

FREQUENTLY ASKED QUESTIONS (FAQ)

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1. What is Money Laundering?

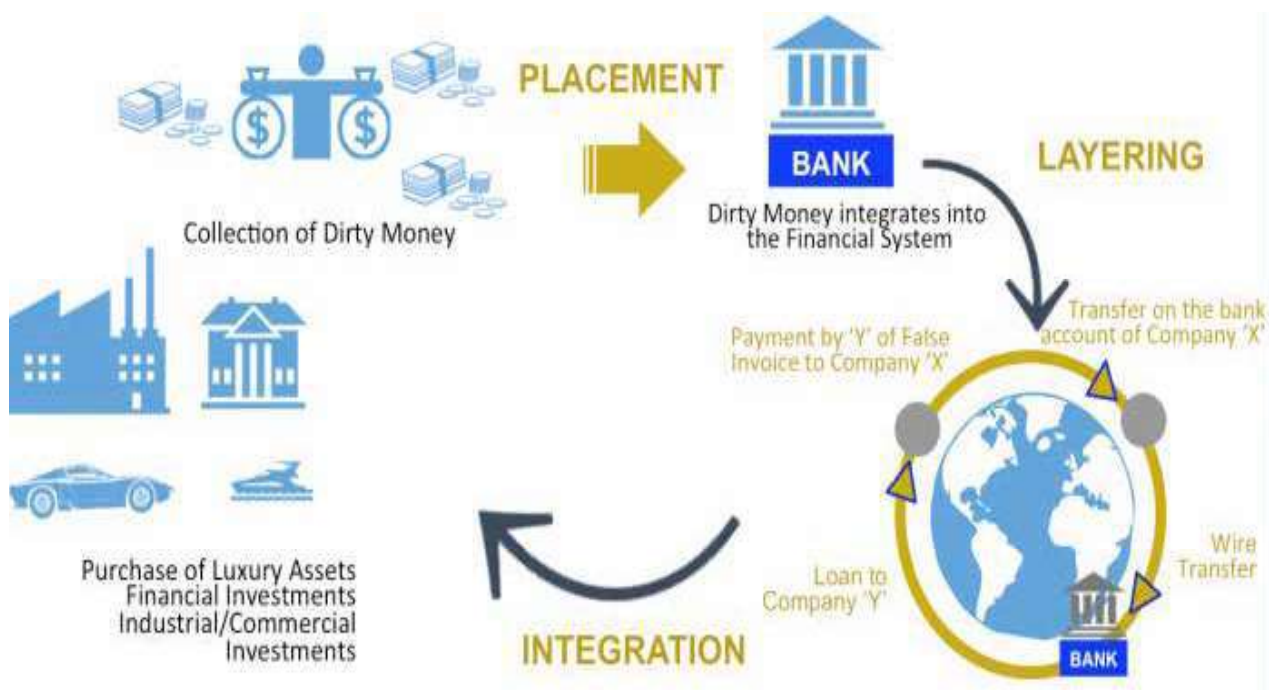
Criminal activities, such as drug trafficking, smuggling, human trafficking, corruption and others, tend to generate large amounts of profits for the individuals or groups carrying out the criminal act. However, by using funds from such illicit sources, criminals risk drawing the authorities' attention to the underlying criminal activity and exposing themselves to criminal prosecution. In order to benefit freely from the proceeds of their crime, they must therefore conceal the illicit origin of these funds.

Briefly described, "money laundering" is the process by which proceeds from a criminal activity are disguised to conceal their illicit origin. It may encompass

- (i) the conversion or transfer, knowing that such property is the proceeds of crime
- (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; and
- (iii) the acquisition, possession or use of property, knowing, at the time of the receipt, that such property is the proceeds of crime.

2. How is Money Laundered?

The process of money laundering can be best described by following figure:



Source: UNODC

- a) In the initial - or placement - stage of money laundering, the launderer introduces his illegal profits into the financial system. This might be done by breaking up large amounts of cash

into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.

