

Money Laundering as an Economic Offence

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Concept of Money Laundering

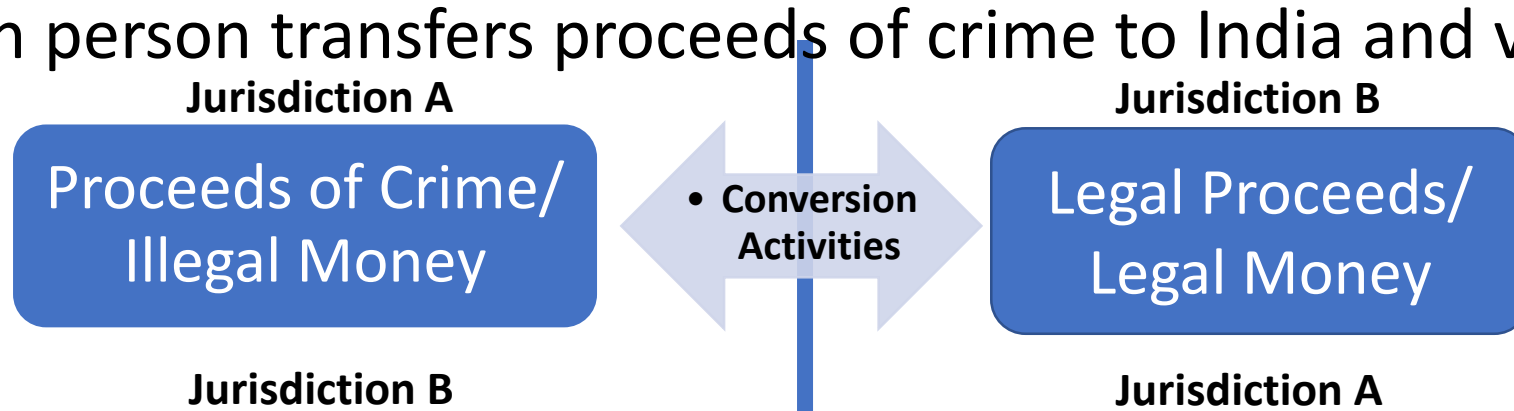
- Money laundering is processing of proceeds of crime (funds/ profit/ income) to disguise their illegal origin.



- Unchecked money laundering activities not only support criminals but their criminal acts.
- No reliable estimate about the size of money laundering but as per United Nations Office on Drugs & Crime (UNODC) it is 3.6% of global GDP.

