<sup>th</sup> May 2001, the exporters of jewelry and gemstones are required to register under the Registration (Importers and Exporters) Order, 1993. In addition they are also required to be registered with the Export Promotion Bureau (EPB) and to

become member of one of the recognized Association such as “All Pakistan Gem Merchants and Jewelers Association, Karachi” or “All Pakistan Commercial Exporters of Rough and Unpolished Precious and Semi-precious Stones Association, Peshawar” or any other association recognized by the Ministry of Commerce under the Trade Organizations Ordinance, 1961.

*CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1).*

#### ***Real Estate Agents***

917. Existing ordinances which govern real estate agents do not cover any specific elements of the Recommendation 5. The requirement on real estate agents to ensure correct account of transactions does not amount to CDD measures required in the Recommendation 5.

#### ***Jewelers, Dealers in Precious Metals and Precious Stones***

918. Existing SROs do not cover or amount to CDD measures required under Recommendation 5. For example, SRO 266(I)/2001 dated 7<sup>th</sup> May 2001 requires the sale proceeds of exported gold jewelry and gemstones be repatriated either wholly in foreign exchange through normal banking channels or partly in the form of gold up to gold content of jewelry exported and partly in foreign exchange. However, this requirement does not amount to jewelers to undertake CDD. Similarly, section 11 of the aforesaid SRO requires foreign nationals and overseas Pakistanis to take out personally gold jewelry or gemstones only up to the limit of US dollars ten thousand, against foreign currency encashment certificate, with itemized purchase receipt(s) and, if the value exceeds US Dollar ten thousands, normal export procedure be followed. However, again this requirement does not amount to jewelers to undertake CDD.

#### ***Lawyers, Accountants, Trust and Company Service Providers and Notaries***

919. Note that lawyers and accountants are the ones that typically provide the trust and company services defined in the international standard. According to the authorities there is no distinct category of businesses that provide this kind of services. Also note that notaries are required to be lawyers by profession. There is no separate notary profession.

920. Lawyers and accountants are subject to the supervision of two self regulatory organizations (SROs): The Bar Council in the case of the former and the Institute of Chartered Accountants in the case of the latter. Neither SRO has issued or considered issuing rules imposing CDD obligations on the profession that they regulate.

921. **Covered activities:** The assessors have sought to establish whether the accounting and the legal profession actually engage in the activities that are defined as trigger for CDD obligations under R.12.

922. The following was confirmed:

- a. Lawyers and accountants prepare transactions for buying or selling real estate
- b. Lawyers and accountants act as formation agents of legal persons
- c. Lawyers and accountants provide a registered office and address for legal persons at least at the initial stage of the formation of the legal person.

The meetings indicated however that the following activities are not common if not totally absent in legal and accounting profession in Pakistan.

- d. Managing of client money, securities or other assets

- e. Managing of bank or securities accounts
- f. Operation or management of legal persons
- g. Acting or arranging for another to act as director or secretary of a company
- h. Acting or arranging for another to act as trustee
- i. Acting or arranging for another to act as nominee shareholder.

*Record-Keeping Requirements (Applying R. 10 to DNFBPs)*

923. While there is no record keeping requirements for NFBPs for the purpose of AML/CFT measures, existing ordinances and SROs require record keeping of transactions and customers for real estate agents and jewelers which could be also useful for AML/CFT purpose although will not go into the depth and scope required under Recommendation 10.. Under Punjab Real Estate Agents and Motor Vehicle Dealers (Regulation & Business) Ordinance, 1980, Islamabad Real Estate Agents and Motor Vehicle Dealers (Regulation & Business) Ordinance, 1984 and The North West Frontier Province Real Estate Agent and Motor Vehicle Dealer (Regulation & Business) Ordinance, 1983, the real estate agents are required to maintain accounts and other record of the transactions arranged, negotiated or made by him and in such manner as may be prescribed. Notwithstanding the above, all the transactions of sale and purchase require compulsory registration with the registrar of properties / revenue officer. All the record of ownership and changes thereof is a permanent record and is maintained by Provincial governments.

924. As to registered jewelers, they are required to keep, inter alia, the date, name of buyer, brief particulars of goods sold, weight and total sale price, purchase invoices, purchase memos or receipts in any form received on purchase of raw materials and other inputs under the section 7 of SRO 391(I)/2001 dated 18 June 2001. Exporters of gold jewelry and gemstones are required to maintain jewelry Pass Book duly authenticated by the Export Promotion Bureau (EPB) and all export and import transactions, as well as import entitlements and actual import, shall be entered in the jewelry Pass Book and authenticated by the EPB.

#### **4.2. Recommendations and Comments**

925. Pakistan should

- take steps to extend CDD and record keeping measures to the full range of NFBPs.
- undertake risk assessments to determine the appropriate CDD and record keeping thresholds for respective NFBPs to ensure obligations imposed are balanced against the nature, size and risk of the NFBPs
- designate the AML/CFT supervisory authorities for the different sectors and provide them with appropriate resources.

##### **4.2.1. Compliance with Recommendation 12**

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
<b>R.12</b>	<b>NC</b>	CDD and record keeping requirements are not applied to NFBPs.

### 4.3. Suspicious Transaction Reporting (R.16)

#### 4.3.1. Description and Analysis

926. **Legal Framework:** Article 7 of the AMLO imposes an STR obligation on financial institutions and does not extend it to NFBPs. However, AML Regulation 2008 provides Director General of FMU to require any NFBPs or agents of NFBPs to report STR in the manner he may prescribe.

927. **Lawyers and Accountants:** Lawyers and accountants do not currently have any obligation to report suspicious transactions. Discussions with the relevant SROs indicated that there is no intention to impose such an obligation on the professions. Discussions with representatives of the professions indicated that such an obligation would not be acceptable.

928. **Covered activities:** As indicated in the discussion of R.12 above it is quite uncommon in Pakistan for lawyers and accountants to carry out *financial* transactions for or on behalf of their clients. Lawyers and accountants however engage in a number of company and trust services that should be subject to STR obligation according under R.16.

929. **Legal Professional Privilege:** Article 9 of the Evidence Order (Qanun-E-Shahadat) 1984 gives a privilege against disclosure without consent to any communication between the client and his advocate. The privilege reads as follows: “No advocate shall at any time be permitted. Unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.” The article excludes from the privilege: (1) any such communication made in furtherance of any illegal purpose; or (2) any fact observed by any advocate, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment”

930. Despite the broad language of the privilege, discussions with representatives of the profession indicated that their understanding of this privilege is that it is limited to their defense function and courts representation and does not extend to activities of commercial nature that they may carry out on behalf of clients and that is not connected to their services as advocates in the context of litigation.

931. It is important to note that the privilege does not extend to the accountants.

#### ***Real Estate Agents, Jewelers, and Dealers in Precious Metals and Precious Stones***

932. As stated previously, currently there is no STR obligation to NFBPs including real estate agents, jewelers and dealers in precious metals and previous stones, and thus no STR is being filled by these NFBPs.

#### 4.3.2. Recommendations and Comments

933. Pakistan should take steps to extend STR obligation to the full range of NFBPs, in particular real estate agents and jewelers given the high risk of ML/TF faced by these sectors.

#### 4.3.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	STR requirement is not applied to NFBPs.

#### 4.4. Regulation, Supervision, and Monitoring (R.24-25)

##### 4.4.1. Description and Analysis

934. Legal Framework: Currently DNFBPs are not subject to the AML/CFT systems and therefore there is no regulation or supervision in this area.

##### *Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):*

935. Casinos are prohibited in Pakistan.

##### *Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):*

936. **Lawyers:** The legal profession is regulated by Bar Councils, which are self-regulatory organizations governed by the Legal Practitioners and the Bar Councils Act 1973. There is one central bar council at the Supreme Court level and four provincial councils at high court level. The Bar Council operates through committees whose members are elected by the membership of the Bar.

937. The main functions of Bar Councils are: to admit persons as advocates on its roll; to hold examinations for purposes of admission; to prepare and maintain a roll of such advocates of the province as well as of each Division; and to remove advocates from such roll; to admit persons as advocates entitled to practice before the High Court and to prepare and maintain a roll of such advocates; and to entertain and determine cases of misconduct against advocates on its rolls and to order punishment in such cases.

938. The Bar Council has the powers to issue rules and to discipline its members. The Bar exercises these powers with restraint. In discussions with the Attorney General and the Chairman of the Pakistan Bar Council, as well as through the discussions with representative of the professions, it was indicated that the Bar has neither the capacity nor the will to regulate the profession for AML/CFT purposes.

939. **Accountants:** The accountancy profession is regulated by the Institute of Chartered Accountants, which is a statutory autonomous body established under the Chartered Accountants Ordinance in 1961. The Ordinance was significantly amended in 1983. The main functions of ICAP are: to set the standards and conduct of the examinations for the purposes of admission, maintain a register of members, and the regulation and maintenance of the status and standard of professional qualifications of members.

940. The powers of the Institute are vested in a Council that consists of 16 members, twelve members are elected from amongst the members for a period of four years and four members are nominated by the Government.

941. The Council has powers to issue rules and to discipline its members. Discussions with the President of the Institute as well as discussions with some representatives of the professions indicated that the Institute has no capacity or intention to use its powers to impose and enforce AML/CFT regulations at this stage.

942. **Real Estate Agents:** As stated earlier, real estate agents are not federally regulated. However, the agents in Punjab and North West Frontier Provinces and the Islamabad Capital Territory are required to register under their respective provincial ordinance. It is estimated that 80 percent of population is covered in those provinces. The remaining provinces do not have governing regulation and thus no registration requirement exist.

943. **Jewelers, Dealers in Precious Metals and Precious Stones:** all jewelers having turnover above a specified threshold are required to register with the Collector of Sales Tax and the exporters of jewelry



and gemstones are required to register with the Export Promotion Bureau (EPB) and to become member of one of the recognized Association. However, the main purpose of registration is for reporting purpose and not so much to monitor the professionals and businesses in the sector.

*Guidelines for DNFBPs (applying c. 25.1):*

944. The AML Regulations 2008 was issued in January 2009 to further guide STR and CTR requirements. The regulation contains an annex with examples of suspicious transactions although the examples are heavy on banking sector.

#### **4.4.2. Recommendations and Comments**

945. Pakistan should:

- designate the AML/CFT supervisory authorities for the different sectors and provide them with appropriate resources.
- take steps to supervise and monitor the full range of NFBPs for AML/CFT purposes
- prepare more detailed sector guidelines to help respective NFBPs to implement AML/CFT requirements

#### **4.4.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.3 underlying overall rating</b>
<b>R.24</b>	<b>NC</b>	There is no regulation or supervision in AML/CFT.
<b>R.25</b>	<b>PC</b>	Guidelines are only predominately banking orientated; no account is taken of other reporting entities. Examples shown are also generic international examples with little or no local context.  There is no effective feedback being offered via the FMU or other competent body.

### **4.5. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)**

#### **4.5.1. Description and Analysis**

946. Legal Framework: Under the AMLO, the Federal Government has the power to include any other non-financial business and profession in order to meet the objects of the Ordinance.

*Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17 & 21 c. 20.1):*

947. Investment advisory services are regulated under the Prudential Regulation on Non Banking Finance Companies (NBFCs) by the SECP. Thus, the same provisions for other NBFCs such as Mutual Funds, Private Equity & Venture Capital Funds, Modarabas, Pension Funds, Real Estate Investment Trusts, Leasing, Investment Banking, and House Financing apply to the Investment Advisors.

948. However, using the provision in the AMLO mentioned above, which enables the Federal Government to include any other non-financial business and profession, no consideration has been given

nor any assessment undertaken to date whether other non-financial businesses and professions are vulnerable to money laundering and terrorist financing and thus should be brought under the AML/CFT regime.

*Modernization of Conduct of Financial Transactions (c. 20.2):*

949. The economy in Pakistan is still largely cash-based due to low literacy rate and rural population. However, the use of electronic transactions and payments is increasing. The largest denomination of the currency in Pakistan is Rs. 5,000 (roughly USD 63). The SECP prohibits cash transactions over Rs 50,000 for NBFCs and Modaraba and Rs. 25,000 for securities transactions. Authorities also informed the assessment team that as per the Income Tax Ordinance 2001, all transactions over Rs. 50,000 (US \$625) by companies and businesses should be settled through cheques/drafts/payment order or other instruments and not through cash to be admissible as an expense for tax purposes. In addition, the same Ordinance provides that cash withdrawal from bank exceeding Rs. 25,000 (US \$312.5) is subject to a withholding tax at 0.3 percent to be deductible by the bank. The SBP is in the process of launching the Real Time Gross Settlement System (RTGS). At the retail payment level, the use of credit and debit cards, on-line banking and mobile phone banking is increasing.

#### **4.5.2. Recommendations and Comments**

950. The authorities should consider the following recommendations.

- The NEC should undertake a risk assessment and assess whether other non-financial businesses and professions should be brought under the AML/CFT regime.
- SBP should continue its efforts to modernize and securitize transactions and to expand the use of electronic transactions among the population.

#### **4.5.3. Compliance with Recommendation 20**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.20</b>	<b>LC</b>	□ Apart from inclusion of investment advisors by SECP, no comprehensive risk assessment has been undertaken to consider whether other non-financial businesses and professions should be also brought under the AML/CFT regime. .



## **5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS**

### **5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)**

#### **5.1.1. Description and Analysis**

951. Legal Framework: The Companies Ordinance, 1984 and the Companies (General Provisions and Forms) Rules, 1985 provides the regulatory framework for registration and post-incorporation requirements of companies. The companies law in Pakistan does not require disclosure of beneficial ownership information as envisaged in the FATF standards but is limited to formal ownership.

952. Any three or more persons associated for any lawful purpose may, by subscribing their names to the Memorandum of Association and complying with the requirements of the Companies Ordinance, form a public company. Any one or more persons so associated may, in like manner, form a private company.

#### *Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):*

953. The Company Registration Office (CRO), which exists under the SECP, is responsible for the registration of all companies in Pakistan. A company comes into being through registration of documents with the registrar in one of the SECP's eight CROs. Approximately 52,000 companies are registered, including 600 publicly listed companies. CROs are located in 8 cities across Pakistan and they provide services, guidance and ensure that companies and their directors comply with the statutory requirements.

954. Information on the objects, structure, location, management and ownership of companies in Pakistan is kept centrally in the CRO and such information is publicly available via the CRO.

955. At the time of registration of companies, the particulars of subscribers are required to be disclosed through memorandum and articles of association including name (present and former), father's/husband's name, nationality (including any former nationality), occupation, residential address, national identity card no. (passport no. for a foreign national), and number of shares taken by each subscriber. Sponsors of a company convert into company members upon incorporation. Directors and officers, including the chief executive, are also required to notify the CRO of business occupation; and particulars of other directorships or other office held in any other company.

956. In the case of foreign legal persons holding an interest in a private company in Pakistan, Board of Investment (BOI) and SECP rules govern the particulars to be obtained. Under the Companies Ordinance 1984, foreign companies must file with the CRO certified copies of articles of incorporation, particulars of office holders, addresses of offices etc. Foreign companies must receive permission from the BOI before opening a branch office by a foreign company. BOI relies on the SBP to conduct due diligence on the bona-fides of the investing foreign company, including its place and form of incorporation, paid up capital, etc. SBP's due diligence does not extend to identifying those persons who exercise ultimate control over the legal person.

957. Any change in the existing shareholding, members or directors is required to be notified by the company through annual return, which is to be filed within 4-6 weeks of the obligatory annual general meeting of members. Both private and public companies are obliged to inform the CRO of any change in directors, CEO, auditors or chief accountant by filing a Form-29 within 14 days of any appointment or change.

958. Every company is required to notify the address of registered office or any change therein to the registrar within 28 days of date of incorporation and the date of change, as applicable.

959. All the aforesaid information is held by the corporate record of the company and is maintained with the CRO. Information on companies is publicly available at the office of the CRO. The CRO may provide certified true copies of the statutory returns on payment of a nominal fee.

960. SECP has wide ranging powers to access company records, including records available on share holders, officeholders and directors as well as financial information. The SECP possesses wide powers to call for any information from, as well as to carry out investigation into the affairs of companies. Section 231 of the Companies Ordinance allows the SECP to authorize the Registrar concerned to inspect the accounts, books and papers of a company.

961. Section 261 of the Companies Ordinance empowers the Registrar, by a written order, to call upon the company and any of its present or past directors, officers or auditors to furnish necessary documents, information or explanations within fourteen days with respect to any matter.

962. If the registrar has reasonable ground to believe that books and papers relating to any company, chief executive, officer and associate of such person can be destroyed, mutilated, altered, falsified or secreted, the registrar can search and seize such books and papers after obtaining permission of the Magistrate of the first class or the Court.

963. The SECP has wide ranging powers to share information obtained on companies with other competent authorities domestically or internationally.

*Access to Information on Beneficial Owners of Legal Persons (c. 33.2):*

964. The CRO has no mechanism by which to determine who else has beneficial interest in a registered company. There is no obligation for companies to provide information beyond the owners of the company and the SECP, as the regulator, does not take steps to probe beyond the legal ownership of a company to the underlying beneficial owner. As such, neither law enforcement agencies, regulatory authorities nor financial institutions has the ability to obtain such information.

965. At the time of the onsite visit the CRO was in the final stage of making online searches available for CRO records.

*Prevention of Misuse of Bearer Shares (c. 33.3):*

966. Bearer shares are not a permissible under the SECP law (Section 89 of the Companies Ordinance refers). The process to dematerialize all shares in Pakistan was undertaken in 1996 and has been complete for a number of years.

*Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions) (c. 33.4):*

967. All the information filed at a CRO is public information and financial institutions have access to company information either through inspection of the records or obtaining certified true copies of documents held by the CRO.

*Analysis of Effectiveness*

968. Pakistan's legal framework for corporate entities requires the registration of all forms of legal persons, but the registration data available with the Registrar does not contain beneficial ownership information, which undermines effectiveness.

969. Information held with the corporate entities and provided to the Registrar is verified by the SECP, with a reasonable level of compliance. This information is available to law enforcement as needed, however its value is undermined by the absence of beneficial ownership information

### 5.1.2. Recommendations and Comments

970. Pakistan should require registered companies to make available accurate and current information on those natural persons who exercise beneficial ownership and control of legal persons.

### 5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
<b>R.33</b>	<b>PC</b>	▫ Laws and regulations do not require adequate transparency concerning the beneficial ownership and control of legal persons in Pakistan.

## 5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

### 5.2.1. Description and Analysis

971. Legal Framework: Express trusts may be formed in Pakistan under the provisions of the Trusts Act 1882. The Act sets out the roles for the *author of the trust*, the *trustee* and the *beneficiary* and related obligations. Every person capable of holding property may be a beneficiary or trustee. As such, natural persons, and any company, society or other entity duly formed under the relevant law may also act as trustee and can operate a trust. The Trusts Act does not require disclosure of beneficial ownership information as envisaged in the FATF standards.

972. Trust may be registered under the Registration Act, 1908. For immovable property, Section 5 of the Trusts Act requires the written instrument of the trust to be signed by the author of the trust or the trustee and registered with the District Registrar's Office. Registration of an instrument of trust is not required for movable property. An instrument of trust for movable property may be registered with the District Registrar on the discretion of the trustee.

973. Pakistan law does not prevent recognition of trusts formed in other jurisdictions.

#### *Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):*

974. Pakistan has a decentralized system of registration of trusts under the Registration Act. Registration of trust deeds is done by various Registrars at the district and city level. Details recorded include the trustees and beneficiaries of the trust. The extent of beneficial ownership required to be disclosed under the terms of the trust act is limited to the direct beneficiary. Indirect beneficiaries, such as a case where a direct beneficiary is another trust, are not required to be disclosed.

975. There is an indirect obligation for the registration of a trust deed for moveable property if the trust is to become a customer of a bank. This is a result of SBP KYC Regulations (M-1) relating to identification of customers who are trusts. The Regulation requires a certified copy of the trust deed as part of the identification of customers, and such certification can only be given for a registered trust deed. Similar requirements are not in place for SECP regulated financial institutions.

976. The SBP KYC regulation requires identification documentation of natural persons who are trustees, but no clear requirement to identify legal persons acting as trustees or the case in which the registered beneficiary may be another trust. SECP regulations do not address trusts

*Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):*

977. Registration of trust information is not centralized and remains a system of manual records controlled by various local and city government registrars implementing the Registration Act. This information is public and is theoretically available to law enforcement as needed, but is very hard to access in practice. Based on discussions with authorities in Pakistan, there is an apparent lack of awareness of which agency registers trusts and how to access trust information.

*Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions) (c. 34.3):*

978. Financial institutions were only required to identify beneficial ownership as of March 2009 (see Recommendation 5).

*Analysis of Effectiveness*

979. As the information is not centralized, no statistics or estimates were available on the extent of registration of trusts formed in Pakistan. Discussions with financial institutions and the regulators indicate that private trusts are relatively uncommon in Pakistan. Based on discussions with authorities in Pakistan, there is an apparent lack of awareness of which agency registers trusts and how to access trust information

980. The information required to be included in the trust agreement on trustees, settlors and beneficiaries does not cover the concept of beneficial ownership, which undermines effectiveness.

