

# **Global Standards of Financial Crime Control Programs and Their Implementation by Nepal**

By

**Prakash Bhandari**

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Supervised by

**Dr. Salvatore Fava, Ph.D**

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**We certify that the student's final thesis submitted in digital form via email:**

Name **PRAKASH**

Surname **BHANDARI**

Residency **NEPAL**

Date of birth **10/04/1972**

Nationality **NEPALESE**

Number **UNISE1602IT**

**FACULTY OF BUSINESS & MEDIA**

**At the Course of FINANCE & ECONOMICS**

**For graduation DOCTOR OF PHILOSOPHY**

Having the following title: **GLOBAL STANDARDS OF FINANCIAL CRIME CONTROL PROGRAMS AND THEIR IMPLEMENTATION BY NEPAL**

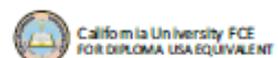
It has been approved without reservation and it is valid for achieving this degree:

**DOCTOR OF PHILOSOPHY IN FINANCE & ECONOMICS**



Supervisor

Accredited by



## **DECLARATION**

I hereby declare that this study entitled “**Global Standards of Financial Crime Control Programs and Their Implementation by Nepal**” submitted to the Selinus University of Science and Literature is based on my own original research work carried out for the degree of Doctor of Philosophy (Ph.D.) under the general supervision of Dr. Salvatore Fava .All the previous works referred for this study have been properly cited and maintained in references. I am highly indebted to all authors and institutions whose work I have referred in my Thesis report. The results presented in this study have not been submitted elsewhere for the award of any degree.

**Prakash Bhandari**

**Ph.D Enrollment No. N° UNISE1602 IT**

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This research work is the result of accumulation of contributions from different people from different fields. The efforts, suggestions and guidelines from them have materialized the concept of this writing. I am very much thankful to all of them.

This research thesis has been prepared to find the implementation status of International Standard of Financial Crime Control Programs by Nepal. For this to find out, I have presented the global standard of financial crime compliance programs in the perspectives of current practice and programs in application globally. With the standard taken as bench mark, legal, institutional and regulatory framework developed by Nepal has been compared and the effectiveness of the efforts have been presented as a result.

I am deeply indebted to Dr. Salvatore Fava, president and general consultant of Selinus University, for his guidance to complete this research work.

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**Prakash Bhandari**

**Ph.D Enrollment No. N° UNISE1602 IT**

## **ABSTRACT**

The global standards for financial crime control programs are set by various international organizations, including the Financial Action Task Force (FATF), the Basel Committee on Banking Supervision (BCBS), and the Wolfsberg Group. These organizations provide guidance to countries on how to prevent financial crime, such as money laundering, terrorist financing, and corruption, by implementing effective anti-money laundering (AML) and countering the financing of terrorism (CFT) programs.

In Nepal, there is the existence of different framework for the purpose of Financial Crime Control. Legal framework, institutional framework and regulatory framework are in place.

Though different sectors of economy has their own regulators, other sector's effort require improvement compared to that of financial sectors. This sector is regulated by the Nepal Rastra Bank (NRB), which has implemented various measures to comply with the international standards set by the FATF and other organizations.

In conclusion, Nepal has taken significant steps to implement global standards for financial crime control programs, however, there are still many rooms for improvement. The Govt needs to ensure that sectors other than financial sectors in Nepal also follow these standards, and that the financial crime control programs they have in place are effective in preventing financial crimes as a whole.