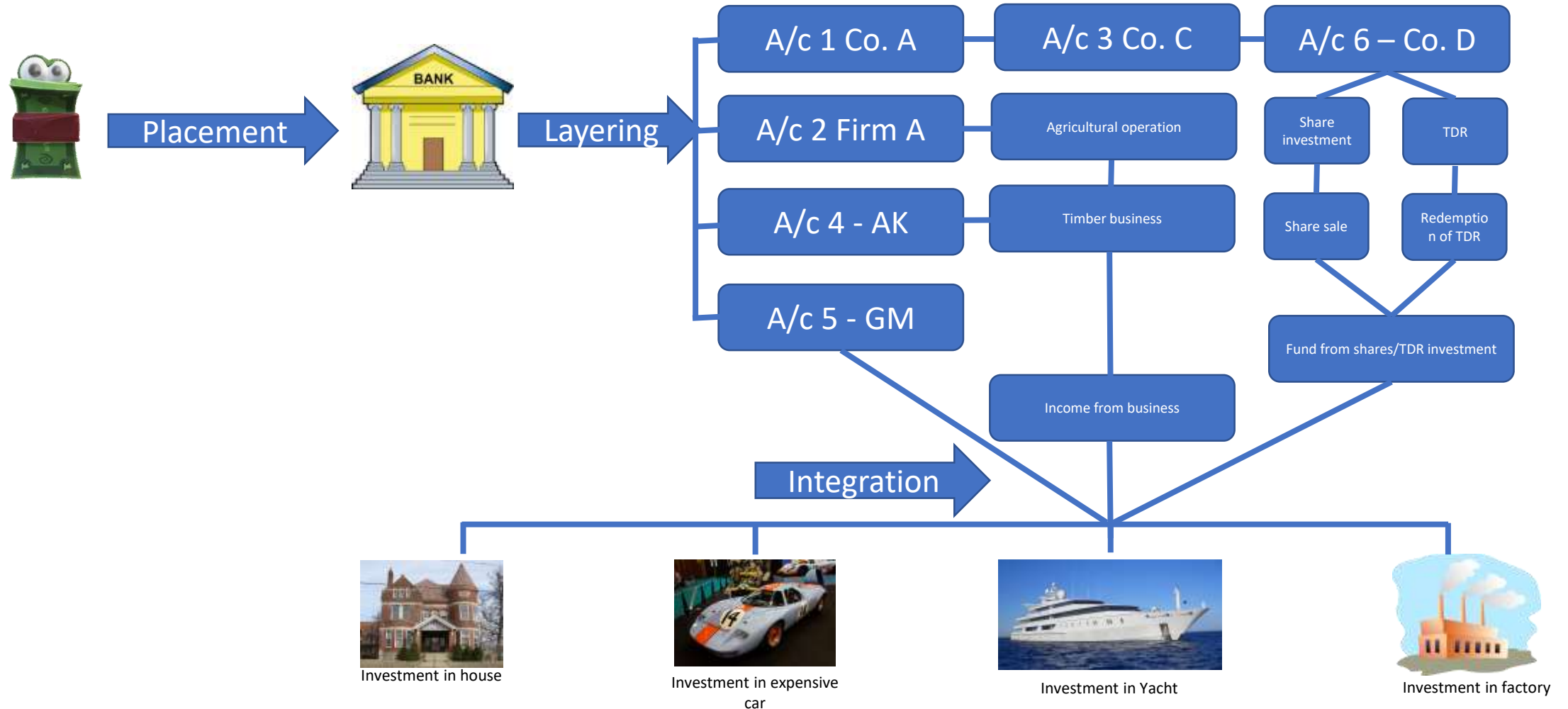
Cross Border Money Laundering

- Cross Border Money Laundering means offence and processes involved in generating as well as projecting POC as untainted property involving two or more countries/ jurisdictions.
- PMLA will apply to any predicate offence by a person outside India in case such person transfers proceeds of crime to India and vice versa.



- Due to the integration of world economies, the cross border transactions constitute more than 60% of world economies which has facilitated increased incidences of cross border money laundering.