981. Registration of trust information is decentralized and remains a system of manual records controlled by district and city administrations. This information is theoretically available to law enforcement as needed, but is very hard to access in practice, which undermines effectiveness.

**5.2.2. Recommendations and Comments**

982. Pakistan should take measures to ensure that trust deed information registered with the various district and city registrars contains information on beneficial ownership and is readily accessible to law enforcement and other competent authorities.

983. Authorities should raise awareness on where trust deed information is held and how to access such information for AML/CFT purposes.

**5.2.3. Compliance with Recommendations 34**

	Rating	Summary of factors underlying rating
<b>R.34</b>	<b>NC</b>	<ul style="list-style-type: none"><li>□ The information required to be included in the trust agreement on trustees, settlors and beneficiaries does not cover the concept of beneficial ownership, which undermines effectiveness.</li><li>□ Registration of trust information is decentralized and remains in manual records and is very difficult for law enforcement agencies to access in practice.</li></ul>

### 5.3. Non-Profit Organizations (SR.VIII)

#### 5.3.1. Description and Analysis

984. Legal Framework: The Trust Act 1882; the Charitable Endowments Act 1890; the Charitable Funds (Regulation of Collections) Act (1953); the Societies Registration Act (1960); Voluntary Social Welfare Agencies (Registration and Control Ordinance) (1961); Local Government Ordinance (2001); the Companies Ordinance (s. 42) (1984).

985. Table 20 summarizes the registration laws governing the NPO sector in Pakistan:

**Table 20: Registration Laws Governing the NPO Sector**

Law	Scope	Registration	Required info.	Competent Authority	Sanction for non-compliance
Trust Act	Private trusts	Mandatory registration of the trust deed as a document.	The particulars of the trust-property and names of all persons executing and claiming under the trust deed.	Offices of the registrar and sub-registrar and district and sub-district level of the provincial government reporting to the office of the Inspector General designated by the provincial government.	Voidance of the trust deed - criminal sanctions for making false statements or submitting false documents to the Registering Office. (s. 82 of the Registration Act (1908).
Charitable Endowments Act	Trusts for charitable purpose including relief of the poor, education and the advancement of any other object of public utility and excluding trusts for exclusively religious worship or teaching.	Voluntary.	Not available	The Ministry of Social Welfare and Special Education.	No Sanctions.



<b>Law</b>	<b>Scope</b>	<b>Registration</b>	<b>Required info.</b>	<b>Competent Authority</b>	<b>Sanction for non-compliance</b>
Societies Registration Act	<ul style="list-style-type: none"> <li>- Societies established for the promotion of literature, science, or the fine arts, or the diffusion of useful knowledge, the diffusion of political education or for charitable purposes.</li> <li>- Registration of Deeni Madaris</li> </ul>	Voluntary except in relation to deeni madaris, whose registration is mandatory.	<ul style="list-style-type: none"> <li>- Name of Society</li> <li>- objects of the society.</li> <li>- names, addresses, and occupations of the governors, council, directors, Committee or other governing body.</li> <li>- Copy of rules and regulations of the society.</li> </ul>	The registrar of joint-stock companies under the departments of industry of the provinces.	No penalties for non-compliance even in relation to the deeni madaris.
Voluntary Social Welfare Agencies	Voluntary social welfare agencies established for the purpose of rendering welfare services in any field mentioned in the schedule to the Act.	Mandatory	<ul style="list-style-type: none"> <li>- a copy of the constitution of the agency</li> <li>- name of agency</li> <li>-area of operation</li> <li>- principal office of the agency</li> <li>-aims and objects.</li> </ul>	Directorate of Social Welfare with offices at district and sub-district level.	Failure to register is punishable by imprisonment up to 6 months or/and with a fine up to 2000 Rs.
Company Ordinance s.42	Association formed as limited liability company for promoting commerce, art, science, religion, sports, social services, charity or any other useful object and intends to apply its profit towards promoting its objects.	Voluntary but mandatory if the company wishes to enjoy the exemption and privileges associated with s.42 status.	<ul style="list-style-type: none"> <li>- Memo. of association.</li> <li>- Articles of association.</li> <li>- Particulars of the directors of the company.</li> <li>- The address of the registered office.</li> </ul>	The Corporate Law Authority (SECP) at Federal Level and the Directorate of Industry.	Cannot enjoy the privileges and exemptions associated with s.42 status.

#### *Review of the Domestic Non-Profit Sector (c. VIII.I)*

986. The Ministry of Social Welfare and Special Education (MoSW) has conducted a review of the domestic laws and regulations that govern the NPO sector. The review concluded that the regulatory situation is very weak, there is fragmentation of regulation and there is lack of compliance or monitoring. The review also identified as a weakness the lack of sharing of intelligence and registration details amongst the various tiers of the regulatory framework: federal, provincial and district level. Steps are being taken since to address these weaknesses. These include a project led by the Ministry of Social

Welfare and Special Education to create a central database that contains the registration details of all registered NPOs and that networks together all the relevant registration authorities. There is also a pending draft consolidated NPOs law that is hindered by popular opposition to government intervention in the NPO sector that may impinge on the constitutional freedom of association. The authorities advised the team that by consulting widely and maintaining communications with NGOs at Federal and local level, it has been gathered that this opposition can be overcome or at least reduced.

987. While the review focused on the adequacy of the legal framework governing the NPO sector, it has not reviewed sufficiently the nature and structure of the sector with a view to identifying the risk factors. The government review acknowledged that the sector is large and noted that it is mostly funded domestically. The Ministry of Social Welfare is currently implementing a wide-based project that aims at creating a national database of all NPOs operating in Pakistan. The project is networking all the local registries and aims at collecting information on the registered NPOs including their projects and their financing. This ambitious project is still at an early stage. Once it is completed it will provide the authorities with the information necessary to monitor the risk in the sector.

*Outreach to the NPO Sector to Prevent it from the Terrorist Financing Abuse (c. VIII.2)*

988. Outreach efforts to the NPO sector are carried out by the MoSW through a federal-level directorate dedicated to NPO matters. Outreach is also done at grass-root level by the Directorate of Social Welfare at district and sub-district level. While the MoSW does not act as the registration authority except for Charitable Endowments under the Charitable Endowments Act 1890, their outreach effort expands beyond the 18 trusts registered under this Act to cover all registered NPOs across the country. The Directorate of Social Welfare, which is the registration authority for agencies registered under Voluntary Social Welfare Agencies Act. The Directorate has representation at district, sub-district and union levels and they work very closely with the NPOs registered under their law.

989. The outreach efforts of both the MoSW and the Directorate of Social Welfare focus primarily on promoting accountability, good governance and integrity in the administration and management of NPOs. A current national program of outreach is being conducted, which includes training regulators and NGOs in each district of Pakistan. This program of training is highly useful for strengthening the guards of the sector against abuse including abuse for the purposes of terrorism financing. The reference in this outreach program to the specific risks of terrorism financing and the various typologies for terrorism financing is still limited.

990. It is worth noting that the MoSW has developed a “Voluntary Code of Conduct/Ethics for the regulation and operation of NGOs. This Code was developed with the participation of 400 NGOs. The code emphasizes the importance of financial transparency in general for the purposes of integrity and good governance. More specifically however, the Code sets best practices for preventing the threats of abuse of NGOs. Under this principle, the Code highlights the potential abuse of non-for-profit organizations for any sort of criminal financing. The practices advocated under this principle centre around strict due diligence measures on board and executive members, close monitoring of the NPO’s financing.

*Supervision or Monitoring of NPOs that Account for Significant Share of the Sector’s Resources or International Activities (c. VIII.3)*

991. Of all the registration authorities, only the Corporate Law Authority in the SECP and the Directorate of Social Welfare have actual monitoring powers of the NPOs that they register. According to the authorities, only 341 non-for-profit companies are registered under s. 42 of the Companies Ordinance and 21,364 are registered under the Voluntary Social Welfare Agencies Act.

992. The Companies Ordinance gives the registrar of companies extensive powers to access information and records (s.261), to compel the production of documents (s.261), and to investigate the affairs of the company (s. 265). Section 231 of the Companies Ordinance also gives the registrar the power to inspect the books of account of the company, imposing an obligation on every director, officer or other employee of the company to produce to provide the inspector with any documents that may be in his possession relating to the affairs of the company and to facilitate the investigation.

993. At the time of the on-site visit no inspections of NPOs has been completed by the SECP. The team was informed after the on-site visit that the SECP is currently undertaking inspection of the following number of associations. These inspections are currently in progress:

Name of CRO	* NPOs
Karachi	30
Lahore	18
Islamabad	14
Peshawar	2
Faisalabad	0
Multan	1
<b>Total</b>	<b>65</b>

994. In addition, the authorities advised the team after the on-site mission out-sourced the examination of annual accounts. During the last year, in order to check the transparency in the financial activities of the association, the Commission outsourced the examination of annual audited accounts of the following associations through the firms of chartered accountants. These audits are also in progress:

995. The Voluntary Social Welfare Agencies Act requires the registered agencies to maintain audited accounts, submit annual reports and audited accounts, and furnish the registration authority upon its request such particulars with regard to accounts and other records. The Act also gives the registration authority the power to inspect the books of account and other records of the agency as well as any property held by the agency and all documents relating thereto.

Name of CRO	* NPOs
Karachi	19
Lahore	6
Islamabad	13
Peshawar	2
Quetta	2
<b>Total</b>	<b>42</b>

996. The Directorate of Social Welfare, which is the registration authority under the Voluntary Social Welfare Agencies Act reaches out on regular basis to the agencies registered under the Act using its wide network of grass-roots field officers. The monitoring exercised by the Directorate focuses primarily on issues of good management of resources and the protection of the beneficiaries and members of the agencies. This outreach goes a long way towards strengthening the guards of these organizations against all sorts of abuse including the abuse for the purposes of terrorism financing. There is not yet *specific* focus on the prevention of the abuse of the welfare agencies for TF purposes and outreach to the sector that alerts them to the specific nature of this abuse.

997. The SECP and the Social Welfare Registers have adequate powers and some resources to supervise the part of the sector that falls within their competence, the capacity and power of the other institutions that are responsible for regulating the other parts of the sector do not have similar capacity or powers.

*Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):*

998. All the registration laws governing NPOs require submission of a certain set of information. Table 21 summarizes the information required under the various laws and its availability to the public:

**Table 21: Summary of Beneficial Ownership Information Required under NPO Laws**

Law	Info on purpose and objective	Info on identity owners and directors	Info held by registrar	Info held by the NPO itself	Publicly accessible
Trust Act	Yes	Yes	Yes	Yes	Only if it relates to immovable property.
Charitable Endowments Act	Yes	Yes	Yes	N/A	Yes
Societies Registration Act	Yes	Yes	Yes	Yes	Yes
Voluntary Social Welfare Agencies	Yes	Yes	Yes	Yes	Yes
Company Ordinance s.42	Yes	Yes	Yes	Yes	Yes

999. Both the company registrar under the Company Ordinance and the Social Welfare registrar under the Voluntary Social Welfare Ordinance are given explicit powers to enquire into the validity of the submitted information and to inspect the NPOs that they register to ensure compliance with the record-keeping requirements. In reality actual verification of the submitted information is very limited. The Social Welfare registrar has an effective grass-root outreach program and on basis of that the assessors were satisfied that they possess actual knowledge of the agencies that they register. The Societies Registrar has very limited powers to inquire into the validity of submitted information and has no powers to inspect the NPO.

*Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):*

1000. With the exception of the powers available to the company registrar and the Securities and Exchange Commission, the registering authorities under applicable laws do not enjoy powers to impose sanctions for violations of the rules governing the NPOs. The only sanctions available under these registration laws are either dissolution of the registered NPO itself or dissolution of the governing body. Both are clearly very severe sanctions that are to be applied in cases of severe mismanagement of funds or inability to provide the services that the NPO was set-up to provide. The applicable laws, with the exception of the Company Ordinance, do not give the registering authorities powers to impose fines for failure to keep records or to file returns. Discussions with the authorities during the on-site revealed that compliance with the registration and filing requirements is at 40-50 percent rate. In addition, many NPOs remain informal operating without registration.

1001. Pakistani law in general does not preclude parallel civil, criminal and administrative proceedings. The general rule, which was confirmed by the Ministry of Law and by local barristers, is that these proceedings are independent.

*Licensing or registration of NPOs and availability of this information (c. VIII.3.3):*

1002. There is no general prohibition on the operation of NPOs without license or registration in Pakistan. Therefore, all independent studies confirm that the number of informal NPOs operating in Pakistan is very large. Registration of NPOs is mandatory in only four cases:

- When it is a charitable trust and the property of the trust is immovable.
- When it is private limited liability company wishing to benefit from the exemptions of s.42 under the Company Ordinance.
- When it is a Social Welfare Agency registered under the Voluntary Social Welfare Registration Act.
- When it is a Deeni Madrasah and therefore required to register under s. 21 of the Societies Registration Act.

1003. It is important to note that apart from the loss of benefits in the absence of registration, such as in the case of s.42 companies under the Company Ordinance, there is no other penalty for failure to register. The provincial government for example does not have any power to sanction informal welfare agencies and mandate them to register. Also, the Registrar of Joint-Stock Companies, which is the registering authority for Deeni Madaris under the Societies Registration Act, has no power to compel an unregistered Madrasah to register in accordance with s.21.

1004. Table 22 summarizes the number of registered NPOs under each Act.

**Table 22: Number of Registered NPOs under NPO Acts**

<b>Law of Registration</b>	<b>Number of NGOs</b>	<b>Percentage</b>
Societies Registration Act 1860	20,189	44.74
Trusts Act 1882	93	0.22
Voluntary Social Welfare Agencies 1961	21,364	47.36
Companies Ordinance 1984	341	0.81
Charitable Endowments Act 1890	26	0.06
Local Government Ordinance 2001	3,010	6.81
<b>Total</b>	<b>45,121</b>	<b>100</b>

*Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):*

1005. Apart from general provisions under the applicable laws for the issuance of annual financial statements and the use of bank accounts, there are no obligations to document individual transactions.

*Measures to ensure effective investigation and gathering of information (c. VIII.4):*

1006. Pakistan relies on the general investigative and intelligence gathering powers that are available to law enforcement and intelligence authorities when a case arises that requires the investigation or the gathering of intelligence regarding an NPO.

1007. The Ministry of Social Welfare and Special Education has a directorate dedicated to NPO affairs. This directorate acts as liaison with law enforcement authorities. Discussions with the Director revealed that his directorate has received requests from other government agencies and has collaborated to the extent of their capacities with law enforcement agencies.

1008. The registration of NPOs is highly fragmented and de-centralized and the information to the extent that it exists is mostly held in paper-records. This clearly limits the ability to share information in a timely fashion. The Directorate concerned with NPO issues at the Ministry of Social Welfare is currently in the process of building one centralized database, computerizing the registries around the country and connecting all the registries through an IT network. This is done in collaboration with international donors. The task is however of great magnitude and it will take time to be completed.

*Responding to international requests regarding NPOs - points of contacts and procedures (c. VIII.5):*

1009. The Directorate responsible for NPOs affairs at the Ministry of Social Welfare acts as the contact points in Pakistan for any foreign request for information pertaining to NPOs. Discussions with the Director revealed that requests for information have been received by the Directorate and have been responded to. Whenever necessary, the Directorate seeks the input of the Ministry of Interior.

1010. In investigative and intelligence matters, the normal routes for international cooperation in these matters are pursued.

*Analysis of effectiveness*

1011. The Pakistani authorities are making a lot of effort in collaboration with foreign donors to organize the NPO sector more effectively. The work of the NGO Affairs Bureau to coordinate with all federal and provincial NPO regulators is a welcome development. A number of constraints remain:

- The NPO sector is jealous of the freedoms guaranteed to it by the constitution and resistant to government regulation. This is directly responsible for the fragmentation of the regulation of the sector and the limited regulatory powers granted in the applicable laws to the registration authorities.
- The size of the sector is a big challenge to the capacity of the government to regulate.
- The lack of computerization of the various registration authorities is an impediment to information sharing.
- The human and financial resources of the registration authorities are highly limited by comparison to the size of the sector.
- There is a very high degree of informality and lack of documentation in the sector.

1012. These constraints are not unique to the Pakistani context. They are faced by many other countries regionally and internationally. The authorities are making substantial effort to address these constraints through: outreach and consultation with the sector, gradual computerization of the registries around the country in the context of the national database project, and harmonization amongst the regulatory agencies through training and outreach.

### 5.3.2. Recommendations and Comments

1013. Because of the constitutional constraints, the magnitude of the sector and the level of activism against government regulation in the sector, any approach to the regulation of the sector will have to rely on incentives. The following steps should be taken in order to achieve more compliance with the international standard:

- A comprehensive risk assessment of the sector and identification of NPOs or categories of NPOs that pose greater ML or TF risk.
- Expanding programs of outreach and training to include greater focuses on the risks of abuse for money laundering and terrorism financing.
- Strengthening the regulations that require to NPOs to keep records on: sources of funds, financial transactions and beneficiaries.
- Moving forward with the project of computerizing the registrars and enhancing the connectivity amongst them and with the Ministry of Social Welfare and populating the national NGO database.
- Creating clear channels for information sharing and coordination amongst the competent authorities in matters pertaining to NPOs.
- Support long-term efforts to streamline and improve the fragmented regulatory framework for NPOs in Pakistan.

### 5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
<b>SR.VIII</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ The NPO sector assessment did not include assessment of ML/TF risks to the sector.</li> <li>▫ No ML/TF risk assessment has been conducted of the sector.</li> <li>▫ Efforts to raise the awareness of the sector of the risks of ML and TF</li> </ul>

		<p>are still limited.</p> <ul style="list-style-type: none"> <li>▫ There is no effective monitoring or supervision of the NPOs that account for a significant portion of the financial resources of the sector and its international activities.</li> <li>▫ The powers of the registration authorities to sanction violations of the regulations of the sector are very limited.</li> <li>▫ The NPOs are still not required to keep records of transactions or to document their donors and beneficiaries.</li> <li>▫ The information sharing amongst competent authorities is hampered by the fragmentation of the registration system, the lack of enforcement and the lack of computerization.</li> <li>▫ A large segment of the NPO sector remains informal, i.e., neither registered not licensed.</li> </ul>
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## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1. National Co-Operation and Coordination (R.31 & R. 32)

#### 6.1.1. Description and Analysis

1014. Legal Framework: The AMLO includes provisions for AML-related national coordination. Section 5 mandates the high-level National Executive Committee (NEC). The NEC is to be chaired by the Minister for Finance and include the Senior Advisor to the Prime Minister on Foreign Affairs; Minister for Law & Justice, Minister of Interior; Governor SBP, Chairman SECP, , Chairman NAB, Director General FMU any other member nominated by the Federal Government. At present the NEC does not include the Minister for Narcotics Control.

1015. The NEC's mandate is to develop and frame an annual national AML strategy; to determine the predicate offences in AMLO; to provide guidance and sanction in framing of rules and regulations; to make recommendations to the Government on implementation of the AMLO; and issue necessary directions to the agencies involved in the implementation of the AMLO.

1016. AMLO establishes the General Committee (GC) to assist the NEC. The GC is comprised of the Secretaries Finance, Interior, Foreign Affairs, Law, Governor SBP, Chairman SECP and Director General FMU, who is also secretary of the GC. The GC's objectives include:

- develop and review the performance of AML measures by investigation agencies, FMU, financial institutions and DNFBPs;
- review training AML programs for government agencies and reporting institutions ; provide assistance to the NEC in carrying out its functions and duties; and
- discussing any issue of national importance relating to money laundering

1017. SBP and SECP have powers in legislation to cooperate and coordinate with information sharing and development and implementation of policies and activities. Section 35(6) to (11) of SECP Act 1997 allows SECP to disclose public and non-public information within its possession to domestic counterparts. Similarly [SBP Act / BCO – check] allows SBP to share and exchange of information with other supervisors.

*Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):*

1018. Between 2001 and 2007 Ministry of Finance convened a policy-level committee for consultation among all relevant departments / agencies to develop AML legislation.

1019. The NEC and GC have taken initial steps to support policy level coordination for AML implementation, however key steps have yet to be taken including sharing information on AML/CFT risk and developing a national strategy to effectively implement the AMLO. A sub-committee was established by NEC for drafting the AMLO Rules and Regulations. On the direction of the NEC the GC formed a sub-committee to review AMLO and make recommendations for further amendments. The GC's recommended amendments have been endorsed by the NEC and referred to the cabinet for submission to the parliament.

1020. The NEC and GC do not currently include all ministries and agencies involved in AML/CFT. The absence of Ministry of Narcotics Control and ANF in these structures is a gap. The inclusion of customs in the GC sub-committee went beyond the GC membership to include Customs.