- b) After the funds have entered the financial system, the second – or layering – stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channeled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not co-operate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.
- c) Having successfully processed his criminal profits through the first two phases the launderer then moves them to the third stage – integration – in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

3. What is a Money Laundering offence?

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of an offence of money laundering. As per ALPA 2008, involvements in following offences are regarded as money laundering offence:

- Converting and transferring property by any means knowing or having reasonable grounds to believe that it is proceeds of crime for the purpose of concealing or disguising the illicit origin of property, or assisting any person involved in the offence for evading legal consequences of offender.
- Concealing or disguising or changing the true nature, source, location, disposition, movement or ownership of property or rights with respect to such property knowing or having reasonable grounds to believe that it is proceeds of crimes.
- Acquiring, using, possessing property knowing or having reasonable grounds to believe that it is the proceeds of crime.

4. What are Proceeds of Crime?

“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

5. What is financing of Terrorism?

Terrorist financing involves the solicitation, collection or provision of funds with the intention that they may be used to support terrorist acts or organizations. Funds may stem from both legal and illicit sources. The primary goal of individuals or entities involved in the financing of terrorism is therefore not necessarily to conceal the sources of the money but to conceal both the financing and the nature of the financed activity.

6. How are Efforts to Combat Money Laundering and Financing of Terrorism linked?

Money laundering is the process of concealing the illicit origin of proceeds of crimes. Terrorist

financing is the collection or the provision of funds for terrorist purposes. In the case of money laundering, the funds are always of illicit origin, whereas in the case of terrorist financing, funds can stem from both legal and illicit sources. The primary goal of individuals or entities involved in the financing of terrorism is therefore not necessarily to conceal the sources of the money but to conceal both the funding activity and the nature of the funded activity.

Similar methods are used for both money laundering and the financing of terrorism. In both cases, the actor makes an illegitimate use of the financial sector. The techniques used to launder money and to finance terrorist activities/terrorism are very similar and, in many instances, identical. An effective anti-money laundering/counter financing of terrorism framework must therefore address both risk issues: it must prevent, detect and punish illegal funds entering the financial system and the funding of terrorist individuals, organizations and/or activities. Also, AML and CFT strategies converge; they aim at attacking the criminal or terrorist organization through its financial activities, and use the financial trail to identify the various components of the criminal or terrorist network. This implies to put in place mechanisms to read all financial transactions, and to detect suspicious financial transfers.

7. How are Corruption and Money Laundering linked?

Anti-corruption and anti-money laundering work are linked in numerous ways, and especially in recommendations that promote, in general, transparency, integrity and accountability. The essential connections are: Money laundering (ML) schemes make it possible to conceal the unlawful origin of assets. Corruption is a source of ML as it generates large amounts of proceeds to be laundered. Corruption may also enable the commission of a ML offense and hinder its detection, since it can obstruct the effective implementation of a country's judicial, law enforcement and legislative frameworks.

When countries establish corruption as a predicate offense to a money laundering charge, money laundering arising as a corrupt activity can be more effectively addressed. When authorities are empowered to investigate and prosecute corruption-related money laundering they can trace, seize and confiscate property that is the proceeds of corruption and engage in related international cooperation. When corruption is a predicate offense for money laundering, AML preventive measures can also be more effectively leveraged to combat corruption.

8. Why controlling money laundering is necessary?

Since money laundering is a financial crime, it does not serve the interest of any economic actor. In addition to saving the areas affected by it, controlling money laundering is necessary for the following reasons:

- Bring the suspect under the purview of legal action by inquiring, investigating and prosecuting him/her after identifying the suspicious transactions
- Criminalize money laundering and the financing of terrorism and proliferation
- Imprison and penalize the criminals involved in money laundering after bringing them into legal action
- Confiscate the properties earned and used in money laundering and the financing of terrorism and proliferation
- Initiate, promote and continue exchange of cooperation at national, regional and international level for control of money laundering
- Create an environment where the criminals in the days to come shall not be in a position to launder through illegal activities, and

- Expedite healthy development of national, regional and international economies.