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## ABBREVIATIONS

ABC	Anti Bribery and Corruption
ALPA	Assets (Money) Laundering Prevention Act
AML	Anti Money Laundering
AML Rules	Asset (Money) Laundering Prevention Rules 2009
AML/CFT	Anti-money laundering/countering the financing of terrorism
APG	Asia Pacific Group (Of Money Laundering)
APGML	Asia Pacific Group on Money Laundering
ATM:	Automatic Teller Machine
BCBS	Basel Committee On Banking Supervision
BIS:	Bank of International Settlements
BNI	Bearer negotiable instruments
BOD	Board Of Directors
BOPA	Banking Offence and Punishment Act 2008
CAP	Customer Acceptance Policy
CBBE:	Customer Based Brand Equity
CBS	Core Banking System
CDD	Customer Due Diligence
CEO	Chief Executive Officer
CFT:	Countering Financing of Terrorism
CIAA	Commission for Investigation of Abuse of Authority
CIF	Customer Identification Form
CIP	Customer Identification Procedure
CIT	Citizen Investment Trust
CO	Compliance Officer
CPF	Countering Proliferation Financing
CTF	Countering Terrorist Financing
CTMP	Customer Transaction Monitoring Procedures
CTR	Cash transaction report
DMLI	Department of Money Laundering and Investigation
DNFBPS:	Designated Non Financial Business and Professions

DRI	Department of Revenue Investigation
ECDD	Enhanced Customer Due Diligence
EOO	Executive Operating Officer
EPF	Employees Provident Fund
et. al:	and others
EU:	European Union
FATF	Financial Action Task Force
FERA	Foreign Exchange (Regulation) Act 1962
FI	Financial Institution
FIU	Financial intelligence unit
FNCCI	Federation of Nepalese Chambers of Commerce and Industries
G-D:	Good dominant
HBL	Himalayan Bank Ltd.
HR	High Risk
HR:	Human Resource
i.e.:	that is
IAIS	International Association of Insurance Supervisors
ICRG	International Cooperation Review Group
IMF:	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
IRD	Inland Revenue Department
IT	Information technology
JQCS:	Judgment Quality Consideration and Superiority
KM:	Knowledge Management
KYC	Know Your Customer
LEA	Law enforcement agency
LR	Low Risk
LVMT	Large Value Money Transfer
ME	Mutual evaluation
MER	Mutual evaluation report
MIS	Management Information System
ML	Money Laundering

MLA	Mutual legal assistance
MLAT	Mutual legal assistance treaty
MOU	Memorandum of understanding
MR	Medium Risk
MSB	Money Service Bureau
MVT	Money value transfer
NBA	Nepal Bankers Association
NBFI	Non-bank financial institution
NEPSE	Nepal Stock Exchange
NGO	Non Government Organizations
NID	National Identification Document
NPO	Non Profit Organizations
NRA	National Risk Assessment
NRB	Nepal Rastra Bank
NRps	Nepali Rupees
OECD:	Organization of Economic Cooperation and Development
OFAC	Office of Foreign Assets Control
PE:	Psychological Empowerment
PEP	Politically Exposed Person
PF	Proliferation Financing
PIP	People In Influencing Position
PTA	Payable Through Accounts
Q&A	Question and answer
RA	Risk Assessment
RBA	Risk Based Approach
RBV:	Resource Based View
RE:	Reporting Entities
RI(s)	Reporting institutions(s)
RM	Risk Management
SAARC	South Asian Association for Regional Cooperation
SAR	Suspicious Activity Report
SD:	Service Dominant

SEBON	Securities and Exchange Board of Nepal
SIS	Supervisory Information System
SRO	Self-regulatory organisation
STR	Suspicious Transaction Report
STR	Suspicious Transaction Report
SWC	Social Welfare Council
SWOT:	Strength, Weakness, Opportunity and Threat
TBML	Trade Based Money Laundering
TF	Terrorist Financing
TTR	Threshold Transaction Report
TU:	Tribhuvan University
UN	United Nations
UNODC:	United Nation Office on Drugs and Crimes
UNSCR	United Nations Security Council Resolution
USD	United States Dollar
Wt.	Weighted

# Chapter-1

## Introduction

### **1.1 Background of the Study**

Not only in the technologies, but also in several procedures and workflow in terms of different transactions have been advanced in today's world. In one hand such advancement has drastically changed the way we think and perform. It is not only in the field of education, nor in the field of business. Rather, it is even more effective in the field of financial crimes. Criminals have also exploited such advancement to the extent they can. Among other crimes, today's world is much more suffering from the criminals involved in financial crimes like money laundering to bribes, corruption etc. Though the impact of financial crimes does not reflect as direct as other types of terrorism related crimes or so, it has wide spread social and economical impact and such impact never remains untouched to the member of the society.