1021. There is no mechanism to coordinate various agencies to ensure effective implementation of CFT measures to counter the very serious TF threats in Pakistan. This impedes the development and

implementation of coordinated policies to systematically prevent, investigate and prosecute terrorist financing as well as freeze and seize terrorist assets, combat cash couriers, protect alternative remittance systems from abuse and to ensure that NPOs are not abused for TF.

1022. Inter-agency cooperation is taking place between agencies under the Ministry of Interior involved in combating terrorism (provincial police, FIA, IB, ISI); however this coordination does not extend to CFT and does not include the FMU or other CFT stakeholders.

1023. Ministry of Social Welfare, through the NGO Affairs Bureau, is coordinating with other NPO regulators and the FMU to share NPO regulatory information and coordinate training. SECP and FBR could be more closely involved in this process. MoSW is coordinating with Ministry of Interior and its line agencies on CFT issues.

1024. SBP and SECP have an established mechanism for cooperation and coordination, which is supported by an MOU. Meetings are held between the two regulators to discuss policy and regulatory issues, although greater emphasis could be placed on AML/CFT coordination and the FMU could be more closely involved in multi-regulator discussions related to AML/CFT.

1025. Close coordination between NAB and regulators has taken place over a number of years to support proceeds of crime investigations and prosecutions. This included establishing NAB desks within SBP. A number of SECP and SBP staff were on deputation to NAB. A number of SBP staff are currently on deputation to FIA to assist in financial investigations and prosecutions.

1026. Coordination and cooperation between law enforcement agencies is undertaken for high-profile cases. However where the predicate offences span the mandate of more than one agency, it is unclear how issues of overlapping jurisdictions will be resolved for day to day operations.

1027. NAB, Ministry of Finance and the FMU have played roles in coordinating with various Pakistan agencies in the participation in the APG and related AML/CFT forums.

*Additional Element - Mechanisms for Consultation Between Competent Authorities and Regulated Institutions (c. 31.2):*

1028. SBP has initiated a joint Compliance Officers Forum for informal consultation between bank compliance officers and the SBP to discuss AML/CFT issues. SBP held four compliance officer meetings in 2008. FMU held two consultation and awareness raising sessions with reporting institutions during 2008.

*Statistics (applying R.32):*

1029. Provisions of sections 5(7) (a) and 6(4) (g) of the AMLO provide for mechanisms for reviewing the effectiveness of AML measures. The application of these provisions has been limited to reviewing legal provisions in the AMLO to further align the ordinance with the international standards. Recommended amendments to AMLO provisions have already been submitted and approved by the cabinet and the draft bill will soon be placed before the Parliament.

1030. The NEC was formed by official gazette on (date) and has held three meetings since (date). The GC and its subcommittee have met approximately 15 times since October 2007.

*Analysis of Effectiveness*

1031. Pakistan's federal system, combined with its system of general and specialist investigation agencies and courts results in significant fragmentation and complexity.

1032. The welcome step of the creation of the NEC and GC has not yet yielded the needed results. So far the NEC has not defined a clear strategy, based on a risk-assessment, to prioritize the implementation of the AML regime. There is no impediment to domestic cooperation and coordination at the operational level, but the overall fragmentation of the institutional framework has so far made it difficult to achieve measurable results in that respect.

1033. The assessors were not informed of a clear mechanism to coordinate and cooperate to develop and implement an effective policy to combat TF.

#### **6.1.2. Recommendations and Comments**

1034. There is a pressing need for close cooperation and coordination of effort to overcome fragmentation and ensure effective implementation of AML/CFT measures across the whole of Pakistan. The structures that are provided for in the AMLO will have no positive effect unless individual agencies commit to supporting coordinated approaches to implement targeted AML/CFT policies across Pakistan.

1035. Pakistan should:

- establish an effective coordination mechanism to set clear national policies for CFT and further develop and effectively implement CFT measures across Pakistan;
- fully implement coordination mechanisms established in AMLO to coordinate AML policies; and
- include all relevant agencies in various AML/CFT coordination structures, in particular Ministry of Narcotics Control and ANF, provincial police and customs.

1036. Authorities may consider establishing a Compliance Officers Networks between the SECP, FIU and NBFIs.

#### **6.1.3. Compliance with Recommendation 31 & 32 (criterion 32.1 only)**

	Rating	Summary of factors underlying rating
<b>R.31</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ Mechanisms established in AMLO to coordinate AML policies have not yet been fully implemented and adequately supported by all relevant stakeholders in the Pakistan government.</li> <li>▫ No mechanism has been established to support CFT coordination at policy and operational levels</li> <li>▫ There are gaps in operational level coordination in relation to AML implementation, in particular supervisory agencies.</li> </ul>
<b>R. 32</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>▫ Very limited steps have been taken to review the effectiveness of AML/CFT systems.</li> </ul>

## **6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)**

### **6.2.1. Description and Analysis**

1037. Legal Framework: International Conventions to which Pakistan is a signatory are not self-executing. To give them effect, relevant obligations and powers must be incorporated into domestic law.

*Ratification of AML Related UN Conventions (c. 35.1):*

1038. Pakistan ratified the Vienna Convention in 1991.

1039. Pakistan signed the Palermo Convention in December 2000 but has not yet acceded to it. The Evaluation Team was advised that approval documentation has been prepared and is awaiting Cabinet approval at the instigation of the Minister of Interior. Pakistan is also pursuing accession to the three Protocols.

*Ratification of CFT Related UN Conventions (c. I.1):*

1040. At the cut-off date for this assessment Pakistan had signed but not acceded to the Convention for the Suppression of Terrorist Financing. Accession was awaiting Cabinet approval.<sup>15</sup>

*Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1):*

1041. Due in large part to the MLA and freezing and forfeiture related provisions within the CNSA, Pakistan meets the requirements of the identified Articles of this Convention.

*Implementation of TF Convention (Articles 2-18, c. 35.1 & c. I.1):*

1042. Pakistan does not conform to certain key elements of the Terrorist Financing Convention, notably in terms of capacity to provide mutual legal assistance in TF-related investigations (Article 12) and uncertainties as to the criminalization of extraterritorial financing (Article 2).

*Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):*

1043. As noted, Pakistan has not acceded to the Palermo Convention. Pakistan's current conformity with the requirements of that Convention is deficient in several respects. Notably:

- Contrary to Article 18, Pakistan has no capacity to provide mutual legal assistance in relation to all "serious crime" as defined in the Convention (*i.e.*, in relation to all offences punishable by a maximum deprivation of liberty of at least four years) – whether or not such offending is transnational in nature and involves an organized criminal group.
- Contrary to Article 16, powers of extradition are constrained to the descriptions of offences contained in the schedule to the Extradition Act, as opposed to all offences punishable by at least 4 years imprisonment (such as the full range of corruption-related offences under s9 of the NAO) – whether or not such offending involves an organized criminal group.
- Contrary to Article 12, there are deficiencies in Pakistan's capacity to freeze and seize assets (as noted under Rec 3). In particular, powers of forfeiture of property of corresponding value are limited to offences under the NAO

*Implementation of UNSCRs relating to Prevention and Suppression of FT (c. I.2)*

1044. As noted in relation to SRIII, freezing pursuant to UNSCRs 1267 and 1373 is deficient, including in relation to type of assets amenable to freezing and range of entities effecting freezing action.

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15. Pakistan has since acceded to the Convention.

*Additional Element—Ratification or Implementation of Other relevant international conventions (c. 35.2):*

1045. Pakistan has both signed and ratified the United Nations Convention against Corruption and has voluntarily acceded to the “Pilot Programme” to review implementation of that Convention. As noted below, however, although the NAB is a designated Central Authority for the purpose of mutual legal assistance in corruption-related cases, there is no legal basis for the provision of MLA in such cases.

*Analysis of effectiveness*

1046. The CNSA and the ANF afford a sound basis for compliance with the Vienna Convention. However, as noted, accession to the Palermo Convention and the TF Convention – and implementation of these conventions and the UNSCRs – is deficient.

### **6.2.2. Recommendations and Comments**

1047. The authorities should consider the following recommendations.

- Pakistan should expedite efforts to accede to the Palermo Convention and the Convention for the Suppression of Terrorist Financing.
- Pakistan should redress the deficits identified in this report concerning criminalization of the TF offence (see the comments in relation to Special Recommendation II), the capacity for freezing and confiscation of terrorist assets (see the comments in relation to Recommendation 3 and Special Recommendation III) and capacity to provide mutual legal assistance in TF related cases (see the comments in relation to Recommendation 36 and Special Recommendation V).
- Pakistan should redress the deficits identified in this report concerning implementation of the relevant UNSCRs (see comments in relation to SRIII).

### **6.2.3. Compliance with Recommendation 35 and Special Recommendation I**

	Rating	Summary of factors underlying rating
<b>R.35</b>	<b>NC</b>	<b>As at the cut-off date for this assessment, Pakistan has acceded to neither the Terrorist Financing Convention nor the Palermo Convention. Pakistan’s current level of conformity with the specified articles of those conventions is deficient.</b>
<b>SR.I</b>	<b>NC</b>	<b>Pakistan has not acceded to the Terrorist Financing Convention. There are deficits in compliance with UNSCRs 1267 and 1373.</b>

## **6.3. Mutual Legal Assistance (R.36-38, SR.V)**

### **6.3.1. Description and Analysis**

1048. The Constitution specifically protects against any action, “other than in accordance with law”, that is detrimental to citizens’ rights concerning life, liberty, body, reputation or property. This applies

equally to State action for the purpose of domestic law enforcement as it does to State action for the purpose of international cooperation.

1049. The requirement that there be a lawful basis for State action of this type is also recognized in practice in the context of international cooperation. In enacting the CNSA, the legislature expressly recognized this requirement by specifically enacting provisions under that Act directly enabling certain action (considered in more detail below) for the purpose of effecting MLA. Similarly, under the NAO, the legislature took the view that powers to even request MLA needed to be expressly conferred. Most recently, under AMLO the legislature again enacted specific provisions enabling the provision of MLA (but only on the basis of a bilateral agreement).

1050. General powers of investigation under the CrPC do not apply other than for the investigation of an “offence”, which is defined as “any act or omission made punishable by any law for the time being in force”: s 4(1) (o). Further, the CrPC (pursuant to its Short Title) extends only to Pakistan.

1051. The Evaluation Team was advised that Pakistan has provided mutual legal assistance pursuant to its obligations under the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth (“The Commonwealth Scheme”). The Team was further advised that, in many instances, requests for MLA have been entertained pursuant to an undertaking of reciprocity. The Commonwealth Scheme, however, is an aspirational and purely voluntary scheme, as opposed to a convention or treaty. Further, because treaties are not self-executing in Pakistan in any event, a multilateral convention governing MLA cannot substitute for domestic legislation specifically enabling assistance via the application of coercive powers.

1052. Pakistan does not have a consolidated MLA regime – although officials advise that steps are in train to enact legislation that would supply one. Pending this, provisions concerning mutual legal assistance are found in only three Acts: AMLO, the CNSA and the NAO. These instruments cover MLA in relation to the offences of money laundering, narcotics-related offences and corruption offences respectively. None of these instruments confers jurisdiction in relation to terrorist financing offences. Nor do any provisions of the ATA although a proposal to address this via amendment to the ATA has been submitted to cabinet.

1053. It was also suggested to the Evaluation Team that s 24(2) of AMLO offers an avenue for the provision of coercive MLA. This provision enables the Federal Government, by “special or general order”, to empower officers “to act as an investigating officer under this Ordinance”. It was suggested that such an appointment might be made specifically in order to confer upon an officer powers available under AMLO for the purpose of facilitating a foreign investigation or proceeding (and that equivalent provisions in other enabling legislation – such as the NAO – might achieve similar ends). The Evaluation Team does not accept this argument. AMLO contains specific provisions relating to “Assistance to a contracting State” – as detailed below. Further, the mere appointment of investigators cannot extend investigatory powers, regardless of the intended purpose of the appointment.

1054. It was further suggested that s 35(6)(3) of the SECP Act enables the provision of MLA. This is true only to the extent that it authorizes SECP to disclose to a foreign government confidential information that is in the possession of the SECP in circumstances where such disclosure would enable that government to “perform a function, or exercise a power, conferred by a law in force in that foreign country”. As such, this provision is mentioned in reference to Recommendation 40

1055. Outside these pieces of legislation, the only provisions enabling mutual legal assistance are s 93C of the Code of Criminal Procedure and s 30 of the Prevention of Electronic Crimes Ordinance. Section 93C enables Pakistan Courts to order the execution of foreign arrest warrants as though they were issued domestically. Section 30 of the Prevention of Electronic Crimes Ordinance enables Pakistan to “cooperate with any foreign Government, Interpol or any other international agency with whom it has established reciprocal arrangements for the purposes of investigations or proceedings” that concern

electronically facilitated crimes or entail electronically preserved evidence. The capacity of the investigating agency (FIA) to cooperate is subject to approval from the Federal Government, which has power to refuse if the request “concerns an offence which is likely to prejudice” the essential interests of Pakistan. The scope of such cooperation is very unclear. The Evaluation Team was provided no information concerning the use of this provision in practice. Nor was the Team provided information as to States with which Pakistan has concluded necessary reciprocal arrangements.

1056. Pakistan has concluded mutual legal assistance treaties with three countries: Sri Lanka, Uzbekistan, China, and Turkey. These treaties cannot expand the ambit of assistance Pakistan is able to provide. This ambit is dictated by Pakistan’s domestic legislation.

*Widest Possible Range of Mutual Assistance (c. 36.1):*

1057. AMLO and the CNSA each contain provisions enabling mutual legal assistance via (i) the deployment of coercive powers for the purpose of facilitating foreign investigations and (ii) the freezing and confiscation of assets.

1058. The provisions within the NAO enable Pakistan to merely request MLA from other jurisdictions. Notwithstanding this, the Evaluation Team was advised that the NAB does provide investigative assistance when requested. The legal basis for the provision of such assistance is therefore considered in this section.

**Assistance in foreign investigations**

**AMLO**

1059. AMLO potentially enables Pakistan to assist foreign investigations of money laundering. It is requisite, however, that the requesting State be a “contracting State”.

1060. Under s 26 the Federal Government is empowered to conclude agreements “on reciprocal basis with the Government of any country outside Pakistan” for the purposes of enforcing the provisions of the Ordinance, exchanging information, providing assistance or transferring property in respect of any offence under the Ordinance (or under the corresponding law of the other country). A “contracting State” is a State with which such an agreement has been concluded.

1061. The MLA regime contemplated by AMLO therefore requires the creation of a network of multiple, bilateral inter-Governmental agreements that enable assistance in relation to, effectively, merely the offence of money laundering. Unsurprisingly, no such agreements have been concluded.

1062. Pakistan cannot, therefore, render mutual legal assistance in relation to money laundering investigations.

1063. On the assumption that agreements are concluded, implementing AMLO would be challenging. The request process commences with a letter of request from the requesting State. Although such requests would be channeled through the Ministry of Foreign Affairs (in accordance with the Rules of Business of that Ministry), the pathway thereafter is unclear. Under s 28, the Ministry has power to forward requests to “the Court” or to “the authorized officer or any authority under this Ordinance as it thinks fit”. The Ordinance does not identify eligible receiving courts. “Authorized officer” is not defined. It is also unclear what is meant by “authority under this Ordinance”. It is possibly a referral to the designated investigating agencies, although such agencies are especially defined as “investigating or prosecuting agencies” under s 2(k). The matter is further complicated by s 31, pursuant to which every

“letter of request, summons or warrant” received must be transmitted to “the concerned Court in Pakistan”. “Concerned Court” is not defined.

1064. Section 29(2) provides that where a court (presumably a “concerned Court”) has received for “service or execution” a summons, arrest warrant, search warrant or summons to appear and produce documents, it “shall cause the same to be served or executed as if it were a summons or warrant received by it from another court in the said territories for service or execution within its local jurisdiction”. “Territories” is undefined and, although the provision refers to “said territories”, this is the only instance of use of that word. The Evaluation Team was advised that the intention of this provision is to enable the Courts to enforce summonses and warrants as though they were issued domestically.

1065. The possible intention of this scheme is to enable the execution of warrants, summonses and production notices to be directed by a court, whereas other forms of request are referred to an “authorized officer” or “authority under this Ordinance”.

1066. Requests are actionable “so long as doing so would not violate laws of Pakistan or is, in any manner, not prejudicial to the sovereignty, security, national interest or public order”.<sup>16</sup>

1067. Section 30(2) relates to inward requests for freezing and confiscation. It enables “the Federal Government” to forward to NAB, FIA or ANF letters of request for “attachment or forfeiture” of direct and indirect proceeds of “an offence under section 3 committed in that contracting State”. Section 3 has no extraterritorial application. The intention is presumably to enable cooperation where the freezing is consequent upon conviction for an offence of money laundering that is criminalized in the foreign jurisdiction in terms similar to section 3. Whatever the position, s 30 enables enforcement of only conviction-based forfeiture orders (but not pecuniary penalty orders).

## NAO

1068. As noted earlier in this report, money laundering *per se* is not an offence under the NAO. NAB’s powers cannot, therefore, be deployed in furtherance of investigation of a foreign ML offence unless the conduct in question is capable of founding a suspicion of offending against one of the various corruption/corrupt practices offences are set forth in the NAO.

1069. Furthermore, the NAB is unable to provide mutual legal assistance, even in relation to corruption cases. As noted, the NAO confers power to simply request, but not provide, MLA. However, officials advised the Evaluation Team that the NAB implies, from its capacity to request MLA, a power to also provide assistance. This was said to occur on an application of the “principle of reciprocity”. This principle has no statutory or Common Law basis. Any application in the present context would confer upon NAB capacity to deploy, for the purpose of a foreign investigation, coercive powers that have been conferred upon it for merely domestic investigation. Given the availability of judicial review in Pakistan and the litigiously protected “fundamental rights” established by the Constitution, NAB’s self-arrogation of power under the “principle of reciprocity” is unpersuasive.<sup>17</sup> No cases were cited in support of it. The Evaluation Team is not convinced that the powers of NAB are legally available to investigate foreign offences, unless the facts support also a suspicion that an offence has been committed against the laws of Pakistan.

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16. The Evaluation Team was advised that “public order” interests would be engaged if the execution of a request is likely to raise public discontent of a magnitude that would impair the general maintenance of civilian order.

17. The detailed provisions of UNCAC cannot resolve these difficulties. The Convention itself requires execution of requests “in accordance with the domestic law of the requested State Party”: Article 46(17). Further, mutual legal assistance may be refused where it would be “contrary to the legal system of the requested State Party”: Article 46(21).



1070. The Evaluation Team was further advised that, since ratifying UNCAC in August 2007, mutual legal assistance is requested and granted by the NAB pursuant to Article 46 of that Convention. Article 46 operates to create a relationship between States when none otherwise exists. This is for the purpose of enabling international cooperation with respect to the corruption-related offences referred to in the Convention. Money laundering is one of those offences: Article 23.

1071. Whilst Pakistan might successfully obtain legal assistance through UNCAC in corruption-related cases, it has no capacity to render assistance. As noted earlier in this report, treaties are not self-executing in Pakistan: relevant powers must be domestically incorporated. Unlike the CNSA, which contains express provisions enabling the use of domestic powers for the purpose of facilitating foreign investigations/prosecutions in narcotics-related offending, there are no equivalent provisions in the NAO.

1072. Despite these obstacles, the Evaluation Team was advised that Pakistan has provided mutual legal assistance, ostensibly on the basis of the principle of reciprocity and authority pursuant to UNCAC.

### CNSA

1073. Under section 56 of the CNSA, Pakistan may request assistance in relation to the narcotics-related offences contained in the Act and may grant “similar requests” received from “foreign States”. “Foreign States” is undefined, with the result that there is no requirement for prior agreement or treaty. However, if the relationship between the foreign state and Pakistan is materially subject to a treaty or other arrangement, the scope of available assistance is limited to assistance contemplated by that treaty or arrangement.

1074. Double criminality is required under the CNSA. Because money laundering is criminalized under that Act (s 12), the CNSA enables MLA in relation to laundering of proceeds of narcotics offences. The predicate offence would need to be sufficiently identifiable as an offence of a type criminalized under the CNSA.

1075. Requests may be refused where they might prejudice the “sovereignty, security, public order or other essential public interest of Pakistan”.

1076. Section 59 enables the High Court to issue “evidence-gathering orders” (production orders) and search warrants. Evidence-gathering orders may require a person to provide records or attend Court to give evidence on oath. Privileges and protections recognized by Pakistan and the requesting State may be invoked by any person so named.

1077. The CNSA also enables transfers of detained persons to assist foreign investigations into conduct that would have constituted an offence under the CNSA had it occurred in Pakistan.

1078. As noted in more detail below (in relation to Recommendation 38), the CNSA also permits the restraint and forfeiture of property derived from narcotics-related offending committed abroad.

1079. In summary, and subject to the requirements of double criminality, in narcotics-related cases the CNSA enables Pakistan to undertake searches, compel production of records, transfer detained persons and freeze and confiscate proceeds, even in the absence of any pre-existing formal relationship.