9. Why Know Your Customer (KYC) is necessary?

KYC is the process of verifying the identity of clients and assessing potential risks of illegal intentions for the business relationship. The objective of KYC guidelines is to prevent banks and other institutions from being used, intentionally or unintentionally, by criminal elements for money laundering activities. Documents collected from the client at the start of business relationship enable banks and other institutions (including online portals) to better understand their customers, their financial dealings and manage their risks prudently. The key components of KYC are as follows:

- Customer Acceptance Policy (CAP)
- Customer Identification Procedures (CIP)
- Monitoring of Transactions
- Risk Management

The application of KYC process by financial institutions and a high degree of transparency is crucial to fight money laundering and the financing of terrorism effectively. CDD must be applied upon establishment of a business relationship or in preparation of specific cash transactions in excess of a certain amount. The basic steps of KYC measures are the appropriate identification of a customer and/or beneficial owner, the verification of the identity of the customer or beneficial owner, as well as the collection of information on the customer's purpose and nature of the business relationship.

Many of the methods applied by criminals to launder money or finance terrorism involve the use of the financial system to transfer funds. Financial institutions, in particular banks, are most vulnerable to abuse for that purpose. In order to protect them, it is essential that financial institutions have adequate control and procedures in place that enable them to know the person with whom they are dealing. Adequate KYC and due diligence on new and existing customers is a key part of these controls. Hence, KYC is necessary in today's banking sector.

10. What is beneficial ownership?

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Beneficial ownership information may be present in a company profile that can be bought from a company register.

11. What influence does money laundering have on economic development?

Launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centers, but inadequate controls are particularly vulnerable as established financial centre countries implement comprehensive anti-money laundering regimes. Differences between national anti-money laundering systems will be exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective counter measures. As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organized crime. Fighting money laundering and terrorist financing is therefore a part of creating a business-friendly environment which is a precondition for lasting economic development.

12. What is the connection with society at large?

The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organized crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments. The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society. In countries transitioning to democratic systems, this criminal influence can undermine the transition. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.

13. What is a STR/SAR?

Suspicious transaction refers to any transaction (including attempted or proposed), regardless of the amount that appears unusual, has no clear economic purpose, appears illegal, does not commensurate with the customer's profile or business activities, involves proceeds from an unlawful activity and indicates that the customer is involved in money laundering or terrorism financing activities. When REs suspect that the customer is involved in ML/TF activities, they should submit a report to FIU-Nepal. Such report is known as Suspicious Transaction Report (STR). The STR has to be reported even when the customer only attempts to establish a relation with the reporting entity. An attempted or proposed transaction reporting is known as Suspicious Activity Report (SAR).

General Characteristics of Suspicious Financial Transaction are:

- Transactions having unclear economical and business target.
- Transactions conducted in relatively large amount cash and/or conducted repeatedly and unnaturally.
- Transactions conducted differently from that of usually and normally conducted by the relevant customer.
- Huge, complex and usual transaction.

A person must make a required report (within three days of the suspicion) if you know or suspect or have reasonable grounds for knowing or suspecting that another person is engaged in money laundering or that certain property is or is derived from the proceeds of criminal conduct or terrorist financing. Reporting Entities (as mentioned in Chapter Two- 2.1) file STRs to FIU-Nepal.

14. Which law should I disclose STR/SAR under?

The legal basis for the reporting of suspicion in respect of money laundering is set out in Assets (Money) Laundering Prevention Act, 2008. The legal basis for the reporting of suspicion in respect of terrorist financing is also the same.

15. When should I submit a STR/SAR?

REs are required to submit a STR/SAR to FIU-Nepal within three days of the initial determination that person knows or suspects (or has reasonable grounds for knowing or suspecting) that another person is engaged in money laundering or terrorist financing or that certain property is or is derived from the proceeds of criminal conduct or terrorist financing. Further to that the information or other matter on which the knowledge or suspicion is based, or which gives the reasonable grounds for that knowledge or suspicion, came to them in the course of the business and makes the STR as soon as practicable after the information or other matter comes to them.

16. How do I submit a STR/SAR to FIU-Nepal?

A STR must be submitted at the FIU-Nepal under a prescribed form under Unified Directive No.19 issued by NRB and other directives issued by different regulators (as mentioned in Chapter Two- 2.2) along with the necessary documents.