Money Laundering Process



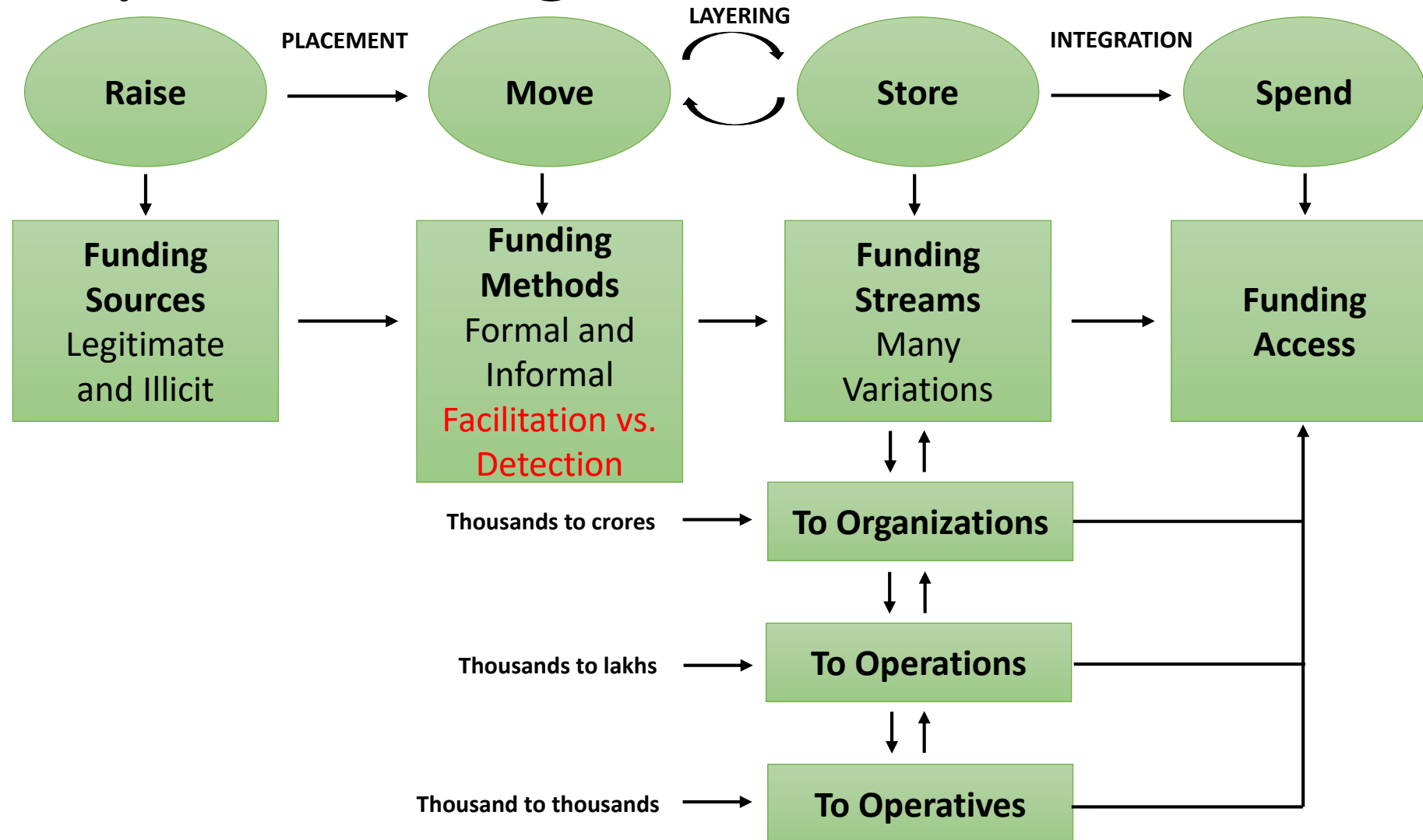
Money Laundering (ML) & Terror Financing (TF)

- TF involves solicitation, collection or provision of funds with intention that the fund may be used to support terrorist acts or organizations.
- The funds may be from both legal or illicit sources.
- A person commits the crime of financing of terror if that person by any means directly or indirectly, unlawfully and wilfully provides or collects funds with intention that they should be used or in knowledge that they are to be used, in full or in part in order to carry out terrorist/ terror activities.
- The primary goal of individual or entities involved in TF is therefore not necessarily to conceal the source of money but to conceal both the financing and the nature of the financed activities.

Money Laundering (ML) & Terror Financing (TF)

- The ML risks are at times different from TF risks for the reason that laundered funds come from proceeds of illegal activities whereas funds used to finance terrorism may come both from legitimate and illegitimate sources.
- The purpose of ML is often to launder and transmit the POC to a legitimate enterprise whereas in case of TF the end is to support acts of terrorism, terrorist individuals and organizations. Many a times ultimate destination of ML funds is to support terrorism, terrorist individuals and organizations.
- TF risks and terrorism risks are often but not always interlinked. For example, a jurisdiction having low terrorism risk may have significant TF risk.