## **Assistance via freezing and confiscation of assets**

### **AMLO**

1080. AMLO enables Pakistan to grant mutual legal assistance by way of identification, freezing and forfeiture of proceeds of a money laundering transaction. It does not enable freezing and confiscation of either instrumentalities or proceeds of other offences.

1081. Section 26 of AMLO, which empowers the Federal Government to enter into agreements with foreign countries, enables such agreements to cover, amongst other things, the “transfer of property relating to any offence under this Ordinance or under the corresponding law in force in that country”. As noted already, no such agreements have yet been concluded. Accordingly, AMLO does not currently enable MLA related to freezing and confiscation of criminal proceeds.

1082. Section 30 specifically deals with “attachment, seizure and forfeiture *etc.* of property in a contracting State or Pakistan.” This section requires a letter of request from a court in a contracting State. As such it is more restrictive than other forms of MLA under AMLO, which may be initiated by way of letter of request from either a “court or authority in a contracting State”.

1083. Requests receivable this way are requests for “attachment or forfeiture of the property in Pakistan derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 committed in that contracting State”. As noted already, s 3 has no extraterritorial application. The only meaningful interpretation of the section is as a vehicle for another State to request freezing and confiscation over proceeds of an offence of money laundering committed in that requesting State.

1084. Upon receipt of such requests, the Federal Government (*i.e.*, the Ministry of Foreign Affairs under existing Rules of Business) may forward the request “as it thinks fit” to the “investigation agency”, currently defined as including the NAB, FIA and ANF.

1085. NAB, FIA or the ANF may execute the request either “in accordance with the provisions of this Ordinance” or “in the manner sought by the contracting State so long as doing so would not violate Law of Pakistan or is, in any manner, not prejudicial to the sovereignty, security, national interest or public order”.<sup>18</sup>

1086. Section 30(6) specifically provides that the provisions of AMLO enabling attachment and forfeiture (sections 8 and 9) “shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or forfeiture of property”. The reference here to the possibility of such a request emanating from “a court or contracting State” is anomalous given, as noted, that the specified channels for onward processing of requests (*i.e.* reference to one of the “investigation agencies”) is triggered only when requests derive from a court.

1087. Because s 30 invokes the powers under sections 8 and 9, the deficits of those provisions noted already in this report (under Recommendation 3) exist also in this context.

1088. The scope of MLA relevant to the identification of proceeds amenable to freezing and forfeiture under s 30 is set out in sections 30(3), (4) and (5). These provisions enable the directed agency “to take all steps necessary for tracing and identifying such property”. Such steps may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of accounts in any bank or financial institution or any other relevant matters”. Such powers are sweeping. They are far in excess of the powers available to FIA and ANF for the purposes of domestic investigation. They are

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18. The ambit of the “public order” ground for refusal is considered under Recommendation 36.

subject only to any “directions” issued under the Ordinance. This is likely a reference to the power of the NEC under s 5(3) (e) to “issue necessary directions to the agencies involved in the implementation and administration of this Ordinance”.

1089. Given that, in the absence of any s 26 agreements, all of these provisions are effectively inoperative, AMLO is not analyzed further in this section.

### NAO

1090. As noted, the National Accountability Ordinance has no provisions relating to the provision of mutual legal assistance. Even though the Evaluation Team was advised that this has not precluded the provision of assistance to date, the Evaluation Team was advised that no country has yet requested the NAB to undertake freezing, seizing or confiscation action.

### CNSA

1091. Section 62 of the CNSA enables the High Court to restrain proceeds of narcotics-related offences where a foreign investigation has commenced and an order for forfeiture has been made or is likely. Section 63 enables Pakistan to enforce foreign confiscation and forfeiture orders. Unlike section 62, property able to be restrained via registration under section 63 is not limited to proceeds of crime. Further still, conceivably s 63 enables the registration of civil-based orders.

1092. Section 63(1) states that the section does not apply to “cases falling within section 40 of this Act”. Section 40 provides that, where a citizen of Pakistan is convicted by a foreign court of an offence “which is also an offence punishable under this Act”, the Special Court may order that person’s assets in Pakistan (if any) to be forfeited. Unlike the MLA provisions, section 40 enables domestically initiated confiscation pursuant to a domestic order. The exclusion from s 63 of “cases falling within section 40” is likely intended to ensure that, where an order has already been made under s 40, registration of a further order is not possible.

1093. Although, technically, there is no impediment to s 40 being used to effect MLA relating to freezing and forfeiture (where the person subject to the request is a citizen of Pakistan), the Evaluation Team was advised that it has not been used that way to date.

1094. The CNSA may also supply the only mechanism through which Pakistan can provide MLA by way of a freeze over intended instrumentalities. This would be the case where the intended instrumentality is subject to a registrable foreign restraint and confiscation order.

#### *Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):*

1095. The Evaluation Team was advised that, between 2005 and July 2008, Pakistan received only 22 requests for MLA. No breakdown was provided as to the Act or Ordinance pursuant to which these requests were made. Twenty-one of these requests were granted in that same period. The time required to respond was between 2 months and 3 years “depending on the nature of the request”. Information received by the Evaluation Team prior to the on-site visit supports the view that Pakistan authorities are often slow to respond to MLA requests in ML and TF related cases and that the quality of response is variable.

#### *No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):*

1096. The only Act enabling the provision of mutual legal assistance is the CNSA. As noted, double criminality is required. The particulars of details required to accompany requests for assistance pursuant to the CNSA (s 58(2)) are sensible and not onerous.

*Efficiency of Processes (c. 36.3):*

1097. The Cabinet-mandated “Rules of Business” of MOFA require requests for MLA (regardless of their basis) to be channeled through that Ministry. The Evaluation Team was advised that, in practice, the expectation is that the Ministry should at least be “advised” of the existence of such requests, should they be received directly on an agency-to-agency basis.

1098. MOFA has no international cooperation division. Instead, requests are processed through the relevant country desk. MOFA acts purely as a conduit. It assumes no responsibility for managing or monitoring the processing of requests.

1099. MOFA forwards requests to whatever agency it considers appropriate, given the suspected criminal offending in question. However, there are no standard operating procedures to appropriately contend with the challenges posed by the fragmentation of Pakistan’s law enforcement mandates. The Evaluation Team was told that where the offence is money laundering, “most likely” FIA will be the recipient agency. The position is unclear in relation to requests related to mixed offending that might span the remit of more than one agency (for example, drug offending entailing money laundering and corruption). In such circumstances, MOFA officials advised that the request would be sent to MOI for on-referral.

1100. Determinations as to whether any available grounds for refusal of assistance are made out are made by way of inter-Ministry consultation at Joint-Secretary/Director General level.

1101. As noted, the only Act enabling the provision of mutual legal assistance is the CNSA. The procedures under that Act relating to the obtaining of High Court orders (s 59) are sensible and clear.

*Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):*

1102. There are no impediments in the CNSA to the provision of MLA pursuant to requests that might, somehow, involve fiscal matters.<sup>19</sup>

*Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):*

1103. Any person subject to an “evidence gathering” order under the CNSA is entitled to invoke any privileges and protections recognized by Pakistan and the requesting State. As noted earlier in this report, however, obligations of confidentiality have not proved an impediment to the obtaining of information for law enforcement related purposes.

*Availability of Powers of Competent Authorities (applying R.28, c. 36.6):*

1104. As noted, s 59 of the CNSA enables the High Court to issue search warrants and production orders, which may require a person to provide records or attend Court to give evidence on oath.

*Avoiding Conflicts of Jurisdiction (c. 36.7):*

1105. The Evaluation Team was advised: (i) there are no set mechanisms for the resolution of potential conflicts of jurisdiction; (ii) to date, no such conflicts have arisen; and (iii) should any such conflicts arise, “the principle to be followed... would be mutual agreement of concerned jurisdictions on a case to case basis”.

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19. However, should any s 26 agreements be concluded pursuant to AMLO, s 41 of that Ordinance would preclude MLA in such circumstances. That section provides that “nothing in this Ordinance shall apply to fiscal offences”.

*Additional Element—Availability of Powers of Competent Authorities Required under R28 (c. 36.8):*

1106. As noted, the Cabinet-mandated “Rules of Business” of MOFA require requests for MLA to be channeled through that Ministry and that, in practice, there is an expectation that the Ministry at least be “advised” of the existence of such requests, should they be received directly on an agency-to-agency basis.

*International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):*

1107. No legal instrument, including the ATA, confers upon any Pakistani agency jurisdiction to deploy coercive powers for the purpose of facilitating a foreign TF or terrorism-related investigation or prosecution.

*Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):*

1108. Pakistan cannot provide mutual legal assistance in terrorism-related matters.

*Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):*

1109. Pakistan can cooperate with other countries on an informal basis where this does not entail the deployment of coercive or intrusive powers.

1110. Formal assistance under the CNSA requires double criminality. Pakistan’s capacity to provide assistance extends to assistance of a type “similar” to that able to be requested by Pakistan (i.e., similar to requests for assistance in the investigation of offences under the CNSA): s 56. No cases were provided to the Evaluation Team concerning in the interpretation of this provision. To the extent that this section does intend to invoke notions of double criminality, it is liberally worded and certainly does not, at face value, impose a strict standard.

*International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2):*

1111. Pakistan cannot provide mutual legal assistance in terrorism-related matters.

*Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):*

1112. As noted, s 63 of the CNSA provides the only basis upon which Pakistan can provide MLA by way of implementing provisional measures. The Evaluation Team was advised that “there have been no requests/cases under section 63 so far”.

*Property of Corresponding Value (c. 38.2):*

1113. Recovery of property of corresponding value can occur only in relation to narcotics offences: via s 64 of the CNSA, Pakistan can enforce foreign “fines”, including pecuniary penalty orders.

*Coordination of Seizure and Confiscation Actions (c. 38.3):*

1114. The Evaluation Team was advised that the NAB and FIA each have protocols or informal arrangements with counterpart agencies in certain countries to enable coordination of seizure action. The ANF, by contrast, has not entered into any such arrangements.

*International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):*

1115. Pakistan cannot provide mutual legal assistance in terrorism-related matters.

*Asset Forfeiture Fund (c. 38.4):*

1116. As noted, a “National Fund for Control of Drug Abuse”, which finances initiatives related to the control and eradication of controlled substances and the rehabilitation of addicts, is funded in part from the sale proceeds of assets forfeited under the CNSA.

1117. A percentage of assets recovered by NAB under plea bargain or “volunteered return” are transferrable to a fund established for the welfare of employees of the NAB but this does not extend to forfeited funds.

*Sharing of Confiscated Assets (c. 38.5):*

1118. Section 26 of AMLO empowers the Government to enter into agreements for the purpose of asset sharing. To date, no such agreements have been concluded. Similar agreements are contemplated by section 65 of the CNSA. Again, no such agreements have been concluded.

*Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):*

1119. As noted, at face value s 63 of the CNSA would enable the registration of civil-based orders, orders deriving from a reverse onus of proof and orders freezing the property of organizations that are found to be primarily criminal in nature. Registration by the High Court of a foreign order is mandatory simply upon proof that the order is in force in the foreign state and is not subject to appeal.

*Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):*

1120. Pakistan cannot provide mutual legal assistance in terrorism-related matters.

*Statistics (applying R.32):*

1121. Statistics provided to the Evaluation Team concerning MLA constituted simply numbers of requests received on an annual basis between 2005 and mid-2008. No breakdown was provided in terms of type of request, nature of offence or requesting country. In terms of the time taken to process these requests, the Evaluation Team was simply advised “from 2 months to 3 years, depending upon nature of request”.

*Analysis of effectiveness*

1122. As noted, between 2005 and July 2008, Pakistan received only 22 requests for MLA, 21 requests were granted and the time required to respond was between 2 months and 3 years “depending on the nature of the request” (some prioritization is said to occur, when required in individual cases). Even allowing for repeated requests of the requesting country for further information, periods of around 3 years to respond to requests are excessive. Information received by the Evaluation Team prior to the on-site visit supports the view that Pakistan authorities are often slow to respond to MLA requests in ML and TF related cases and that the quality of response is variable.

1123. AMLO’s legal assistance provisions prescribe unclear pathways for the processing of MLA requests and are currently completely ineffective, for the reason that no s 26 agreements have been concluded. Further, endeavoring to conclude multiple, bilateral s 26 agreements would require extensive work. Cabinet approval would be required to even commence the process of negotiation. The negotiation stage would require considerable intermediation from the Ministry of Foreign Affairs as to scope and, amongst other things, “conditions, exceptions or qualifications” considered appropriate within the meaning of s 26(2). The Ministry of Law, Justice and Human Rights would need to vet both draft and concluded agreements. On both sides of the negotiation, internal high-level approval of concluded agreements would be required (at Cabinet level in Pakistan). As candidly acknowledged by officials, the effort would be the same as that required to negotiate comprehensive mutual legal assistance treaties

covering a comprehensive range of offences. Further, it is questionable whether another State would dedicate reciprocal resources to the effort of concluding a bilateral agreement essentially covering a single offence. It is telling that no country has yet entered into such an agreement.

1124. Notwithstanding the absence of any empowering provision in the NAO, it must be acknowledged that the NAB has, to date, functioned (without challenge) as a Central Authority for the receipt and execution of MLA requests concerning corruption-related offences. Since its inception, NAB has received a total of 53 requests for assistance, of which just over half (27) have been serviced. North America (Canada and the United States) and Europe (including the UK) account for 43 of these requests. Other than being advised that this assistance has not extended to cooperation in the freezing or confiscation of assets, the Evaluation Team was provided no details as to the nature of the assistance sought – or time taken to respond.

### 6.3.2. Recommendations and Comments

1125. The authorities should consider the following recommendations.

- Pakistan authorities should not expend valuable resources concluding s 26 agreements under AMLO.
- The process drafting stand-alone MLA legislation that has already commenced should be expedited. Such legislation is urgently required. This need was identified in Pakistan’s last assessment.
- Given the time and resources required to conclude bilateral MLA treaties, particular consideration should be given to enacting MLA legislation that enables Pakistan to entertain requests for MLA independent of any pre-existing relationship (as under the CNSA) and in relation to a wide range of offences, including terrorist financing.
- Pending the establishment of a comprehensive MLA framework, it is recommended that the current legislative review of AMLO at least remove the requirement that requesting States be “contracting States”.
- The MLA-related procedural deficiencies and ambiguities identified in this report should also be addressed – as should the deficiencies here identified in relation to MLA concerning asset forfeiture.
- Also pending the evolution of a comprehensive MLA framework, – and dependent upon imminent policy decisions to be taken by the Federal Government concerning the future of the NAB – the NAB should be conferred express power to provide, as well as receive, MLA. Such assistance should extend to freezing and forfeiture of assets.
- In general, but particularly pending the creation of a comprehensive MLA framework, officials should closely review MLA requests with a view to determining whether they disclose possible domestic offending warranting domestic investigation. Where domestic investigations are viable, they may offer an alternative mechanism for the provision of international assistance, thereby bypassing any deficiencies or formalities associated with any MLA regime. Given the utility of the ML offence in prosecuting transnational crime, particular consideration should be given to the possibility of initiating domestic investigations for money laundering, whether as a stand-alone offence or otherwise.

### 6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
<b>R.36</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>□ The legal basis for the provision of MLA is limited to narcotics related offences.</li> </ul>

		<ul style="list-style-type: none"> <li>▫ There is no evidence that assistance is provided in a timely, constructive and efficient manner.</li> </ul>
<b>R.37</b>	<b>C</b>	
<b>R.38</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>▫ Assistance by way of freezing and seizing is limited to narcotics related offences under the CNSA.</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ There is no legal basis for the provision of MLA in terrorism-related matters.</li> </ul>

## 6.4. Extradition (R.37, 39, SR.V)

### 6.4.1. Description and Analysis

1126. Legal Framework: Pakistan has entered into extradition treaties with 29 countries.<sup>20</sup> However, in order to be extraditable, the offence must arise from acts or omissions that fall within the descriptions set out in the Schedule to the Extradition Act 1972 (s 2(1) (a))<sup>21</sup> and either (i) be listed as extraditable in a treaty with the requesting State or (ii), whenever “the Federal Government considers it expedient”, be notified in the official Gazette. Notification in the Gazette must direct that the provisions of the Act “shall, with respect to such offences and subject to such modifications, exceptions, conditions and qualifications, if any, as may be specified therein, have effect in relation to that State” (s 4).

1127. The model treaty vetted by the Ministry of Law that forms the basis of Pakistan’s bilateral arrangements enables extradition for any offence punishable “according to the law of the Parties” by a term of imprisonment of not less than one year. This does not mean that all offences carrying terms of imprisonment of 1 year or more are extraditable: they must also be scheduled to the Act and punishable by more than 1 year in the treaty partner State.

1128. Prior to October 2008, Pakistan could not extradite in TF-related cases. In October 2008 “financing for terrorism” was added to the Schedule to the Extradition Act as a description of an extraditable offence.

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20. By way of adoption of treaties concluded by the United Kingdom: Argentina, Belgium, France, Greece, Switzerland, United States, San Marino, Monaco, Netherlands, Denmark, Austria, Yugoslavia, Iraq, Ecuador, Portugal, Luxemburg, Colombia, Cuba, Italy. By way of treaties independently concluded: Iran, Turkey, Saudi Arabia, Maldives, Egypt, Australia, Uzbekistan, Algeria, China, and United Arab Emirates.

21. Offences described in the Schedule are: Culpable homicide; Maliciously or willfully wounding or inflicting grievous bodily harm; rape; procuring or trafficking in women or young persons for immoral purposes; kidnapping, abduction or false imprisonment or dealing in slaves; stealing, abandoning, exposing or unlawfully detaining a child; bribery; perjury or subornation of perjury or conspiring to defeat the course of justice; arson; an offence concerning counterfeit currency; an offence against the law relating to forgery; stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud; burglary, house-breaking or any similar offence; robbery; blackmail or extortion by means of threats or by abuse of authority; an offence against bankruptcy law or company law; malicious or willful/damage to property; acts done with the intention of endangering vehicles, vessels or aircraft; an offence against the law relating to dangerous drugs or narcotics; piracy; revolt against the authority of the master of a ship or the commander of an aircraft; contravention of import or export prohibitions relating to precious stones, gold and other precious metals; Illicit dealing in arms, ammunition or explosive material used in their production; aiding and abetting, or counseling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the aforesaid offences; financing for terrorism.



1129. Listed as the 23<sup>rd</sup> description in the Schedule are the offences of aiding, abetting, counseling, procuring, attempting or conspiring to commit any of the “aforesaid offences”. “Financing for terrorism”, however, is not an “aforesaid offence” for the reason that it was inserted as the 24<sup>th</sup> description.

*Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):*

1130. An “extradition offence” is defined as an offence “the act or omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place [in Pakistan] would constitute an offence against the law of Pakistan”. The second half of this definition establishes the requirement of dual criminality. The first half ensures that this requirement turns upon a consideration not of the taxonomy or terminology of the foreign offence but of the underlying “act or omission”. This is further ensured by s 2(2), which provides that, in determining whether any foreign offence falls within the scheduled descriptions, “any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded”.

*Money Laundering as Extraditable Offence (c. 39.1):*

1131. Money laundering was added to the Schedule of the Act by way of Gazetted notification dated 17 March 2009. It is therefore now an extraditable offence. Further, the Schedule to the Extradition Act is augmented by section 66 of the CNSA, which renders all offences against Chapter II of that Act “extraditable offences”. Accordingly, laundering of proceeds of narcotics offending, contrary to s 12 of that Act, was extraditable throughout the relevant assessment period.

*Extradition of Nationals (c. 39.2):*

1132. Section 5 of the Extradition Act sets out the grounds for refusal for extradition. These include instances where the offence in question is “of a political character”, is not serious enough to warrant imprisonment of 12 months or more (or a death or life sentence), is one for which the person has been previously convicted/acquitted or where the person might be “prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.” Nationality *per se* is not listed as a ground for refusal.

1133. However, Article 4(3) of the Model Extradition Treaty, vetted by the Ministry of Law, Justice and Human Rights and forming the template for Pakistan’s extradition treaties, states that extradition “may” be refused where the person is a national of the requested country. That said, the Evaluation Team was advised that Pakistan has twice extradited its own nationals. The Evaluation Team was further advised that the only impediment to extradition of Pakistan nationals would be the absence of an undertaking of reciprocity on the part of the requesting State.

*Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):*

1134. As noted, Pakistan extradites its own nationals.

*Efficiency of Extradition Process (c. 39.4):*

1135. The Extradition Act offers a straightforward extradition regime. Relevant provisions are found in ss 6 – 14. Requests are received via diplomatic channels and are transferred to the Ministry of Interior. The Ministry has power to order an enquiry by any first class Magistrate who would have had jurisdiction had the offence been committed within jurisdiction. The Court then has commensurate powers to summons the fugitive offender and enquire whether a *prima facie* case has been made out in support of the request. The Court is also charged with determining whether the offence is of a political character – or even extraditable. Such hearings proceed principally by way of consideration of documentation provided by the requesting State. The Act enables exhibits, depositions and even “official certificates of facts” from foreign proceedings to be received in evidence. The Evaluation Team was advised that, in the

usual course, such an enquiry is concluded within two to three months of receipt of order by the Magistrate. Where a prima facie case is established, the Court reports that result to the Ministry and remands the fugitive in custody pending the issue by the Ministry of a “warrant for the custody and removal of the fugitive offender and for his delivery”. Grounds for refusal to extradite include political motivation, previous conviction/acquittal for the same offence, persecution on account of race, religion, nationality or political opinions.