17. Does FIU have the automatic system for the reporting STR/SAR?

The FIU-Nepal has introduced the automated system called goAML to the reporting entities. STR/SAR should be reported to the FIU-Nepal electronically through goAML web reporting system by BFIs, Insurance sector, Securities dealers (Brokers), Cooperatives with transactions above specified threshold, Retirement fund and assigned REs where as other REs through signed paper reports.

18. What should I include in a STR/SAR ?

Suspicious Transactions Reports (STRs) include detailed information about transactions that are suspected violations of law or appear to be suspicious or arouse suspicion or has reasonable grounds to suspect that if the property is related to ML/TF or other offence. An activity may be included in the Suspicious Transactions Reports (SARs) if the activity gives rise to a suspicion that the account holder is attempting to hide something or make an illegal transaction.

The quality of a STR/SAR is only as good as the content, therefore, it should include, ‘who, what, where, when, why, how and which predicate offence’. It should also include all supporting documents and the analysis required under Unified Directive No. 19 for BFIs and other directives issued by different regulators.

19. Is a single red flag or indicator sufficient to report suspicious transactions/activities ?

A transaction may have certain ‘red flags’ or indicators of STR/SAR. It is important that the presence of multiple indicators should act as a warning sign in order to add intelligence to the report. Further, REs should take reasonable measures that enable them to establish that there are grounds to suspect that the transaction or attempted transaction is related to the commission of a ML/TF or other predicate offence.

20. What is Threshold Transactions Reporting (TTR)?

A Threshold Transaction Report (TTR) is a report that financial institutions and designated non financial business and professions (DNFBPs) are required to file to FIU for deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction more than One Million Nepalese Rupees for BFIs and for other entities as presented in Table 3.2. The threshold amount may be reached by a single transaction or by a series of transactions in cash into a single account or by a single customer over a period of one working day. It may be considered to be an aggregate transaction in cash exceeding the prescribed threshold.

21. What do I do if I am requested to provide additional information from the FIU?

Reporting Entities who receive a request for additional information from the FIU should respond as instructed by the Act, Rule and Directives.

22. Can I terminate the business relationship?

Whether or not to terminate a business relationship is a commercial decision for the Reporting Entities. Where a RE makes a decision to terminate a business relationship after it has made a STR and is concerned that in doing so it may prejudice an investigation or contravene the tipping off rules, it should engage with the FIU accordingly. The decision to terminate a relationship, however, remains with the Reporting Entities.

23. What is ‘Tipping Off’?

The Assets (Money) Laundering Prevention Act, 2008 provides that it is an offence if a person knows, or suspects, that an internal suspicion report to a FIU-Nepal has been or will be made or if any information or other matter concerning the internal suspicion report or STR has been or will be communicated to FIU and s/he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion unless it is for a purpose set out in those laws.

24. What is Financial Information Unit, Nepal (FIU-Nepal)?

Financial Information Unit (FIU)-Nepal is a national agency responsible for receiving, processing, analyzing and disseminating financial information and intelligence on suspected money laundering and terrorist financing activities to the relevant law enforcement/investigative agencies and foreign FIUs. It was established on 21 April, 2008 under the section 9 of the Assets (Money) Laundering Prevention Act, 2008 within the Nepal Rastra Bank (the central bank) as an independent unit. The FIU-Nepal is also assigned to function as the secretariat of the National Coordination Committee under the coordination of Secretary of Office of the Prime Minister and Council of Ministers. The Head of FIU is the Secretary of the committee.

The legislation, in regards to AML/CFT, mandates the FIU to:

- receive and collect reports on suspicious and prescribed threshold financial transactions and other information relevant to money laundering and terrorist activities financing from government agencies, financial institutions and non-financial institutions;
- analyze and assess the information received from reporting entities and inspect transactions and records of bank, financial institution and non- financial institution;
- provide suspicious and other relevant information to the Investigation Department and others relevant;
- guide the banks, financial institutions and non-financial institutions regarding the reporting;
- ensure compliance by reporting entities with their obligations under the Act, rules and regulations;
- manage training and awareness programs;
- impose fine bank, financial institution and non-financial institution in the failure of reporting compliance;
- develop information exchange mechanism with other FIUs or related international institution by entering into Memorandum of Understanding or membership.