While we talk about money laundering, simultaneously terrorist financing and financing of proliferation also comes together. So whole world today is fighting against these two major crimes among others in the notion that they both could not and should not be allowed to exist.

United nations being the patronage of world community, has taken lead to combat against Money Laundering, Terrorist Financing and Financing of Proliferation. Likewise, European Union, and other inter governmental organizations like Financial Action Task Force (FATF), FATF Styles regional bodies, Egmont Group, Wolfsberg Group, BCBS etc are also the prominent fighters against financial crimes across the world.

Financial Crime Control is the responsibility of whole world today and being a member of the globe, Nepal also must comply with international standards of Financial crime compliance program. But because of so many limitations, Nepal is not coping with all those standards and mapping its efforts and achievement with those standard is quite imperative. So developing countries like Nepal has many challenges in implementation of international standards developed for financial crime control programs.

### **1.1.1 Introduction**

Financial Crime is an important phenomenon as it poses a significant threat to the stability and integrity of the financial system, as well as the social and economic well-being of societies worldwide. Financial crime is a complex problem, encompassing a wide range of illicit activities, including money laundering, terrorist financing, corruption, and fraud. International standards and guidelines for financial crime control programs have been developed to address the challenges posed by financial crime.

The international community has been increasingly concerned about the issue of financial crime since the early 1990s. In response to this concern, the Financial Action Task Force (FATF) was established in 1989 as an intergovernmental body to develop and promote policies to combat money laundering. Since then, the FATF has expanded its mandate to include countering the financing of terrorism and other forms of financial crime. The FATF has developed a series of recommendations that serve as the international standards for anti-money laundering (AML) and countering the financing of terrorism (CFT). These recommendations have been adopted by more than 200 countries and jurisdictions and are considered the global standard for AML/CFT.

In addition to the FATF, other international organizations have also developed standards and guidelines for financial crime control programs. For example, the World Bank Group has developed a set of principles for effective AML/CFT supervision, and the United Nations Office on Drugs and Crime has developed the United Nations Convention against Transnational Organized Crime, which provides a framework for international cooperation in the prevention and control of organized crime.

Effective financial crime control programs typically include several key components, including risk assessment, customer due diligence, transaction monitoring, suspicious activity reporting, and compliance management. These components are interrelated and form the basis for a comprehensive and effective financial crime control program.

#### ***Risk Assessment:***

Risk assessment is the first and most critical component of an effective financial crime control program. A risk assessment identifies the specific risks posed by a financial institution's business activities and customer base and determines the appropriate level of controls needed to mitigate those risks. The risk assessment should be a continuous process and should be reviewed regularly to ensure that it remains current and relevant.

***Customer Due Diligence:***

Customer due diligence (CDD) is the process of identifying and verifying the identity of a customer, assessing the customer's risk profile, and determining the nature and purpose of the customer's business relationship with the financial institution. CDD is essential to ensure that a financial institution is not unwittingly facilitating financial crime.

***Transaction Monitoring:***

Transaction monitoring is the process of reviewing customer transactions to detect and report suspicious activity. Transaction monitoring should be risk-based and tailored to the specific risks identified in the risk assessment. Financial institutions should have systems in place to identify and investigate transactions that are unusual or suspicious.

***Suspicious Activity Reporting:***

Financial institutions have a legal obligation to report suspicious activity to the relevant authorities. The reporting of suspicious activity is a critical component of an effective financial crime control program. Suspicious activity reports (SARs) should be filed promptly and accurately and should contain all the relevant information necessary for law enforcement agencies to investigate and prosecute financial crimes.

***Compliance Management:***

Compliance management is the process of ensuring that a financial institution complies with all applicable laws, regulations, and internal policies and procedures. Compliance management includes the development and implementation of policies and procedures, employee training, and ongoing monitoring and testing to ensure that the financial institution is operating in accordance with its obligations.