1136. Presumably, s 93C of the Code of Criminal Procedure, which enables Pakistan Courts to order the execution of foreign arrest warrants as though they were issued domestically, is instrumental in ensuring the attendance of summoned fugitives.

*Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5):*

1137. Pakistan’s laws do not contemplate simplified procedures, such as deportation by consent or transfer pursuant to backed-warrant.

*Additional Element under SR V (applying c. 39.5 in R. 39, c V.8)*

1138. As noted, Pakistan’s laws do not contemplate simplified procedures.

*Statistics (applying R.32):*

1139. The Evaluation Team was provided with no detailed statistics relating to extradition.

#### *Analysis of effectiveness*

1140. In the absence of any statistics or detailed data concerning extraditions, the Evaluation Team is unable to analyze in any detailed way the effectiveness of the regime’s implementation. That said, the statutory procedure for extradition is unremarkable and straightforward. On this basis, effectiveness was regarded as having a neutral effect upon ratings – including for extradition for ML, which has only recently become available.

#### **6.4.2. Recommendations and Comments**

1141. The authorities should consider the following recommendations.

- The placement of “financing for terrorism” as a description in the Schedule to the Extradition Act should be reviewed so that accessorial and inchoate offences related to TF are also extraditable.

#### **6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V**

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
<b>R.39</b>	<b>C</b>	.
<b>R.37</b>	<b>C</b>	
<b>SR.V</b>	<b>PC</b>	Pakistan can extradite for TF but scope to extradite for ancillary offending should be clarified by reorganization of the offences listed in the Schedule to the Extradition Act.

## **6.5. Other Forms of International Co-Operation (R.40 & SR.V)**

### **6.5.1. Description and Analysis**

*Widest Range of International Cooperation (c. 40.1)*

*International Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c. V.5):*

#### **Financial Sector Supervisory Authorities:**

1142. **SECP** has powers to cooperate and where appropriate coordinate internationally with other regulatory authorities concerning information sharing and development and implementation of policies and activities. The law allows SECP to disclose public and non-public information within its possession to domestic and international counterparts (section 35(6) to (11) of SECP Act).

1143. In the international context, SECP has developed cooperative linkages with other counterpart regulatory authorities and is currently, the member of the following international regulatory organizations:

- International Organization of Securities Commission (IOSCO),
- International Association of Insurance Supervisors (IAIS),
- International Organization of Pension Supervisors (IOPS),

1144. International cooperation between SECP and overseas counterparts is carried out on an ongoing basis particularly in the area of exchange of information which is performed under strict confidentiality. SECP is signatory to bilateral Memoranda of Understanding (MoU) with counterpart regulatory authorities that primarily cover cross-border co-operation and exchange of information for enforcing compliance with respective laws and regulations of the signing authorities. While the signing of MoUs with some other jurisdictions is in process, formal co-operative arrangements have been concluded with the following regulatory counterparts:

- Securities & Exchange Board of India
- Maldives Monetary Authority
- Australian Securities & Investments Commission
- Royal Monetary Authority of Bhutan
- Securities and Exchange Commission of Sri Lanka
- South Asian Securities Regulators Forum (SASRF)
- Asia Pacific Corporate Registers Forum (APCRF)

1145. SECP has forwarded its application to become a signatory to the IOSCO MMoU. So far, SECP is not party to the MMoU, and the assessors understand that IOSCO has notified SECP that it currently doesn't meet all the relevant requirements.

1146. **SBP** has taken an initiative in signing MOUs with central banks of various other countries in particularly where Pakistani banks have branches. SBP has signed MOUs with various supervisory authorities of the world. SBP indicates that these MOUs have a wide variation in scope ranging from mere exchange of information to details pertaining to licensing criteria, on-site inspection, supervisory cooperation, combating money laundering and terrorist financing, nature of action to be taken in case of any irregularity etc. It is worth noting however that in the view of the assessors, even through these MOUs, SBP does not have the capacity to share confidential information, in particular customer account specific information with foreign counterparts. SBP considers that Section 46 A (2) of SBP Act-1956 and

32(2) of BCO-1962 would allow it to participate in international exchange of confidential information. Section 46 A(2) states that “no court, tribunal or other authority shall permit anyone to produce or give evidence derived from, any unpublished record of the Bank, except with the prior permission in writing of the Governor who may give or withhold such permission as thinks fit”. Section 32(2) lays out the SBP capacity to require information from financial institutions, and is of general nature (i.e. not specific to international cooperation).

1147. SBP indicates that it has only received very occasional requests for information (and did not provide statistical data). SBP indicates that it would build on the provision in the Banking Companies Ordinance which gives discretion to the Governor. While taking note of this information, the assessors still consider this legal basis to be weak, discretionary, and susceptible to challenges before court.

1148. SBP has signed MOUs with various supervisory authorities of the world which include:

- |              |             |
|--------------|-------------|
| • Azerbaijan | • Sri Lanka |
| • Bahrain    | • Syria     |
| • Bangladesh | • Turkey    |
| • Kazakhstan | • Vietnam   |
| • Kyrgyzstan | • Indonesia |
| • Mauritius  | • Oman      |
| • Qatar      | • China     |

And MOUs with Egypt, Kenya, Hong Kong Monetary Authority and Bafin (Germany), are also under process.

### **Law Enforcement Authorities**

1149. LEA (FIA, ANF, NAB, police and customs) international co-operation: Whilst there is no explicit prohibition on LEA to LEA sharing of intelligence or in the conduct and support of day-to-day co-operation at the operational level, the assessors are aware of anecdotal evidence that LEAs have cooperated with international counterparts. However the assessors were not given structured statistical or case information from any of the agencies allowing them to be satisfied that these are standard practices.

1150. Indeed, to the contrary, the only examples given relating co-operation were through formal channels through the Foreign and Interior Ministries or via Mutual-legal assistance or other bi-lateral requests and these primarily focused on drugs and anti-corruption cases. NAB has however signed a limited number of MOUs with some foreign counterparts. All was also of concern to note that the quoted were all reactive in their nature i.e. the agencies were responding to foreign requests for assistance but Pakistan was not the originator of such request to foreign jurisdictions for assistance.

1151. There appears, to the assessors, to be a reliance on what has become a ‘standard-operating-procedure’ whereby requests for foreign assistance are first routed via the Foreign Ministry and from there to either the Ministry of Interior, ANF or the NAB and then on to the Courts to provide such assistance. Which excludes any form of spontaneous responses to intelligence (at the LEA level) or of operational co-operation.

1152. The assessors were informed that intelligence sharing did exist within the ‘intelligence community’ and primarily in regard to terrorist related matters but this was not evidenced to the assessors – LEAs commented that they were not part of this intelligence process. Whilst this sharing can be very productive in itself it only has limited application – as it only exists where there are partners within the ‘intelligence community’ that do share with Pakistan and where Pakistan is able to and does share intelligence to their foreign counterparts. International experience shows this is generally limited to

specific countries and therefore does not cover the wide ranges necessary to combat ML and TF as a whole.

*Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):*

1153. For law enforcement authorities, ‘standard-operating-procedure’ tend to preclude timely assistance (see comments above 40.1).

*Clear and Effective Gateways for Exchange of Information (c. 40.2):*

1154. There are no clear and effective gateways for law enforcement authorities (see comments at 40.1)

*Spontaneous Exchange of Information (c. 40.3):*

1155. No specific information was provided to the assessors on this issue by the financial supervisory authorities.

1156. No evidence was given by FIA, ANF, NAB the police or customs that demonstrated spontaneous exchanges of intelligence or co-operation at the operational level spontaneous or otherwise.

*Making Inquiries on Behalf of Foreign Counterparts (c. 40.4):*

1157. Enquiries that were received have been routed via the ‘standard-operating-procedure’ whereby the law enforcement authority has then followed directions of the court.

*FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):*

1158. In regard to FMU co-operation, AMLO places restrictions on FMU’s ability to spontaneously share information that appear to be too restrictive to meet the Egmont principles of information exchange as FMU interprets its ability to share information to have to follow the ‘standard-operating-procedure’ as above. (see also comment under R26 - 26.10)

*Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):*

1159. LEAs are authorized to conduct enquires on behalf of foreign counterparts where the ‘standard-operating-procedure’ has been followed and are directed through the court.

*No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):*

1160. Reciprocity in accordance with domestic law is the only stated condition given by Pakistani authorities.

*Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):*

1161. The assessors were not made aware of such restrictions – see also comments above (40.6). Pakistani authorities did also point out that NAB, ANF and FIA do not deal with fiscal offences, as they are beyond the mandate provided under respective legislation.

*Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):*

1162. Pakistani authorities informed us that no request has so far been refused, which was received in accordance with the law. Evidence was not provided that demonstrated this.

*Safeguards in Use of Exchanged Information (c. 40.9):*

### **Financial Supervisory Authorities**

1163. The MoU signed by SECP for sharing of information with foreign counterpart regulatory authorities contain the following requirements: “The assistance or information obtained pursuant to this Memorandum of Understanding will not be disclosed to third parties without the prior consent of the Requested Authority. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information or assistance. Each Authority will keep confidential, to the extent permitted by law; (a) any request for information made under this Memorandum of Understanding and any matter arising in the course of this Memorandum of Understanding, including consultations between the Authorities and unsolicited assistance, unless such disclosure is necessary to carry out the request or the other Authority waives such confidentiality; (b) any information received pursuant to this Memorandum of Understanding unless it is disclosed in furtherance of the purpose for which it was requested. Notwithstanding the provisions of paragraphs 6.9, 9.1 and 9.2, the confidentiality provisions of this Memorandum of Understanding will not prevent the Authorities from informing the law enforcement or regulatory bodies in its territory, such as the registrar of companies or stock exchange, of the request for the purposes of assisting the Authorities in responding to the request. If an Authority becomes aware that information passed under this Memorandum of Understanding may be subject to a legally enforceable demand to disclose that information the Authority will, to the extent permitted by law, inform the other Authority of the situation. The Authorities will then discuss and determine the appropriate course of action. Provided that neither authority will take any action without the consent of the other.”

1164. Similarly, under the MOUs signed by SBP, it is obligatory to make use of information in the conditions of secrecy as provided in the MOU given below:

“The Parties each agree that all possible and reasonable steps will be taken to preserve the confidentiality of the information received pursuant to this MOU and to ensure that employees of the Parties hold confidential all information obtained in the course of their duties.

It is agreed that any confidential information received by either Party from the other should be used exclusively for lawful supervisory purposes and if the information is to be used for any purpose other than supervisory, prior written permission from the originator of the information must be sought.”

### **Law Enforcement Authorities**

1165. The ‘standard-operating-procedure’ requires consideration in regard to reciprocity and also that information is used for the purpose intended (as per mutual legal assistance requests).

*Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1):*

*Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11)*

*Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9):*

#### **6.5.2. Recommendations and Comments**

1166. The authorities should consider the following recommendations.

- SBP should be allowed to share confidential information with its foreign counterparts. FMU should not be mandated to go through the Ministry of Foreign Affairs to negotiate and conclude MoUs with foreign counterparts.
- Procedures, with an appropriate legal mandate, need to be implemented that allow for the sharing of intelligence and the day-to-day co-operation in operational matters across all LEA (FIA, ANF, NAB, police and customs). These institutions should not be mandated to go through the Ministry of Foreign Affairs to negotiate and conclude MoUs with foreign counterparts.
- The FMU needs to have wholly independent process to enable information and intelligence. That are in accordance with s 4(e) AMLO and not over-ridden by s26 AMLO. Or adhere to process that require it to route such inbound or outbound requests via any other ministry, department or agency.

### 6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
<b>R.40</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>▫ SBP cannot share confidential information with foreign counterparts</li> <li>▫ There are no appropriate procedure or working practices that evidence the widest possible range of international co-operation to their foreign counterparts</li> <li>▫ The ‘standard-operating-procedure’ used does not provide clear, effective, prompt and constructive exchanges directly between counterparts.</li> <li>▫ FMUs ability to share information is also hampered by the absence of conclusion of bilateral agreements which, under AMLO, condition its ability to engage in international exchange of information.</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▫ SBP cannot share confidential information with foreign counterparts</li> <li>▫ There are no appropriate procedure or working practices that evidence the widest possible range of international co-operation to their foreign counterparts</li> <li>▫ The ‘standard-operating-procedure’ used does not provide clear, effective, prompt and constructive exchanges directly between counterparts.</li> </ul>





## **7. OTHER ISSUES**

### **7.1. Resources and Statistics**

#### **7.1.1. Description and Analysis**

##### *Resources of the Courts*

1167. As noted earlier, the Special Courts evolved from recognition by the Federal Government that more expeditious resolution of criminal prosecutions was required in certain categories of cases, including corruption, narcotics and terrorism related cases. With the notable exception of delays in processing forfeiture applications in the Drugs Court (as mentioned under Recommendation 3), there appear to be no concerns as to the capacity of the Special Courts to expeditiously dispose of their caseloads. However, issues do arise with respect to the safety of informants and judges, particularly in the Anti Terrorism Courts. Pakistan authorities do not run a witness protection program. Judges of the Anti Terrorism Courts have been murdered.

1168. Inadequate resourcing is the principal cause of delay in Pakistan's ordinary courts. Improved resourcing is required to both increase the numbers of judges available to hear cases and improve infrastructure, including the building of new courtrooms. The Evaluation Team was advised that the Asian Development Bank has provided funding for this and that, to further counter these sorts of issues, the Federal Government is considering introducing "night courts" and greater recourse to 'alternative dispute resolution' processes.

1169. In Baluchistan and NWFP, increased resourcing has led to far more tolerable delays, particularly in Baluchistan where the period between charging and adjudication is now around one year. However, the Evaluation Team was advised that in the provinces of Sindh and Punjab, delays in the order of 10 years are common. The Evaluation Team was further advised that, on any given court sitting day, a provincial judge or magistrate might have a daily "cause list" of some 70-80 cases and that, given the impossibility of discharging such a workload in a single day, adjournments are willingly granted. The Chief Justice of Pakistan has constituted a committee to review and submit recommendations for reducing the backlog. Further, the capacity of the judiciary to deny applications for adjournment is often highly compromised due to an inverse power relationship with the bar. Bar Associations appear to be strong. The Evaluation Team was advised that, in the past, barristers have successfully boycotted particular judges. Power imbalances are maintained by the fact that, in the lower courts, the legal acumen of counsel is frequently greater than that of the presiding judicial officer due to significant differences in remuneration.

1170. As a result, adjournments are routinely granted – even after the taking of evidence has commenced. This has an adverse impact upon, amongst other things: the capacity of the prosecution to ensure the attendance of witnesses; the reliability of evidence tendered; and the integrity of judgments rendered – particularly given that proceedings are recorded only via the judge's handwritten notes. Additionally, because (i) under the CrPC accused persons detained for a continuous period in excess of one year must be released on bail and (ii) time in custody is taken into account upon sentence, significant delays compromise both the prospects of attendance of accused persons and the deterrent effect of sentences.

1171. The Supreme Court is also subject to extraordinary caseload pressure. Appeals to the Supreme Court lie as of right to persons sentenced to death or to life imprisonment – and from determinations from the special tribunals. Although leave is required in other cases and questions of law must be identified (as opposed to mere questions of fact), an extraordinarily high percentage of matters end up in the Supreme

Court. In civil matters, the damages threshold is set at a mere 50,000 Pakistan rupees. The National Judicial (Policy Making) Committee has recently announced the draft policy for reducing this backlog.

1172. Recommendations of the Law & Justice Commission of Pakistan to place more workable limits upon access to the Supreme Court have not been followed. As at 1 July 2005, in excess of 30,000 cases were pending in the Supreme Court. Notwithstanding an annual intake of approximately 12,000 to 15,000 new cases per year, as a result of concerted effort this pendency had reduced by March 2007 to 10,000. Recent upheavals within the membership of the Supreme Court have, however, stymied this progress. The Court's pendency currently sits at approximately 17,000 cases.

1173. Decisions of the Supreme Court are made available to counsel and the remaining judiciary by way of privately published law reports and the internet. However, the Evaluation Team was told that the burden of the Court's caseload compromises the quality of its decisions by denying the presiding Justices sufficient time to fully consider judgments, particularly constitutionally interpretative judgments.

#### *High professional standards (c30.2)*

1174. Staff of FIA, ANF, NAB and the FMU are all subject to vetting procedures of their own organizations.

#### *Adequate and relevant training (c30.3)*

1175. FIA, ANF, NAB and the FMU have all received training. The majority of which has been provided by international donors, either in country and abroad. This approach has had some success but has not fully taken account of domestic circumstances and does not provide any form of sustainable training that meet the changing and urgent need of the Pakistani law enforcement authorities.

1176. ANF and FIA have designed MF training course but. ANF purely in house and relating to drug trafficking and FIA have attempted to develop a program with a more multi-agency approach. The programs deal with basic concept of ML and re-iterate domestic law and regulation. Both agencies seek additional support in relation to specialist training in the areas of ML and TF.

#### *Review of the effectiveness of the regime (c 32.1)*

1177. The statistical information available has been described under the relevant sections of this report. The authorities are not in position to review the effectiveness of the Pakistani AML/CFT regime for the following reasons: absence of comprehensive and authoritative review of the ML and FT risks facing the country; lack of centralized and aggregated statistics regarding the impact and results achieved.

#### *Maintenance of comprehensive statistics (c 32.2)*

1178. Several of the AML/CFT authorities in Pakistan maintain some statistics on their activities. These have been described in the relevant sections of the report. However, the statistical apparatus is highly fragmented, as a result of the fragmentation of the institutional framework itself. In addition, a high share of the statistical information available is not currently geared towards identifying the AML/CFT dimensions as such – including in terms of investigations, prosecutions and actions by the financial sector supervisors.

#### *Additional criteria – additional statistics (c 32.3)*

1179. The gaps identified for criteria 32.2 also apply.

### 7.1.2. Recommendations and Comments

1180. The authorities should consider the following recommendations.

- The staffing and resources across the federal investigative agencies, including FMU (commented on in criteria 26), needs to be addressed as a matter of priority, with the consideration to the formation of dedicated ML (and with FIA TF) units.
- Any inauguration of staff or focus on specialism of ML and or TF must also be accompanied by the relevant training on recruitment and thereafter as needs demand.
- The current training regime is fragmented; somewhat ad-hoc based on donor availability and to general to meet current ML and TF needs of Pakistan. Considerable benefit would be obtained from a more structured and national approach to ML and TF training that assist all federal agencies. This should be considered at a national policy level (and possibly as part of a national strategy). Such a course should be domestic, multi-agency so reflecting the dynamics of ML and TF and also so reflecting domestic needs, problems, laws and regulations.
- The creation of Provincial Prosecution Services is a meritorious concept. The centralization of prosecution services can help combat the considerable challenge of coordinating a criminal justice sector that is highly fractured. However, whilst noting the resource constraints facing Pakistan, it is recommended that these services be adequately funded.
- Funding should extend to training of both prosecution counsel and the judiciary in the field of financial investigation and the adducing of associated evidence.
- The Government should continue its endeavors to reduce current court backlogs.
- A comprehensive, aggregated and centralized statistical framework for AML/CFT should be devised.

### 7.1.3. Compliance with Recommendations 30 and 32

	Rating	Summary of factors underlying rating
R.30	PC	<ul style="list-style-type: none"><li>• Overall insufficient resources available for AML/CFT efforts, particularly in light of the risks facing Pakistan, particularly for law enforcement, the FMU and the judiciary. SECP is also under-resourced to effectively undertake its AML/CFT functions</li><li>• Excessive fragmentation of the training, and where training has been delivered, usually not specific and operational enough</li></ul>
R.32	NC	<ul style="list-style-type: none"><li>• Absence of comprehensive and coherent statistical apparatus, allowing measure of results and review of effectiveness of the AML/CFT regime</li></ul>

### 7.2. Other relevant AML/CFT Measures or Issues

### 7.3. General Framework for AML/CFT System (see also section 1.1)

See section 1.1 on corruption.