Money Laundering in terror cases



Terror Financing – Main Players

- Category 1: Those who inspire – Dr. Zakir Naik
- Category 2: Inspired by terrorist propaganda and feel empowered to act out in support – Financers, commercial enterprises, charitable organizations, states
- Category 3: Communicate with several terrorist organizations or within organization to provide guidance on operational planning or target – leader and manager of terrorist group
- Category 4: Commit specific act of terror - terrorists

Terror Financing – Funding/ fund flow

- Fund requirement of the terror organizations is far greater as compared to individual terrorists.
- The TF include several steps which are covered u/s 3 of PMLA.
- **Step 1: Raising of fund: illegal business** – extortion, narcotics, theft, hawala, kidnapping; **legal businesses** - private donations, commercial enterprises, abuse and misuse of charitable organizations, state sponsorship of terrorism.

Terror Financing – Funding/ fund flow

- **Step 2: Movement of fund (Placement): informal movement** – bulk cash, hawala, barter trade, money exchanger, exchange of precious metals/ stones; **formal movement** – banks, money service business, virtual currencies, prepaid cards, internet based payment services, wire transfer, trade.
- **Step 3: Storing of fund (Layering):** funding streams may be stored at organization level or at operation level or at operative level
- **Step 4: Spending of fund (Integration):** pace and process of money movement from organization to actual operative

Money Laundering – Terror Financing with legitimate funds

- The source of funds for terror financing may be from illegal activities or from legal business.
- The legal fund may be moved to several shell companies before finding destination to terrorist organizations by way of storing and spending for terrorist activities.
- The movement of fund from the business organization engaged in the legal business ultimately to terror organization may be through several entities by way of loan, payment for several fake activities, contribution for CSR activity, etc.

Money Laundering – Terror Financing with legitimate funds

- Since, the fund is directly or indirectly linked to several criminal activities (may be not by donor but by intermediaries) and terrorist organizations and is also involved in several processes/ activities as included in section 3 of PMLA, the terror financing is offence under the PMLA even in the cases where initial funding has come from legal source.

Terror Financing - Action by ED

- Proceeds of crime of Rs. 1,212 crore and investment in 99 properties have been detected during the course of investigation.
- Proceeds of crime of Rs. 627.82 crore have been attached u/s 5 of PMLA.
- 25 prosecution complaints have been filed for offence u/s 3 r.w.s. 4 of PMLA. The Trial Proceedings are still continuing.
- In 2 cases, accused have been sentenced.

Important Concerns

- Multiple, opaque and complex structure in the country or several jurisdictions:
 - Creation of multiple structures in the country or several jurisdictions.
 - Ownership of these structures is devised using several subsidiary companies.
 - Partners/ shareholders of these structures are generally family members, employees or business associates of accused.
 - No real business activities in these structures.
 - These structures are created to hold properties/ investments or to pay substantial dividend.
 - Opaque beneficial ownership of assets in several jurisdictions.
 - Lax banking and other regulations by certain jurisdiction-tax heavens.
- Complex routing of transactions through these structures using off-shore banking channel known for secrecy.

Important Concerns

- Deliberate effort to mask money trail using following methodology:
 - Deposit and withdrawal from the bank account in cash.
 - Hiding complete narration and description of transaction in the bank account by the banks.
 - Use of third party cheque/ traveller's cheque valid in several countries to generate POC.
 - Using POC for payment of services/ goods in order to give the colour to POC as untainted money.
 - Fake data in the KYC and bank opening form.
 - Routing of funds in several bank accounts which may be more than 100 of different entities located in different jurisdictions within a short span of time.
- Delayed reply from banking institutions and other organisations.

Important Concerns

- Withholding/ deliberate suppression of information by the accused: In 90% of the cases, in practice accuse generally withholds information of structures created both in India and outside as well as money trail of financial transactions.
- Fugitive accuse-
 - Tendency to leave the country before detection of offence or just after offence known to public.
 - Obtaining permit to live/ citizenship of the country with which India does not have extradition treaty or the overseas country is known for very poor record of extraditing accused persons.
 - Frequent travelling to various countries.
 - Lack of internationally agreed robust system for tracking of cancelled passport or for complying the terms and conditions of RCN issued by the Interpol.