25. What will FIU-Nepal do with the information received by it?

FIU-Nepal will process and analyze received financial information or STR and disseminate actionable intelligence in appropriate case to relevant Law Enforcement Agencies.

26. How do FIUs exchange information with each other?

FIUs exchange information with other FIUs on the basis of reciprocity or mutual agreement consistent with procedures understood by the requested and requesting party. An FIU requesting information should disclose to the FIU that will process the request at a minimum, the reason for the request, the purpose for which the information will be used and enough information to enable the receiving FIU to determine whether the request complies with its domestic law. FIU-Nepal sends request for information to other FIUs by the Egmont Secure Web (ESW) secure email network and also receives request from other Egmont Group members.

27. What is Predicate Offence?

As per Asset (Money) Laundering Prevention Act, 2008 following offences are classified as predicate offence.

- Participation in an organized criminal group and racketeering,
- Disruptive (terrorist) act and terrorism,
- Trafficking in person and migrant smuggling ,
- Any kinds of sexual exploitation including sexual exploitation of children,
- Illicit trafficking of narcotic drugs and psychotropic substances,
- Illicit transportation of arms and ammunition,
- Illicit transportation of stolen and other goods,
- Corruption and bribery,
- Fraud,
- Forgery,
- Counterfeiting of coin and currency,
- Counterfeiting of goods and plagiarism or piracy of products,
- Environmental related,
- Murder, grievous bodily injury,
- Kidnapping, illegal restraint or hostage-taking,
- Theft or robbery,
- Smuggling (including custom, VAT and tax) related,
- Tax (including direct and indirect) related,
- Extortion,
- Piracy,
- Insider Dealing and Market Manipulation in securities and commodities related,
- Ancient monument conservation related,
- Forest, National park and wild animals related crime,
- Money, banking, finance, foreign exchange, negotiable instruments, insurance, cooperatives related,
- Black marketing, consumer protection, competition, supply related,
- Election related,
- Communication, broadcasting, advertising related,
- Transportation, education, health, medicine, foreign employment related,

- Firm, partnership, company, association related,
- Real estate and property related,
- Lottery, gambling, donation related,
- Citizenship, immigration and passport.
- Offence of terrorist financing or association with terrorist organization.

28. What is Mutual Evaluation?

Mutual Evaluation is a peer review process in which country are assessed to determine the levels of compliance with the international AML/CFT standards. It has two aspects: technical compliance and effectiveness compliance.

- Technical Compliance Assessment:** A desk-based technical compliance analysis assesses compliance by an APG member with the specific requirements of each of the 40 FATF recommendations- the relevant legal and institutional framework of the jurisdiction, and the powers and procedures of competent authorities. These recommendations represent the building blocks of an AML/CFT system. The technical compliance analysis is undertaken by an assessment team prior to an on-site visit of the member being evaluated.
- Effectiveness Assessment:** The main component of a mutual evaluation is effectiveness. It assesses the extent to which an APG member achieves a defined set of outcomes that are central to a proper functioning and effective AML/CFT system with expected results based on the ML and TF risk profile of that jurisdiction. The effectiveness analysis is not only based on information exchanged with the assessment team but also after the exchange of information, the team will visit the member under evaluation (usually for two weeks, sometimes longer) and interview government and private sector officials to gain a comprehensive understanding of how the AML/CFT system is working. Effectiveness assessment is done based on the FATF's 11 Immediate Outcomes (IOs).

29. What are the consequences of low compliance in mutual evaluation?

Country with low compliance in mutual evaluation is subject to FATF review and may be put in the global Negative List as non-cooperative country and faces: -

- Harder situation for banks to conduct international transactions
- Increase in cost of funds or delay or limitation
- Loss of credit lines or correspondent relationships
- Decrease in receiving assistance, loan and other facilities from international org. and countries
- Restrictions on inward remittance, aid, capital and other flows
- Inability of institutions to expand overseas
- Withdrawal of foreign banks
- Loss of investor confidence
- Reputational problem to Nepal and its financial system
- Freezing of overseas assets
- Complete isolation from international financial markets