**Table 1. Ratings of Compliance with FATF Recommendations**

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
<b>Legal systems</b>		
1. ML offense	<b>PC</b>	<ul style="list-style-type: none"> <li>• The definition of the acts of laundering misses some of the elements required under applicable conventions. The gap is very small.</li> <li>• 4 of the 20 categories of designated offences are not currently predicate offences to ML and piracy and insider trading are not criminal offences in Pakistan.</li> <li>• The investigative authorities do not envision the possibility of prosecuting ML as an autonomous offence.</li> <li>• The main ML offence under AMLO lacks a sufficient range of ancillary offences.</li> <li>• There is an overall lack of effectiveness of the investigation and prosecution of money laundering reflected in the nearly total absence of cases.</li> </ul>
2. ML offense—mental element and corporate liability	<b>PC</b>	<ul style="list-style-type: none"> <li>• It is not currently the practice in Pakistan to charge legal persons for ML offences or for the predicate offences and there is not an alternative system of civil sanctions applicable to their breaches.</li> <li>• The maximum pecuniary punishments allowed for money laundering under AMLO are potentially too lenient for the cases involving large proceeds.</li> <li>• Despite the existence of a ML offence under CNSA since 1997 and ATA since 2005, there has not been any track-record of successful prosecution for ML under those statutes.</li> <li>• There is overall a lack of effectiveness in sanctioning the ML offence</li> </ul>
3. Confiscation and provisional measures	<b>PC</b>	<ul style="list-style-type: none"> <li>• AMLO's forfeiture provisions do not clearly enable forfeiture of proceeds of crime.</li> <li>• Only the NAO permits forfeiture of property of corresponding value.</li> <li>• There is no capacity to provisionally freeze under the ATA.</li> <li>• Only the CNSA offers effective protection to</li> </ul>

<sup>22</sup>These factors are only required to be set out when . the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
		<p>third parties.</p> <ul style="list-style-type: none"> <li>• Only the NAO confers power to void actions.</li> <li>• Levels of forfeiture under the NAO are not high.</li> <li>• The effectiveness of forfeiture under the CNSA is blunted by systemic impediments in the Special Court.</li> <li>• AMLO's attachment and limited confiscation powers have not been tested.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>C</b>	•
5. Customer due diligence	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of coverage of some financial institutions, particularly Pakistan Post</li> <li>• Excessive reliance on NADRA and NARA, without due consideration to the remaining weaknesses of these identification sources, particularly NARA</li> <li>• Excessive emphasis on NADRA and NARA cards as ultimate identification and verification of identity tools</li> <li>• Overall lack of effectiveness</li> </ul> <p><u>For SBP</u></p> <ul style="list-style-type: none"> <li>• The narrow scope of the identification requirements for legal persons and arrangements, as they do not extend to the identification of the directors (except for joint stock companies)</li> <li>• There is ambiguity on the minimum content of enhanced due diligence in high risk scenarios</li> <li>• The conditions for simplification or reduction of the CDD requirements in low risk scenarios are too open ended, and not enough guidance has been provided to the financial institutions, or situations of proven low risk have not been sufficiently defined. There is no definition either of the minimum level of CDD to be then implemented</li> </ul> <p><u>For ECs</u></p> <ul style="list-style-type: none"> <li>• Ambiguity as to "other particulars" that ECs need to obtain for inward remittances of all amounts and outward remittances of less than US\$5,000.</li> <li>• Lack of clear guidance on the type of identification documents that should be used for verification of customers and the timing of verification of customers for remittance transfers</li> <li>• No obligation to conduct CDD on occasional customers when suspicion of ML or TF arises regardless of the value of the transaction or when there are doubts about the veracity or adequacy</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
		<p>of previously obtained customer identification data.</p> <ul style="list-style-type: none"> <li>• No obligation to identify and take reasonable measures to verify the identity of beneficial owners.</li> <li>• No enhanced due diligence measures for high-risk customers.</li> <li>• No explicit requirement as to what course of actions should be taken when satisfactory CDD cannot be established.</li> </ul> <p><u>For SECP</u> Absence of</p> <ul style="list-style-type: none"> <li>• definition of the situations for identification of the customer outside the account opening or establishment of a business relationship (occasional customers, doubts about the veracity or adequacy of previously obtained customer data)</li> <li>• requirement to verify the identity of the customer</li> <li>• requirement to identify the directors or trustees of legal persons or legal arrangements</li> <li>• requirement to identify beneficial ownership, and to take reasonable steps to verify the identity of the beneficial owner (except for situation where the customer is acting on behalf of another person)</li> <li>• requirement to obtain information on the nature and intended purpose of the business relationship, and to conduct on-going due diligence</li> <li>• requirements to perform enhanced due diligence for higher risks categories of customers, transactions or business relationships</li> <li>• requirements – particularly relevant for the securities markets – on the timing of the verification</li> <li>• requirements related to situations where CDD cannot be satisfactorily completed</li> <li>• requirements on existing customers, with a specific deadline</li> </ul>
6. Politically exposed persons	<b>PC</b>	<ul style="list-style-type: none"> <li>• No requirement on PEPs for the financial institutions under SECP</li> <li>• No definition of PEPs, and no coverage of family members or associates, for financial institutions covered by SBP</li> <li>• No requirement for enhanced on-going due diligence on PEPs, and their families and associates, for financial institutions covered by</li> </ul>

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>22</sup></b>
		<p>SBP</p> <ul style="list-style-type: none"> <li>• Insufficient effectiveness</li> </ul>
7. Correspondent banking	<b>LC</b>	<ul style="list-style-type: none"> <li>• Banks are not required to establish a clear understanding as to which institution will perform the required measures.</li> </ul>
8. New technologies & non face-to-face business	<b>LC</b>	<ul style="list-style-type: none"> <li>• Banks are not required to have policies and procedures in place to address any specific risks associated with non-face-to-face transactions.</li> </ul>
9. Third parties and introducers	<b>LC</b>	<ul style="list-style-type: none"> <li>• SECP does not require entities it regulates to immediately obtain from the third party the necessary information concerning certain elements of the CDD process.</li> <li>• SECP does not require entities it regulates to satisfy themselves that copies of documents relating to the CDD process will be made available by the third party without delay.</li> <li>• SECP does not require entities it regulates to satisfy themselves that the third party is regulated and has measures in place to comply with the CDD requirements set out in R.5 and R.10.</li> <li>• At the time of the assessment, SECP did not require entities it regulates to take into account whether countries in which the third party is based apply the FATF Recommendations.</li> </ul>
10. Record-keeping	<b>PC</b>	<ul style="list-style-type: none"> <li>• The SBP has not through law or regulation required that banks or exchange companies provide information to domestic competent authorities on a timely basis.</li> <li>• The SBP has not defined the time period for which Exchange Companies must maintain records.</li> <li>• The SECP has not through law or regulation required that NBFCs provide information to domestic competent authorities on a timely basis.</li> <li>• The SECP has not through law or regulation required that NBFCs maintain records of customer identification for at least five years after the termination of a business relationship.</li> <li>• The SECP has not through law or regulation required that NBFCs maintain records of correspondence with customers for at least five years after the termination of a business relationship.</li> <li>• The SBP has not through law or regulation required that exchange companies maintain records of customer identification for at least five years after the termination of the business relationship.</li> </ul>

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>22</sup></b>
11. Unusual transactions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Outside banks and Modarabas there are no legal or regulatory requirements or systems dealing with monitoring or examination and therefore no controls within other institutions to deal with monitoring or examination of transactions.</li> <li>• Effectiveness of the ability for banks and Modarabas to examine transactions is impeded by a generally poor understanding of the ML and TF risks faced by Pakistan or internationally.</li> <li>• Record keeping in relation to the examination of internal unusual reports not sent to FMU is not explicit. Effectiveness in relation to record keeping for unusual reports that formed STRs was not evidenced.</li> </ul>
12. DNFBP–R.5, 6, 8–11	<b>NC</b>	<ul style="list-style-type: none"> <li>• CDD and record keeping requirements are not applied to NFBPs.</li> </ul>
13. Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>• Not all predicate crimes in Rec 1 are covered.</li> <li>• Whilst AMLO covers reporting across all financial institutions only banks have reported and in very low numbers.</li> <li>• The overall STR regime is not working effectively.</li> </ul>
14. Protection & no tipping-off	<b>C</b>	<ul style="list-style-type: none"> <li>•</li> </ul>
15. Internal controls, compliance & audit	<b>PC</b>	<ul style="list-style-type: none"> <li>• The SECP does not require NBFCs to establish initial and ongoing training programs to make their employees aware of the AML/CFT obligations or of ML and TF trends.</li> <li>• The SECP does not require all NBFCs to implement screening standards to ensure all their employees meet the highest ethical standards.</li> <li>• Brokers are not required to designate compliance officers, to have an adequately resourced independent internal audit function or to monitor for suspicious activity.</li> <li>• The SBP does not require exchange companies to appoint compliance officers, nor it requires exchange companies to develop and maintain sufficient internal controls to prevent ML/TF</li> <li>• The SBP does not require exchange companies to establish an independent audit function.</li> <li>• The regulatory regime does not cover Pakistan Post when it provides financial services.</li> </ul>
16. DNFBP–R.13–15 & 21	<b>NC</b>	<ul style="list-style-type: none"> <li>• STR requirement is not applied to NFBPs</li> </ul>
17. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Overall insufficient effectiveness of the sanctioning regime, and its application</li> <li>• SBP</li> <li>• Weaknesses in the sanction regime to ensure its</li> </ul>



<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>22</sup></b>
		<ul style="list-style-type: none"> <li>effectiveness, dissuasiveness and proportionality</li> <li>range of sanction power available for non-compliance of ECs too narrow</li> <li>SECP</li> <li>Insufficient pecuniary sanctions available to the Exchanges</li> </ul>
18. Shell banks	<b>C</b>	<ul style="list-style-type: none"> <li></li> </ul>
19. Other forms of reporting	<b>C</b>	<ul style="list-style-type: none"> <li></li> </ul>
20. Other NFBP & secure transaction techniques	<b>LC</b>	<ul style="list-style-type: none"> <li>Apart from inclusion of investment advisors by SECP, no comprehensive risk assessment has been undertaken to consider whether other non-financial businesses and professions should be also brought under the AML/CFT regime.</li> </ul>
21. Special attention for higher risk countries	<b>PC</b>	<ul style="list-style-type: none"> <li>Despite recent progress for financial institutions supervised by SBP, there are no rules or regulations for all other types of FIs</li> <li>Pakistan is not in legal position to implement counter-measures for non-bank financial institutions</li> </ul>
22. Foreign branches & subsidiaries	<b>LC</b>	<ul style="list-style-type: none"> <li>The SBP has not issued a regulation requiring financial institutions to inform SBP when foreign branches cannot observe AML/CFT measures because of a conflict of laws in the host country.</li> </ul>
23. Regulation, supervision and monitoring	<b>LC</b>	<ul style="list-style-type: none"> <li>AML/CFT regulatory and supervisory requirements (market entry, regulation, supervision, compliance monitoring)</li> <li>Ambiguities in the roles of the financial sector supervisors and the FMU in terms of regulatory and guidance on the one hand, and compliance monitoring on the other hand for the suspicious transaction reporting obligations.</li> <li>SECP</li> <li>Lack of recourse to the regulatory powers to press all professions to adopt a satisfactory form for establishment of the business relationships</li> <li>Absence of “fit and proper” requirement for agents in the securities markets</li> <li>Non application of the fit and proper tests to beneficial owners of financial institutions</li> </ul>
24. DNFBP—regulation, supervision and monitoring	<b>NC</b>	<ul style="list-style-type: none"> <li>There is no regulation or supervision in AML/CFT.</li> </ul>
25. Guidelines & Feedback	<b>PC</b>	<ul style="list-style-type: none"> <li>Guidelines are only predominately banking orientated; no account is taken of other reporting entities. Examples shown are also generic international examples with little or no local context.</li> <li>There is no effective feedback being offered via</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
		<p>the FMU or other competent body.</p> <ul style="list-style-type: none"> <li>Insufficient guidance provided by the financial sector supervisors</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	<b>PC</b>	<ul style="list-style-type: none"> <li>ATA requirements to report suspicion of TF offences do not provide for reporting of such STRs to the FMU</li> <li>No guidance is given to reporting entities on the completion of STRs.</li> <li>FMU does have indirect access to other information for analysis but the lack of a systematic approach to this affects timeliness of obtaining such information.</li> <li>Effectiveness of dissemination is impacted by staff experience and the lack of clear policies that deal with the differing ‘investigative agencies’.</li> <li>FMU is judged not to have sufficient operational independence and autonomy.</li> <li>No reports and or statistics are published</li> <li>Legal and working practice constraints impede information sharing</li> </ul>
27. Law enforcement authorities	<b>PC</b>	<ul style="list-style-type: none"> <li>There is no evidence of standalone investigations into ML or TF. Those investigations that have taken place are generally associated with overt proceeds from the principal involved in the predicate crime.</li> <li>A general insufficient understanding of investigative powers across all investigative agencies and the FMU contributes to the lack of investigations into ML or TF.</li> <li>The primary agency for investigation of TF (FIA) is insufficiently resourced to effectively to ensure proper investigations.</li> </ul>
28. Powers of competent authorities	<b>LC</b>	<ul style="list-style-type: none"> <li>Evidence was not produced to demonstrate effective use of provisions for search, seizure or production of general or banking documentation or concerning obtaining of witness statements in relation to ML or TF.</li> </ul>
29. Supervisors	<b>PC</b>	<ul style="list-style-type: none"> <li>Compliance monitoring insufficiently proactive on CDD and STR reporting requirements beyond compliance with the NADRA obligation</li> <li>Insufficient “hands-on” training on the supervision of compliance with AML/CFT requirements for examiners (for SBP, for ECs, and for SECP as a whole)</li> <li>Insufficient resources for SBP (for Exchange</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
		<p>companies), SECP and as needed the Exchange to fulfill their supervision mandate on AML/CFT</p> <ul style="list-style-type: none"> <li>• Narrow coverage of system audits for the securities markets as far as AML/CFT requirements are concerned</li> <li>• Narrow coverage and depth of the compliance manual on AML/CFT for NBFCs</li> <li>• Insufficient effectiveness of the supervisory regime</li> </ul>
30. Resources, integrity, and training	<b>PC</b>	<ul style="list-style-type: none"> <li>• Overall insufficient resources available for AML/CFT efforts, particularly in light of the risks facing Pakistan, particularly for law enforcement, the FMU and the judiciary. SECP is also under-resourced to effectively undertake its AML/CFT functions</li> <li>• Excessive fragmentation of the training, and where training has been delivered, usually not specific and operational enough</li> </ul>
31. National co-operation	<b>PC</b>	<ul style="list-style-type: none"> <li>• Mechanisms established in AMLO to coordinate AML policies have not yet been fully implemented and adequately supported by all relevant stakeholders in the Pakistan government.</li> <li>• No mechanism has been established to support CFT coordination at policy and operational levels</li> <li>• There are gaps in operational level coordination in relation to AML implementation, in particular supervisory agencies.</li> </ul>
32. Statistics	<b>NC</b>	<ul style="list-style-type: none"> <li>• Absence of comprehensive and coherent statistical apparatus, allowing measure of results and review of effectiveness of the AML/CFT regime</li> <li>• Very limited steps have been taken to review the effectiveness of AML/CFT systems.</li> </ul>
33. Legal persons–beneficial owners	<b>PC</b>	<ul style="list-style-type: none"> <li>• Laws and regulations do not require adequate transparency concerning the beneficial ownership and control of legal persons in Pakistan.</li> </ul>
34. Legal arrangements – beneficial owners	<b>NC</b>	<ul style="list-style-type: none"> <li>• The information required to be included in the trust agreement on trustees, settlors and beneficiaries does not cover the concept of beneficial ownership, which undermines effectiveness.</li> <li>• Registration of trust information is decentralized and remains in manual records and is very difficult for law enforcement agencies to access in practice.</li> </ul>
<b>International Cooperation</b>		
35. Conventions	<b>NC</b>	<ul style="list-style-type: none"> <li>• As at the cut-off date for this assessment,</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
		Pakistan has acceded to neither the Terrorist Financing Convention nor the Palermo Convention. Pakistan's current level of conformity with the specified articles of those conventions is deficient.
36. Mutual legal assistance (MLA)	NC	<ul style="list-style-type: none"> <li>The legal basis for the provision of MLA is limited to narcotics related offences.</li> <li>There is no evidence that assistance is provided in a timely, constructive and efficient manner.</li> </ul>
37. Dual criminality	C	<ul style="list-style-type: none"> <li></li> </ul>
38. MLA on confiscation and freezing	NC	<ul style="list-style-type: none"> <li>Assistance by way of freezing and seizing is limited to narcotics related offences under the CNSA</li> </ul>
39. Extradition	C	<ul style="list-style-type: none"> <li></li> </ul>
40. Other forms of co-operation	NC	<ul style="list-style-type: none"> <li>SBP cannot share confidential information with foreign counterparts</li> <li>There are no appropriate procedure or working practices that evidence the widest possible range of international co-operation to their foreign counterparts</li> <li>The 'standard-operating-procedure' used does not provide clear, effective, prompt and constructive exchanges directly between counterparts.</li> <li>FMUs ability to share information is also hampered by the absence of conclusion of bilateral agreements which, under AMLO, condition its ability to engage in international exchange of information.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> <li>Pakistan has not acceded to the Terrorist Financing Convention. There are deficits in compliance with UNSCRs 1267 and 1373.</li> </ul>
SR.II Criminalize terrorist financing	PC	<ul style="list-style-type: none"> <li>Pakistani law is ambiguous on the criminalization of financing of individual terrorists.</li> <li>Pakistani law is ambiguous on the criminalization of financing of terrorist organizations unless they are so proscribed by the Federal Government.</li> <li>There is no definition of property leaving the scope of the financing offences ambiguous.</li> <li>There is ambiguity as to whether the offence would extend to the financing of terrorism committed against foreign government or populations.</li> <li>The ATA does not recognize explicitly actions</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
		<p>designed to intimidate international organizations as terrorism.</p> <ul style="list-style-type: none"> <li>- There is overall lack of effectiveness reflected in the fact that there has never been any prosecution for terrorism financing.</li> </ul>
SR.III Freeze and confiscate terrorist assets	<b>PC</b>	<ul style="list-style-type: none"> <li>Freezing of assets of non-1267 entities is limited to financial assets and compromised by the need for such entities to possess a “distinctive name”.</li> <li>Although SROs relating to 1267 entities are of general application, only the freezing action of entities regulated by SBP is monitored</li> <li>Freezing of assets of 1267 entities does not extend to all assets.</li> <li>Non-compliance with freezing obligations is not sanctionable.</li> <li>In the absence of indemnity/hold-harmless provisions, some entities do not effect freezes without confirmation that there has been no false-positive name-hit, which may take up to five days.</li> <li>Pakistan’s capacity to freeze assets of entities in line with foreign country freezing measures is not clear nor are there any established procedures enabling consideration of foreign requests for freezing..</li> <li>No guidance has been provided to entities expected to undertake freezing action.</li> <li>There are no provisions for the protection of bona fide third parties.</li> </ul>
SR.IV Suspicious transaction reporting	<b>NC</b>	<ul style="list-style-type: none"> <li>There is no direct mandatory obligation to file an STR when there are reasonable grounds to suspect that funds are linked to, related to, or are to be used for terrorism, terrorist acts or terrorist organizations.</li> <li>TF STR obligations are limited to proceeds of terrorism</li> <li>Emphasis on reporting requirements are biased towards ML and not TF.</li> <li>Despite the prevalence of terrorism in Pakistan, implementation of the obligation to report TF related STRs is very weak</li> </ul>
SR.V International cooperation	<b>PC</b>	<ul style="list-style-type: none"> <li>There is no legal basis for the provision of MLA in terrorism-related matters.</li> <li>Pakistan can extradite for TF but scope to extradite for ancillary offending should be clarified by reorganization of the offences listed in the Schedule to the Extradition Act.</li> <li>SBP cannot share confidential information with</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
		<p>foreign counterparts</p> <ul style="list-style-type: none"> <li>• There are no appropriate procedure or working practices that evidence the widest possible range of international co-operation to their foreign counterparts</li> <li>• The ‘standard-operating-procedure’ used does not provide clear, effective, prompt and constructive exchanges directly between counterparts.</li> </ul>
SR.VI AML/CFT requirements for money/value transfer services	PC	<ul style="list-style-type: none"> <li>• The current scope of preventive measures imposed on ECs is narrow.</li> <li>• Sanctions against ECs are not effective, proportionate and dissuasive.</li> <li>• No efforts have been made to identify unlicensed operation of remittance service providers (Hawala) although informal operators still exist especially in the provinces where SBP oversight is weak.</li> <li>• Pakistan Postal Savings Bank is not subject to AML/CFT obligations.</li> </ul>
SR.VII Wire transfer rules	LC	<ul style="list-style-type: none"> <li>• No clear obligations for ECs with regards to verification of the identify of originator, handling of incoming wire that lacks full originator information, and sending full originator information throughout the payment chain.</li> <li>• Banks are not required to obtain originator information or documentation from ECs conducting wire transfers on behalf of third parties.</li> <li>• Pakistan Postal Savings Bank is not subject to the wire transfer requirements when they engage in wire transfers/remittances.</li> </ul>
SR.VIII Nonprofit organizations	PC	<ul style="list-style-type: none"> <li>▫ The NPO sector assessment did not include assessment of ML/TF risks to the sector.</li> <li>▫ No ML/TF risk assessment has been conducted of the sector.</li> <li>▫ Efforts to raise the awareness of the sector of the risks of ML and TF are still limited.</li> <li>▫ There is no effective monitoring or supervision of the NPOs that account for a significant portion of the financial resources of the sector and its international activities.</li> <li>▫ The powers of the registration authorities to sanction violations of the regulations of the sector are very limited.</li> <li>▫ The NPOs are still not required to keep records of transactions or to document their donors and</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>22</sup>
		<p>beneficiaries.</p> <ul style="list-style-type: none"> <li>▫ The information sharing amongst competent authorities is hampered by the fragmentation of the registration system, the lack of enforcement and the lack of computerization.</li> <li>▫ A large segment of the NPO sector remains informal, i.e., neither registered nor licensed.</li> </ul>
SR.IX Cross-Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> <li>• Pakistan's partial declaration system is focused on foreign exchange control rather than AML/CFT and only covers people transporting foreign currency out of Pakistan and does not cover people bringing foreign currency into Pakistan, any movement of Pakistan rupees or bearer negotiable instruments</li> <li>• SBP and Customs authorities do not share information about declarations with the FMU.</li> <li>• Customs authorities do not share information with the FMU upon discovery of a false declaration.</li> <li>• Customs authorities do not share information with the FMU when they have a suspicion of money laundering or terrorist financing.</li> <li>• The existing regime is not effectively implemented.</li> </ul>