Important Concerns

- Lack of legal mechanism-
 - India has only 39 operational Mutual Legal Assistance Treaty (MLAT) in criminal matters with other countries.
 - India has Extradition Treaty with 37 countries and extradition arrangement with 8 other countries.
 - India does not have MLAT and Extradition Treaty with tax heaven and Caribbean Islands used by fugitive.
 - Cumbersome and time consuming legal procedures involved in other jurisdictions in execution of MLAT/Extradition requests-e.g. extradition of Vijay Mallya.
 - Even though India had wider network of tax treaties which allows exchange of information but these treaties do not allow use of information for any other purpose except taxation.
 - Information obtained through Financial Intelligence Unit (FIUs) are in the nature of intelligence only and cannot be used as evidence and the same information is required to be obtained from the same jurisdiction under MLAT in order to constitute as evidence.

Important Concerns

- Cooperation amongst jurisdictions involved in cross border money laundering.
- Timely information from foreign jurisdiction.
- Restriction on use/ sharing of information obtained under DTAA/ TIEA/ MLAT to other agencies/ agency.
- Delay in execution of extradition request.
- Cooperation amongst agencies located in India and in foreign jurisdictions.

Important Challenges

- Legal consequences of withholding the information by the accused.
- Ability and empowerment of accuse in creating multiple opaque structure without any adverse legal consequences.
- Poor regulatory mechanism in the banks allowing opening of the bank account on the basis of fake or incorrect information about the holder and permission for complex routing of series of transactions using various banks in India and outside India.
- Non-cooperative attitude of jurisdictions involved in cross border money laundering.
- Lack of timely response from institutions located in India and other jurisdictions.

Important Challenges

- Beneficial ownership of assets.
- Issues relating to extradition of accused.
- Limitation of legal and administrative domestic tools-Chapter IX of PMLA empower ED to issue LR for investigation, transfer of accused person, attachment, seizure and confiscation of POC, however, Limited Treaty Network (LTN) (Extradition Treaty and Mutual Legal Assistance Treaty) has posed serious challenge.
- Poor cooperation amongst agencies located in India as well as in foreign jurisdiction in spite of existence of Financial Action Task Force (FATF) which was created in the year 1989 is coordinating measures and efforts made by National Governments.

Important Challenges

- Legal issues-
 - Even fugitive offenders are seeking to misuse of extra ordinary jurisdiction of the Court.
 - Appropriate judicial notice to deliberate withholding of the information and creation of opaque entities without any business purpose except for complex routing of transactions by the accused.
 - Execution of LR.
- Money launderers have shown themselves through time to be extremely imaginative in creating and using new schemes to circumvent various counter measures, accordingly, enforcement agencies and legal system must evolve themselves to meet these challenges.

International and national response to tackle money laundering

- Initiatives by United Nations
- Initiatives by FATF
- FATF Styled Regional Bodies
- International Cooperation
- Domestic Response

Initiatives by United Nations

- Conventions

- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention)
- International Convention for Suppression of the Financing of Terrorism, 1999
- United Nations Convention Against Transnational Organized Crimes, 2000 (Palermo Convention)
 - Supplementary protocols trafficking in persons (2) migrant smuggling and (3) illicit trafficking in firearms
- United Nations Convention Against Corruption, 2003

Initiatives by United Nations (contd.)

- United Nations Office on Drugs and Crimes (UNODC) established the UN Global Programme against Money Laundering (GPML) in 1997
- GPML mandate was strengthened in 1998 by the United Nations General Assembly Special Session Political Declaration and Action Plan against Money Laundering which broadened its remit beyond drug offences to all serious crime
- GPML has capacities and a special mandate to assist Member States in ratifying and implementing the international standards related to money laundering and financing of terrorism

Initiatives by FATF

- The Financial Action Task Force (FATF) was established in July 1989 by a Group of Seven (G-7) Summit in Paris, initially to examine and develop measures to combat money laundering
- In October 2001, the FATF expanded its mandate to incorporate efforts to combat terrorist financing, in addition to money laundering
- India became a member of FATF in 2010
- In April 2012, it added efforts to counter the financing of proliferation of weapons of mass destruction.
- In April 2019, FATF Ministers adopted a new, open-ended mandate for the FATF.

Initiatives by FATF (contd.)

- The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system
- The FATF monitors countries' progress in implementing the FATF Recommendations; reviews money laundering and terrorist financing techniques and counter-measures; and, promotes the adoption and implementation of the FATF Recommendations globally.
- The fourth round of review with a strengthened 40 recommendations commenced in 2013 with an emphasis on implementation

FATF Styled Regional Bodies

- Eight FATF-style regional bodies (FSRBs) have been established for the purpose of disseminating the International standards on combating money laundering, financing of terrorism & proliferation (FATF Recommendations) throughout the world
 - Asia/Pacific Group on combating money laundering (APG)
 - Caribbean Financial Action Task Force (CFATF)
 - Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe (MONEYVAL)
 - Eurasian Group (EAG)
 - Eastern and South African Anti Money Laundering Group (ESAAMLG)
 - Financial Action Task Force on Latin America (GAFILAT)
 - Inter Governmental Action Group against Money Laundering in West Africa (GIABA)
 - Middle East & North Africa Financial Action Task Force (MENAFATF)
 - Task Force on Money Laundering in Central Africa (GABAC)

International Cooperation

- FATF Reviews – ongoing basis for sharing of experience and cooperation amongst enforcement agencies and FIU
- Egmont Group amongst FIUs for international cooperation
- Interpol for Red Corner Notice and other areas of cooperation
- UNCAC Review on International Cooperation in matters related to corruption and money laundering and asset recovery
- Inter Agency Cooperation for Asset Recovery – CARIN, ARIN-AP etc.
- StAR Global Focal Point Network on Asset Recovery (GFPN)
- Oversight by G20 and United Nations

Domestic Response

- Prevention of Money Laundering Act (PMLA) was enacted in 2002
- Enforcement Directorate established under FEMA was given the responsibility of
 - administer and enforce the provisions of PMLA including investigation into the offence of money laundering, filing of prosecution complaint before the special court against the accused, attachment and confiscation of property involved in money laundering and carrying out international cooperation with competent authorities in foreign jurisdictions
- Enforcement Directorate has the sole jurisdiction to investigate the money laundering cases
 - Law Enforcement Agencies (LEAs) having the responsibility to investigate a “predicate offence”, including the State Police Authorities, are required to make a reference to the Enforcement Directorate to examine the money laundering aspect of the criminal activity

Domestic Response (contd.)

- Enforcement Directorate has investigated and prosecuted several high-profile cases related to bank fraud, corruption and terror financing with properties being attached and taken possession of and prosecution complaints filed under the provisions of PMLA
- Fugitive Economic Offenders Act enacted in 2018
- Enforcement Directorate has so far filed applications under the Fugitive Economic Offenders Act against ten individuals with a view to force these economic offenders to return to face trial in India and the Courts have already declared Vijay Malaya and Nirav Modi as fugitives

Domestic Response (contd.)

- AML/ CFT obligations on Financial Sector who as “reporting entities” are required to obtain and maintain identity and beneficial ownership information and provide Suspicious Activity Report to the FIUs
- Director, FIU can impose sanctions to the reporting entities
- Robust information sharing and cooperation amongst domestic agencies and with foreign counterparts
- The Government of India makes all efforts to be compliant with FATF recommendations

Thank You