**Table 2. Recommended Action Plan to Improve the AML/CFT System**

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
<b>1. General</b>	<p>Priority actions over the next 18 months:</p> <ul style="list-style-type: none"> <li>Engage as soon as possible a ML/TF risk-assessment in Pakistan, involving all Pakistani stakeholders. This would include any typology identified in ML/TF cases in Pakistan. This risk-assessment should also seek inputs from Pakistan's main international partners to integrate Pakistan-related typologies that they may have developed;</li> <li>Prepare a national AML/CFT strategy, defining the main objectives and priorities of stakeholders and setting out a national policy on ML/TF. This strategy should be driven by a high-level, centralized leadership and should clarify the roles and responsibilities of the main actors, in particular in law enforcement and prosecution agencies;</li> <li>Expand the scope of the on-going revision process of AMLO, of the Banking Company Ordinance, of the SECP Act and of key regulatory provisions, in particular to: further extend the list of predicate offences; ensure the autonomy of the ML offence; clarify the ambiguities surrounding the scope of the TF offence and the forfeiture regime; lift the impediments to international cooperation (mutual legal assistance and other forms of international cooperation); and confer AML/CFT rule-making powers to the prudential supervisors, broaden the CDD requirements for financial institutions;</li> <li>Deepen the engagement of financial institutions, with a mix of awareness raising, provision of tailored guidance on the ML/FT risks and typology in Pakistan and more focused enforcement action – notably on the suspicious transaction reporting.</li> </ul>
<b>2. Legal System and Related Institutional Measures</b>	
<b>2.1 Criminalization of Money Laundering (R.1 &amp; 2)</b>	<ul style="list-style-type: none"> <li>Expand the scope of the acts of laundering to cover the elements of the Vienna and Palermo conventions.</li> <li>Expand the scope of the predicate offence to cover a range within all the designated categories.</li> <li>Create a sufficient range of ancillary offences to support the money laundering offence.</li> <li>Ensure that money laundering is investigated and prosecuted as an autonomous offence and train the investigative authorities so that they can gather evidence in support of the money laundering offence regardless of conviction for a predicate offence.</li> </ul>



FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<ul style="list-style-type: none"> <li>• Ensure that legal persons are held liable for acts of money laundering.</li> <li>• Ensure that there are a proportionate and dissuasive range of sanctions available against legal persons who may be liable for money laundering.</li> <li>• Review and remove the obstacles that hamper the effectiveness of the investigation and prosecution of money laundering.</li> <li>• Make sure that the laundering of the proceeds of terrorism financing is fully criminalized.</li> </ul>
<b>2.2 Criminalization of Terrorist Financing (SR.II)</b>	<ul style="list-style-type: none"> <li>• Remove the ambiguity regarding whether the offence of financing terrorism would apply to financing acts of terrorism committed against foreign governments and populations. This could be achieved either through legislative amendment, court decision, or authoritative interpretation of the provisions of the Act.</li> <li>• Criminalize the participation in a terrorist organization regardless of whether this organization has been administratively proscribed or not.</li> <li>• Expand the scope of the offence to cover the financing of individual terrorists and the financing of terrorist organizations even when they are not proscribed.</li> <li>• Review the system and identify the reasons for the lack of effectiveness of the terrorism financing offences.</li> </ul>
<b>2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)</b>	<ul style="list-style-type: none"> <li>• Make clear that post-conviction forfeiture under s 4 covers proceeds of crime (both direct and indirect).</li> <li>• Resolve the inconsistencies in terminology within sections 8 and 9, such that both proceeds of crime and instrumentalities are clearly amenable to freezing and forfeiture.</li> <li>• Clarify the uncertainties surrounding the procedures for seizing, freezing and forfeiture.</li> <li>• Cover forfeiture of property of corresponding value.</li> <li>• Introduce powers of provisional freezing in terrorism and terrorist financing related cases.</li> <li>• Afford protection to Third parties under AMLO and the ATA. Third party protection under NAO should extend to protection against forfeiture, as well as provisional freezing.</li> <li>• Extend the power to void actions taken to prejudice recovery of property subject to forfeiture to beyond forfeiture under the NAO.</li> <li>• Review procedures within the counter-narcotic Special Courts with a view to ensuring far greater expedition in the disposal of forfeiture applications (for example, by way of judicially-enforced time-tabling orders).</li> </ul>
<b>2.4 Freezing of funds used for</b>	<ul style="list-style-type: none"> <li>• Amend ATA so as to provide a mechanism for the freezing of</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
<b>terrorist financing (SR.III)</b>	<p>assets of entities covered by UNSCR 1373 that are not organisations with a distinctive name (and therefore unable to be proscribed).</p> <ul style="list-style-type: none"> <li>• Expand the scope of property capable of being frozen to cover all assets. Under the SROs it is expressly limited to “bank accounts, funds and financial resources, including but not limited to those used for the provision of internet hosting or related services”. Action under the ATA is limited to offices, accounts and seized cash.</li> <li>• Ensure that SROs come into force upon promulgation, such potential ambiguity as to whether they take effect “from the date of implementation of instructions” issued by SBP or from the date of implementation by “any other duly authorised authority” is resolved.</li> <li>• Make non-compliance with freezing obligations enforceable via sanction. With respect to entities regulated by SBP, this could be done very simply via the issuance of a single directive under s 41 of the BCO concerning all entities proscribed or listed to date (and future disseminations by SBP being similarly coupled with related directions). Additionally, an SRO could be issued providing penalties and enforcement procedures (as contemplated under the United Nations (Security Council) Act 1948). Such an SRO would ensure that non-compliance is generally sanctionable, including in relation to unregulated entities.</li> <li>• Extend the dissemination of SROs and notifications of proscriptions to SECP, such that the power to direct and enforce freezing action is not limited to those entities regulated by SBP.</li> <li>• Review the report-back period particularly such that same-day turn-around is required where entities have IT systems capable of concluding a same-day data-matching.</li> <li>• Consider conferring reporting entities with indemnity from litigation arising from freezing action, so as to address the concerns of entities reluctant to undertake freezing action in the absence of confirmation from SBP.</li> <li>• Provide guidance to entities expected to undertake freezing action – particularly if, as recommended here, entities regulated by SECP are to be newly subject to enforced compliance. Such guidance should consider matters such as access to funds, as set forth in UNSCR 1452.</li> <li>• More clearly and readily extend protection to third parties inadvertently affected by freezing action.</li> </ul>
<b>2.5 The Financial Intelligence Unit and its functions</b>	<ul style="list-style-type: none"> <li>• ATA requirements to report suspicion of TF offences should include a requirement for a report to be made to the FMU as the national centre for receiving all ML and TF related STRs, even</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
<b>(R.26)</b>	<p>if TF related STRs are made in parallel to the police.</p> <ul style="list-style-type: none"> <li>• FMU should clearly indicate the powers of other competent authorities which are used to authorize the FMU to obtain additional information from reporting parties to aid in analysis</li> <li>• FMU should . <ul style="list-style-type: none"> <li>▫ Authorities should provide guidance to reporting entities on the completion of STRs.</li> <li>▫ FMU should ensure that systematic procedures are in place to make use of indirect access to other information for analysis to ensure timeliness of obtaining information.</li> <li>▫ FMU policies for dissemination should be clarified to help overcome the fragmentation of responsible investigating agencies.</li> </ul> </li> <li>• DG FMU should set out an action plan detailing current and medium term needs including staffing and infrastructure requirements to meet the FMU's core functions of receipt, analysis and dissemination as well as its ancillary functions assigned through AMLO and those undertaken to support the NEC and GC.</li> <li>• A devolved budget should be allocated to the DG FMU to appropriately implement the action plan.</li> <li>• There needs to be clarity in relation to operational independence and autonomy of the FMU. Language in s6(3) AMLO "FMUs... supervision and control of the General Committee" also needs to be reviewed and clarified to ensure the perception of operational independence and autonomy is maintained.</li> <li>• A working practices document need to be developed for FMU operations including: priorities for STR reporting requirements (with SBP and SECP); STR quality; dissemination policies to take into account law enforcement fragmentation; standard operating procedures for analysis; procedures for information requests and responses; security policies including physical security and visitors. Consideration should be given to amending AMLO that gives FMU explicit access to additional financial information needed in to undertake its functions.</li> <li>• Separate the FMU database from the SBP IT systems and implement a policy for IT back-up and disaster recovery planning.</li> <li>• FMU should prepare an FMU Annual Report which includes statistics typologies and trends</li> <li>• The FMU should implement the Egmont Principles for information exchange. Powers for international co-operation should be clarified to allow FMU autonomy to participate in international cooperation.</li> <li>• FMU staff should be trained in typologies of criminal (including</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	terrorist) structures and money flows specific to Pakistan.
<b>2.6 Law enforcement, prosecution and other competent authorities (R.27 &amp; 28)</b>	<ul style="list-style-type: none"> <li>• Pakistan should, as matter of priority, ensure that those agencies designated to pursue investigations of ML and TF are responsible and resourced to properly pursue ML and TF investigations, including ML cases beyond cases of ‘self-laundering’ or the overt proceeds from the principal involved in the predicate crime.</li> <li>• Pakistan should ensure proper investigation of ML and TF is supported by a sufficient understanding of investigative powers across all investigative agencies.</li> <li>• All agencies responsible for investigating ML and TF should be properly resourced to ensure effective investigations.</li> <li>• The investigative agencies should appoint and adequately resource dedicated financial investigators to: deal with asset-based investigations allied to the predicate crimes within their jurisdiction (including terrorism; ML and TF allied to the predicate crime) and; investigate ML and TF as a stand-alone crime irrespective of whether the source of information emanates from the FMU or any other source.</li> <li>• High-level training in current laws for all investigative agencies, and in particular for all dedicated financial investigators within these agencies, is essential, including training to dispel the misconception that a predicate offence conviction is required prior to investigating/prosecuting ML.</li> <li>• Pakistan should consider making all MF offences and associated investigations as cognizable to support a single approach to investigation.</li> <li>• The authorities should adopt a clear and definitive policy on the concept of “lead agency” for the investigation and prosecution of ML and TF.</li> <li>• Greater use of tools and techniques used in predicate crime investigation, such as the controlled delivery, would assist in understanding the concepts of ‘follow-the-money’.</li> <li>• The Pakistani authorities should ensure that deployment of skilled financial investigators across all provincial and federal agencies with mandates to investigate ML and TF and asset recovery.</li> <li>• Statistical framework should be put in place, particularly in relations to production, seizure, search and the obtaining of statements across all agencies.</li> </ul>
<b>2.7 Cross-Border Declaration &amp; Disclosure (SR IX)</b>	<ul style="list-style-type: none"> <li>• Pakistan’s limited declaration system is not an operational element of Pakistan’s AML/CFT regime, because, among other things, domestic coordination is lacking. SBP and Customs authorities do not share information about declarations with the</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>FMU. The SBP also does not inform Customs authorities or the FMU when it denies a person's request to take more than \$10,000 out of Pakistan. Seizures are reported to the FMU on an annual basis, but Pakistan Customs is not currently authorized to share information with the FMU on a more regular or timely basis. Pakistan Customs is also not authorized to share information with the FMU when there is a suspicion of ML or FT. In addition, the limited declaration system does not apply to couriers bringing currency into Pakistan or to Pakistan rupees.</p> <ul style="list-style-type: none"> <li>• Pakistan is considering implementing a declaration system, but its porous borders make enforcement of anti-smuggling laws difficult. Despite the difficulty of enforcing these laws at all potential points of entry, Pakistan should take efforts to combat cash couriers, in particular those that support TF and ML related to the narcotics trade.</li> <li>• Pakistan should implement a disclosure or declaration that achieves AML/CFT objectives and covers all forms of currency and bearer negotiable instruments.</li> <li>• SBP, as the foreign exchange regulator, and NBR (Customs), as the border enforcement agency, should share export control information with the FMU.</li> <li>• SBP and Customs officials should share with the FMU all permission requests — both granted and denied — on a timely basis.</li> <li>• Customs should share information with the FMU upon discovery of a false declaration.</li> <li>• Customs authorities should share information with the FMU when they have a suspicion of ML or TF.</li> <li>• Pakistan should ensure that powers available to customs to detect, interdict, seize and sanction cases of cash couriers are effectively implemented and related international cooperation is pursued.</li> </ul>
<b>3. Preventive Measures—Financial Institutions</b>	
<b>3.1 Risk of money laundering or terrorist financing</b>	<ul style="list-style-type: none"> <li>•</li> </ul>
<b>3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)</b>	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Address the remaining (small) gaps in the NADRA, and more importantly those related to NARA, to ensure that they are appropriate identification tools</li> <li>• Lessen the exclusive reliance on NADRA (and NARA) identification cards as the cornerstone for identification and verification of identity</li> <li>• Strictly enforce the deadline for identification of existing</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>accounts by June 2009 for SBP and ensure that all existing accounts are properly identified for SECP by September 2009</p> <p><u>For SBP:</u></p> <ul style="list-style-type: none"> <li>• Enlarge the scope of the identification requirements for legal persons and arrangements, as they do not extend to the identification of the directors (except for joint stock companies)</li> <li>• Clarify the minimum level of additional diligences for enhanced due diligence in high risk scenarios</li> <li>• Specify the conditions for simplification or reduction of the CDD requirements in low risk scenarios, and provide guidance to the financial institutions on situations of proven low risks, as well as on the definition either of the minimum level of CDD to be then implemented</li> <li>• Enforce the new and additional requirements under revised PR-M1</li> <li>• Define PEPs, and extend the enhanced due diligence requirements to family members or associates</li> <li>• Require enhanced on-going due diligence on PEPs, and their family members and associate</li> <li>• In entering into correspondent relationship, require banks to establish a clear understanding as to which institution will perform the required measures.</li> <li>• Clearly address the money laundering and terrorist financing risks associated with new technologies.</li> </ul> <p><u>For ECs:</u></p> <p>Amend the AML/CFT regulatory framework of ECs to include:</p> <ul style="list-style-type: none"> <li>• Specifying “other particulars” that ECs need to obtain for inward remittances of all amounts and outward remittances of less than US\$5,000.</li> <li>• Type of identification documents that should be used for verification of customers and the timing of verification of customers for remittance transfers.</li> <li>• An obligation to conduct CDD on occasional customers when suspicion of ML or TF arises regardless of the value of the transaction or when there are doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>• An obligation to identify and take reasonable measures to verify the identity of beneficial owners. Beneficial owners should be defined consistent with the standard.</li> <li>• Defining the enhanced due diligence measures for high-risk customers.</li> <li>• An explicit requirement as to what course of actions should be taken when satisfactory CDD cannot be established.</li> <li>• Defining the enhanced due diligence measures required in</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>relation to foreign PEPs.</p> <ul style="list-style-type: none"> <li>• Obligation to require senior management to approve new correspondent relationship.</li> </ul> <p><u>For SECP</u></p> <ul style="list-style-type: none"> <li>• define the situations for identification of the customer outside the account opening or establishment of a business relationship (occasional customers, doubts about the veracity or adequacy of previously obtained customer data)</li> <li>• require to verify the identity of the customer</li> <li>• require to identify the directors or trustees of legal persons or legal arrangements</li> <li>• require to identify beneficial ownership, and to take reasonable steps to verify the identity of the beneficial owner</li> <li>• require to obtain information on the nature and intended purpose of the business relationship, and to conduct on-going due diligence</li> <li>• require to perform enhanced due diligence for higher risks categories of customers, transactions or business relationships</li> <li>• specify – particularly relevant for the securities markets – the requirement on the timing of the verification</li> <li>• set out requirements related to situations where CDD cannot be satisfactorily completed</li> <li>• set out requirements for PEPs</li> <li>• specifically address the money laundering and terrorist-financing risks associated with new technologies and non-face-to-face transactions</li> <li>• issue regulations or guidance on new technologies and non-face-to-face technologies for NBFCs other than brokers.</li> </ul>
<b>3.3 Third parties and introduced business (R.9)</b>	<ul style="list-style-type: none"> <li>• The SECP should set forth specific requirements concerning third-party and introduced business for entities it regulates. Specifically, it should require financial institutions to immediately obtain the necessary information concerning certain elements of the CDD process, to satisfy themselves that supporting documentation will be made available by the third party without delay, to satisfy themselves that the third party is regulated and has measures in place to comply with R.5 and R.10 and to satisfy themselves that third parties in other countries are in jurisdictions that apply the FATF standards.</li> </ul>
<b>3.4 Financial institution secrecy or confidentiality (R.4)</b>	<ul style="list-style-type: none"> <li>•</li> </ul>
<b>3.5 Record keeping and wire transfer rules (R.10 &amp; SR.VII)</b>	<ul style="list-style-type: none"> <li>• The SBP and SECP, as appropriate, should require banks, exchange companies and NBFCs to provide information to domestic competent authorities on a timely basis. While examiners have the authority to demand data during an examination, there is no legal requirement that banks or</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>exchange companies provide information to law enforcement on a timely basis.</p> <ul style="list-style-type: none"> <li>• The SBP should require exchange companies to maintain records of customer identification for at least five years after the termination of a business relationship.</li> <li>• The SECP should require NBFCs to maintain records of customer identification for at least five years after the termination of a business relationship.</li> <li>• The SECP should require NBFCs to maintain correspondence between the business and the customer for five years.</li> <li>• Authorities should bring Pakistan Postal Savings Bank within the AML/CFT regime.</li> </ul>
<b>3.6 Monitoring of transactions and relationships (R.11 &amp; 21)</b>	<ul style="list-style-type: none"> <li>• Work needs to be undertaken by the supervisory bodies to strengthen the systems within banks and Modarabas and across all other area implement such systems.</li> <li>• Training and awareness raising based on a national risk assessment covering ML and TF (which currently does not exist) would greatly assist in in fostering ST reporting.</li> <li>• Consideration should be given to incorporating all the principals of: monitoring; examination; record keeping; and systems for dealing with countries not applying FATF standards in an amendment to AMLO. This should then be underpinned with more detailed regulations from the supervisory bodies that reflect the different business areas covered by the supervisors.</li> <li>• AMLO should be amended to explicitly deal with record keeping in relation to unusual reports generated within a financial institution whether they are reported to the FMU or not.</li> <li>• Requirements under Recommendation 21 should be laid out outside the banking sector (SECP)</li> </ul>
<b>3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, &amp; SR.IV)</b>	<ul style="list-style-type: none"> <li>• The list or predicate offences required to be reported for the purpose of ML needs to cover all predicate crimes covered under Recommendation 1.</li> <li>• There should be a direct mandatory obligation to file an STR when there are reasonable grounds to suspect that funds are linked to, related to, or are to be used for terrorism, terrorist acts or terrorist organizations.</li> <li>• The inconsistencies within the reporting requirements regarding TF need to be explicitly addressed by an amendment to AMLO.</li> <li>• Further encourage improved reporting, both in terms of quality</li> </ul>



FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>and quantity. Care should be taken thought not to encourage defensive reporting or reporting for the ‘sake of numbers’. Training and then an effective feed-back combined with enforcement action, where necessary, needs to be considered.</p> <ul style="list-style-type: none"> <li>• FMU should further engage SBP and SECP to devise an integrated approach to foster reporting. This approach should be based on the potential risk posed by the different sectors</li> <li>• Deepen the training of staff in financial institutions, taking into account (i) possible ‘loopholes’ created by the non-reporting of tax matters and explain how this can be used to cover transactions that are otherwise suspicious and should be reported and (ii) that whilst transactions should be properly reviewed by an institution before making an STR the ‘burden’ on the institution did not amount to the institution have to evidence a suspicion.</li> <li>• Revise the reporting Guidelines (i) incorporate different examples covering sectors other than banking and (ii) provide more Pakistani based examples.</li> <li>• FMU needs to address the whole issue of the lack of feedback as a matter of urgency. If there is a perceived or real prohibition (the assessors see no legal prohibition) regarding the provision of feedback this needs to be also addressed urgently.</li> <li>• The maintaining of confidentiality by the FMU and other investigative bodies is potentially undermined by language used in s34(1)(3) AMLO which states “shall, as far as possible, be kept confidential by the FMU...”. This does not determine when or where such confidentiality may be broken.</li> </ul>
<b>3.8 Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</b>	<ul style="list-style-type: none"> <li>• The FMU should assist banks in identifying ML and TF trends so that banks tune their internal controls and ongoing training programs to address better the ML and TF risks in Pakistan.</li> <li>• The SBP should expand its internal control requirements for exchange companies to require the appointment of a compliance officer and establish and maintain strong internal policies and controls. The SBP should also embody its recommendation that the auditors be independent in a formal rule.</li> <li>• The SECP has required NBFCs to establish ongoing training programs for their employees.</li> <li>• The SECP should require NBFCs to implement screening standards to ensure all their employees meet the highest ethical standards. The SECP should also extend the requirement to all beneficial owners of NBFCs.</li> <li>• Brokers should be required to designate chief compliance officers and to establish and maintain an adequately resourced independent internal audit function.</li> </ul>
<b>3.9 Shell banks (R.18)</b>	<ul style="list-style-type: none"> <li>•</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
<b>3.10 The supervisory and oversight system—competent authorities and SROs</b> <b>Role, functions, duties and powers (including sanctions) (R.23, 29, 17 &amp; 25)</b>	<p>The authorities should take action to:</p> <ul style="list-style-type: none"> <li>Expand to all financial institutions (per FATF definition) the AML/CFT regulatory and supervisory requirements (market entry, regulation, supervision, compliance monitoring)</li> <li>As a whole, enlarge to all CDD and STR reporting requirements (i.e. beyond compliance with the NADRA obligation) the proactive compliance monitoring, and follow-up actions. This should be a priority for SECP, including in its division of labor with the Exchanges</li> <li>Clarify the roles of the financial sector supervisors and the FMU in terms of regulatory and guidance on the one hand, and compliance monitoring on the other hand for the suspicious transaction reporting obligations. The assessors consider that the mandated coordination between the FMU and SBP and SECP for regulations is satisfactory, but that it should be made clearer that compliance monitoring rests with the financial sector supervisors</li> <li>Develop “hands-on” training on the supervision of compliance with AML/CFT requirements for examiners</li> <li>Increase the resources available to SECP, and SBP to a lesser extent, and as needed, the Exchange to fulfill their supervision mandate on AML/CFT</li> </ul> <p><b>SBP</b></p> <ul style="list-style-type: none"> <li>Amend the sanction regime to ensure that effective, dissuasive and proportionate sanctions are available to foster compliance in case of systemic compliance failure</li> <li>Expand the range of sanction power available for non-compliance of ECs.</li> </ul> <p><b>SECP</b></p> <ul style="list-style-type: none"> <li>Enforce the requirement for all professions to adopt a form for establishment of the business relationships, and enlarge the scope of the existing ones, with a view to allow financial institutions to have effective customer profiles</li> <li>Set up a “fit and proper” requirement for agents in the securities markets</li> <li>Expand the fit and proper tests to beneficial owners of financial institutions regulated by the SECP</li> <li>Strengthen the pecuniary sanctions available to the Exchanges – or step in on a regular basis for significant compliance failures, in order to use the more dissuasive, proportionate and effective range of sanctions directly available to the SECP</li> <li>Strengthen the coverage of system audits as far as AML/CFT requirements are concerned</li> <li>Enlarge the coverage and depth of the compliance manual on</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	AML/CFT for NBFCs
<b>3.11 Money value transfer services (SR.VI)</b>	<ul style="list-style-type: none"> <li>• Authorities should identify unlicensed operation of money service providers, raise awareness of the licensing requirement, give reasonable time to apply for a license, then after that, crack down on continued non-licensed operation.</li> <li>• SBP should develop effective, proportionate and dissuasive sanction regime against ECs.</li> <li>• SBP should also extend the scope of the AML/CFT obligations which is too narrow at this point.</li> <li>• Authorities should subject remittance services offered by the Postal Savings Bank to AML/CFT obligations in order to create a level playing field and also to impose key obligations such as STR reporting, in addition to CDD and other preventive measures that are partially now practiced by the Postal Savings Bank.</li> </ul>
<b>4. Preventive Measures– Nonfinancial Businesses and Professions</b>	
<b>4.1 Customer due diligence and record-keeping (R.12)</b>	<p>Pakistan should</p> <ul style="list-style-type: none"> <li>• take steps to extend CDD and record keeping measures to the full range of NFBPs.</li> <li>• undertake risk assessments to determine the appropriate CDD and record keeping thresholds for respective NFBPs to ensure obligations imposed are balanced against the nature, size and risk of the NFBPs</li> <li>• designate the AML/CFT supervisory authorities for the different sectors and provide them with appropriate resources.</li> </ul>
<b>4.2 Suspicious transaction reporting (R.16)</b>	<ul style="list-style-type: none"> <li>• Pakistan should take steps to extend STR obligation to the full range of NFBPs, in particular real estate agents and jewelers given the high risk of ML/TF faced by these sectors.</li> </ul>
<b>4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, &amp; 25)</b>	<p>Pakistan should:</p> <ul style="list-style-type: none"> <li>• designate the AML/CFT supervisory authorities for the different sectors and provide them with appropriate resources.</li> <li>• take steps to supervise and monitor the full range of NFBPs for AML/CFT purposes</li> <li>• prepare more detailed sector guidelines to help respective NFBPs to implement AML/CFT requirements</li> </ul>
<b>4.4 Other designated non-financial businesses and professions (R.20)</b>	<ul style="list-style-type: none"> <li>• The NEC should undertake a risk assessment and assess whether other non-financial businesses and professions should be brought under the AML/CFT regime.</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<ul style="list-style-type: none"> <li>SBP should continue its efforts to modernize and securitize transactions and to expand the use of electronic transactions among the population.</li> </ul>
<b>5. Legal Persons and Arrangements &amp; Nonprofit Organizations</b>	
<b>5.1 Legal Persons–Access to beneficial ownership and control information (R.33)</b>	<ul style="list-style-type: none"> <li>Pakistan should require registered companies to make available accurate and current information on those natural persons who exercise beneficial ownership and control of legal persons.</li> </ul>
<b>5.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)</b>	<ul style="list-style-type: none"> <li>Pakistan should take measures to ensure that trust deed information registered with the various district and city registrars contains information on beneficial ownership and is readily accessible to law enforcement and other competent authorities.</li> <li>Authorities should raise awareness on where trust deed information is held and how to access such information for AML/CFT purposes.</li> </ul>
<b>5.3 Nonprofit organizations (SR.VIII)</b>	<p>The following steps should be taken in order to achieve more compliance with the international standard:</p> <ul style="list-style-type: none"> <li>A comprehensive risk assessment of the sector and identification of NPOs or categories of NPOs that pose greater ML or TF risk.</li> <li>Expanding programs of outreach and training to include greater focuses on the risks of abuse for money laundering and terrorism financing.</li> <li>Strengthening the regulations that require to NPOs to keep records on: sources of funds, financial transactions and beneficiaries.</li> <li>Moving forward with the project of computerizing the registrars and enhancing the connectivity amongst them and with the Ministry of Social Welfare and populating the national NGO database.</li> <li>Creating clear channels for information sharing and coordination amongst the competent authorities in matters pertaining to NPOs.</li> <li>Support long-term efforts to streamline and improve the fragmented regulatory framework for NPOs in Pakistan.</li> </ul>
<b>6. National and International Cooperation</b>	
<b>6.1 National cooperation and coordination (R.31)</b>	<p>Pakistan should:</p> <ul style="list-style-type: none"> <li>establish an effective coordination mechanism to set clear national policies for CFT and further develop and effectively implement CFT measures across Pakistan;</li> <li>fully implement coordination mechanisms established in AMLO to coordinate AML policies; and</li> <li>include all relevant agencies in various AML/CFT coordination structures, in particular Ministry of Narcotics Control and ANF, provincial police and</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>customs.</p> <p>Authorities may consider establishing a Compliance Officers Networks between the SECP, FIU and NBFIs.</p>
<b>6.2 The Conventions and UN Special Resolutions (R.35 &amp; SR.I)</b>	<ul style="list-style-type: none"> <li>• Pakistan should expedite efforts to accede to the Palermo Convention and the Convention for the Suppression of Terrorist Financing.</li> <li>• Pakistan should redress the deficits identified in this report concerning criminalisation of the TF offence (see the comments in relation to Special Recommendation II), the capacity for freezing and confiscation of terrorist assets (see the comments in relation to Recommendation 3 and Special Recommendation III) and capacity to provide mutual legal assistance in TF related cases (see the comments in relation to Recommendation 36 and Special Recommendation V).</li> <li>• Pakistan should redress the deficits identified in this report concerning implementation of the relevant UNSCRs (see comments in relation to SR.III).</li> </ul>
<b>6.3 Mutual Legal Assistance (R.36, 37, 38 &amp; SR.V)</b>	<ul style="list-style-type: none"> <li>• Pakistan authorities should not expend valuable resources concluding s 26 agreements under AMLO.</li> <li>• The process drafting stand-alone MLA legislation that has already commenced should be expedited. Such legislation is urgently required. This need was identified in Pakistan's last assessment.</li> <li>• Given the time and resources required to conclude bilateral MLA treaties, particular consideration should be given to enacting MLA legislation that enables Pakistan to entertain requests for MLA independent of any pre-existing relationship (as under the CNSA) and in relation to a wide range of offences, including terrorist financing.</li> <li>• Pending the establishment of a comprehensive MLA framework, it is recommended that the current legislative review of AMLO at least remove the requirement that requesting States be "contracting States".</li> <li>• The MLA-related procedural deficiencies and ambiguities identified in this report should also be addressed – as should the deficiencies here identified in relation to MLA concerning asset forfeiture.</li> <li>• Also pending the evolution of a comprehensive MLA framework, – and dependent upon imminent policy decisions to be taken by the Federal Government concerning the future of the NAB – the NAB should be conferred express power to provide, as well as receive, MLA. Such assistance should extend to freezing and forfeiture of assets.</li> <li>• In general, but particularly pending the creation of a comprehensive MLA framework, officials should closely review MLA requests with a view to determining whether they disclose possible domestic</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>offending warranting domestic investigation. Where domestic investigations are viable, they may offer an alternative mechanism for the provision of international assistance, thereby bypassing any deficiencies or formalities associated with any MLA regime. Given the utility of the ML offence in prosecuting transnational crime, particular consideration should be given to the possibility of initiating domestic investigations for money laundering, whether as a stand-alone offence or otherwise.</p>
<b>6.4 Extradition (R. 39, 37 &amp; SR.V)</b>	<ul style="list-style-type: none"> <li>• The placement of “financing for terrorism” as a description in the Schedule to the Extradition Act should be reviewed so that accessory and inchoate offences related to TF are also extraditable.</li> </ul>
<b>6.5 Other Forms of Cooperation (R. 40 &amp; SR.V)</b>	<ul style="list-style-type: none"> <li>• SBP should be allowed to share confidential information with its foreign counterparts. FMU should not be mandated to go through the Ministry of Foreign Affairs to negotiate and conclude MoUs with foreign counterparts.</li> <li>• Procedures, with an appropriate legal mandate, need to be implemented that allow for the sharing of intelligence and the day-to-day co-operation in operational matters across all LEA (FIA, ANF, NAB, police and customs). These institutions should not be mandated to go through the Ministry of Foreign Affairs to negotiate and conclude MoUs with foreign counterparts.</li> <li>• The FMU needs to have wholly independent process to enable information and intelligence. That are in accordance with s 4(e) AMLO and not over-ridden by s26 AMLO. Or adhere to process that require it to route such inbound or outbound requests via any other ministry, department or agency.</li> </ul>
<b>7. Other Issues</b>	
<b>7.1 Resources and statistics (R. 30 &amp; 32)</b>	<ul style="list-style-type: none"> <li>• The staffing and resources across the federal investigative agencies, including FMU (commented on in criteria 26), needs to be addressed as a matter of priority, with the consideration to the formation of dedicated ML (and with FIA TF) units.</li> <li>• Any inauguration of staff or focus on specialism of ML and or TF must also be accompanied by the relevant training on recruitment and thereafter as needs demand.</li> <li>• Considerable benefit would be obtained from a more structured and national approach to ML and TF training that assist all federal agencies. This should be considered at a national policy level (and possibly as part of a national strategy). Such a course should be domestic, multi-agency so reflecting the dynamics of ML and TF and also so reflecting domestic needs, problems, laws and regulations.</li> <li>• Provincial Prosecution Services should be adequately funded.</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<ul style="list-style-type: none"> <li>• Funding should extend to training of both prosecution counsel and the judiciary in the field of financial investigation and the adducing of associated evidence.</li> <li>• The Government should continue its endeavours to reduce current court backlogs.</li> <li>• A comprehensive, aggregated and centralized statistical framework for AML/CFT should be devised.</li> </ul>
<b>7.2 Other relevant AML/CFT measures or issues</b>	
<b>7.3 General framework – structural issues</b>	

### Annex 1. Authorities' Response to the Assessment

Relevant Section	Pakistan's Comments
General	<p>Pakistan is of the view that many of the legal weaknesses in legislation pointed out by the assessors are excessively based on a civil law approach or fall short of appreciating the intention of the legislation and likely interpretations in common law countries like Pakistan. The assessors have erred on the side of abundant caution in overlooking the broad coverage afforded by e.g. TF legislation already in place. This has reflected in NC or PC ratings on several recommendations rather than LC. Also certain measures taken by Pakistan after the cutoff date, though acknowledged, have not been reflected in related ratings while lower ratings were also assigned due to certain legislative amendments still being in the parliamentary approval process. Given the amount of work and efforts already undertaken, it is Pakistan's view that NC/PC ratings under at least 12 recommendations would stand transformed to LC or C. In general, it is acknowledged that there are weaknesses on the implementation side due to resources &amp; capacity constraints which are being progressively addressed, though assessors have preferred, either due to methodology edicts or as a matter of abundant caution not to assign any weightage to the systems already in place and working. Pakistan is fully aware of the need for continued improvement on several fronts and is committed to progressively address issues so as to accelerate country's convergence to the international standards in the minimum time possible and appreciates all the support and inputs being provided by APG, WB, FATF and member countries. Pakistan recognizes that the methodology prescribes an ideal set of conditions and circumstances to exist irrespective of an individual country's particular set of realities, stage of development and an emphasis on form over substance. Pakistan's extensive indulgence in respect of meeting all MLA requests, despite lack of a comprehensive legal frame work, though even acknowledged at APG's annual conference, therefore remains to be of no consequence in related assessment context.</p>
Section 2.2 SR II	<p>The assigned rating of PC under this recommendation is based on perceived weaknesses in related legislation, as being restrictive, without reference to the fundamental provisions defining terrorism in a much broader way with clear applicability to both individuals and organizations whether proscribed or not domestic or international, as well as in respect of solicitation of funds or being concerned with any arrangement which results into availability of money or other property for terrorism. Similarly, Pakistan is also of the view that undue emphasis is placed on certain points not relevant to the overall context e.g., the assertion that use of singular term in the law limits applicability whereas it is an established fact that in common law countries, for legal purposes, singular terms include plural unless specifically mentioned in that context or the use of word 'government' in administrative/enforcement context in legislation being extended to conclude that certain legal provisions give the laws an inward focus. Being in the extensive knowledge of domestic common law based system and inclination of courts in</p>



Relevant Section	Pakistan's Comments
	respect of interpretations; Pakistan is reasonably comfortable with the existing provisions in the law in the context of SR II and believes to be largely compliant with the criteria. However, Pakistan would still evaluate what further elaborations, if at all needed, can be considered to dispel perceived weaknesses.
Section 2.7 SR IX	Pakistan believes that the NC rating is based on an excessively restrictive approach. Pakistan has a long history of Foreign Exchange Controls, liberalized over the last 12 years. Before the liberalization drive in the nineties, a strict currency declaration system was in place for decades and LEAs and regulators have extensive knowledge and experience of related issues. Even under the liberalized regime, outward movements of currency & instruments are restricted to financial institutions or approved transactions under existing laws & regulations. Though currently there is no declaration requirement for inward movement of currency & instruments, LEAs at entry/exist points have extensive powers to question, detain and confiscate where there is a suspicion of illegality. At the same time, the financial system is insulated from such undetected/elicit inflows through exhaustive KYC/CDD and customer profiling requirements. Though a declaration system is being evolved which shall soon be formalized, even the existing system, in Pakistan's view, does not support an NC rating.
Section 3.7 SR IV	The indicated shortcomings for an NC rating are in Pakistan's view not grounded in logical reasoning. As per FATF standards at the level of reporting entities, specific ML or TF related link is not required to be established but only a suspicion of related illegality. ML/TF linkages are established at the LEAs level. The entire Anti Terrorism Act has been included in the schedule of predicate offenses to AML legislation for STR reporting purposes while a number of cases were identified as having possible TF links at the level of FIU. It would therefore be incorrect to conclude that the system of STR reporting is biased in favor of ML or obligation to report TF related STRs is weak. The terrorism related problems being faced by Pakistan currently stem from other regional peculiarities and the financial system by and large is reasonably ring-fenced against possible misuse by terrorists, terrorist/proscribed organizations or such identified sponsors in the domestic and international context. The rating of NC, in Pakistan's view is therefore based on concerns & perceptions rather than actual on ground situation.
Section 5.1 R 33	It is Pakistan's view that assessment under this recommendation excessively relies on technicalities. Due recognition is not afforded to the rather sophisticated level of related understanding & application of the long established concepts of beneficial ownership in the financial sector. Such prevalent understanding and FI's own internal policies adequately addressing the inherent issues have not given rise to reasons for regulators to specifically issue regulations/guidelines/clarifications. There was also a disconnect in assessors understanding of beneficial owners and sponsors of private limited companies in Pakistan, which in the larger scheme of things are predominantly one and the same, as eventually established by the regulators while exceptions are also duly recorded as accessible information at the regulators level. The technical weakness only remains in respect of additional efforts for establishing beneficial ownership of foreign companies incorporating as local

Relevant Section	Pakistan's Comments
	companies/businesses through publically available information and websites on such companies are accessed and assessed to provide the necessary comfort level. Nevertheless, existing instructions are being reviewed to evaluate the need for further elaborations to address assessors' perceptions.
Section 6.2 R 35	Pakistan has already subscribed fully to Vienna Convention and Terrorist Financing Convention while accession documents to Palermo Convention shall soon be submitted to the UN. Having subscribed to two out of three conventions Pakistan is already beyond the NC stage and would be compliant under this recommendation within the next few weeks upon submission to the UN of accession documents in respect of Palermo Convention.
Section 6.2 SR I	Pakistan is of the view that even despite having deposited accession documents of Terrorist Financing Convention after the ME cut-off date, Pakistan largely complies with provisions of UNSCRs 1267 & 1373. Assessors view that Statutory Regulatory Orders (SROs) of Government of Pakistan are applicable from the date of receipt by the addressees is erroneous as being in the nature of law, SROs are valid orders as from the time of issue. FIs have in place systems to monitor issuance of UN resolutions having possible impact in their domain and in practice there are no delays in implementation. In the overall context therefore Pakistan already largely complies with the prescribed requirements.
Section 6.3 R-36	At present, a standalone act entitled <i>Mutual Legal Assistance Act 2009</i> is under active consideration of the stakeholders and is likely to be put up to the parliament for consideration and enactment shortly. The proposed act contains the procedure, manners and rules on the basis of international standards and best practices for MLA. However, it needs to be appreciated that the existing CNSA explicitly provides the legal basis for provision of MLA and there is no illegality involved in other agencies in Pakistan providing assistance in the manner requested. Similarly, there is nothing preventing NAB or FIA in using their coercive powers in eliciting documents/responses as may be requested, which indeed has been the case over a number of years. Even in cases requiring freeze on assets etc., the law already provides for local Courts' vetting of such foreign jurisdictions' requests for local implementation. For the purposes of accommodating for such requests, other LEAs use their legal authority to investigate which is not limited in relation to crimes only in the local context. Also, domestic action on foreign tip-offs is in no way excluded or not being taken cognizance of. In fact there have been several instances of detailed investigations by NAB/FIA on foreign tip-offs and even based on press reports. In the overall context therefore Pakistan is clearly of the view that the assessed rating is not reflective of realities.

**Annex 2. Details of All Bodies Met During the On-Site Visit**

List of ministries, other government authorities or bodies, private sector representatives and others.

**Annex 3. List of All Laws, Regulations, and Other Material Received**

**Copies of Key Laws, Regulations, and Other Measures**

2009

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