### **1.1.2 Challenges and Opportunities:**

Anti-money laundering (AML) and countering the financing of terrorism (CFT) are two critical areas of financial crime control. These two areas have gained significant attention from regulators, policymakers, and financial institutions due to the threat they pose to the global financial system's integrity and stability. The purpose of this review is to explore the literature on AML/CFT, including the evolution of AML/CFT policies and regulations, the challenges associated with implementing AML/CFT measures, and the emerging trends in AML/CFT.

Implementing effective AML/CFT measures presents several challenges for financial institutions. These challenges include the cost of compliance, the complexity of regulations, and the difficulty of balancing compliance with customer service. However, there are also opportunities associated with AML/CFT measures. For example, implementing effective AML/CFT measures can enhance a financial institution's reputation, improve customer confidence, and reduce the risk of financial crime.

## **1.2 Statement of the Problem with Research Questions**

As the fight against financial crime is the collaborative efforts of countries like an Eco-system, Nepal has also an important role to play. Its legal, institutional and environmental efforts to combat with financial crimes also has great significance in world wide effort. So it is very important to see the actual position of Nepal in implementing international standard of Financial Crime Compliance Programs in line with the internationally developed instruments and mechanisms.

Financial Action Task Force has evaluated Nepal for two times in the history and has suggested to strengthen its efforts to combat with financial crimes. In light with this fact and in the threshold of next evaluation, it is even more imperative to find out the actual situation/position of Nepal in practice legally or in the ways of implementation, on financial crime compliance programs.

So far Nepal's effort have not been found sufficient in terms of legal arrangements, institutional development in different sectors as per national risk assessment report and in

terms of governance as a whole. These have been cited by mutual evaluation report (2011) and other related assessments. All these reports and assessments have found Nepal's national capability as weak or deficient and has shown negative light on its image in international financial community. As the main criteria for assessing country's strength is based on FATF 40+9 Recommendations, while analyzing the implementation status of Nepal is studied, actual implementation status of those FATF Recommendation should be taken into consideration with first priority. Therefore, question arises as whether Nepal has been able to cope up with the growing international pressure as well as to comply with the international standards in order to assume its international obligations in combating financial Crimes fully and effectively or not?

In this context researcher tries to find out the answers to the following questions:

1. Is Nepal's efforts to combat with financial crimes is sufficient?
2. Is Nepal's effort to combat with financial crimes is in line with international standard?
3. Is Nepal's efforts to combat with financial crimes is in line with international conventions, international laws regulations?
4. Is Nepal's efforts are reflected in its efforts as per the standards set by FATF, Basel, Wolfsberg, UN, and European Union?
5. What are the areas Nepal should strengthen its efforts

### **1.3 Rationale of the Study**

Nepal is an under developed country but still plays a vital role in terms of economic and political global arena because of its ego-political existence. So it is highly important for Nepal to the study of Financial Crimes in many reasons.

The most important reason is that Nepal is not self reliant economy. She has to rely on international cooperation and exchange for so many things including the commodities of daily consumption to employment. So Nepal must remain valid for international cooperation and transactions in many ways.

To have this situation exist in the country, Nepal must comply with minimum standard of international instruments whether it be the instrument to fight against financial crimes. That is why, this study of Nepal's status on implementation of International Standard of Financial Crime Compliance Program hold high rationality.

Secondly, enhanced export, attraction of foreign investment, export of skill and services are another aspect Nepal should focus on. For this all to happen, Nepal must be in pace with international community to combat with financial crimes. So on this ground also, for the sovereign survival of the country as well, this is very important to know the actual status of Nepal in terms of international standard of financial crime compliance programs.

Technology based financial crimes are getting popular world wide. Nepal need to develop its capacity to adopt enhanced technology to combat with financial crimes. But what is the status of this kind of possibilities is another matter of concern to study.

Typologies of financial crimes are varying day by day due to the advancement in the technologies. To cope up with these developed typologies, it is very important to know the present status and way forward based on today's status.

Thirdly, even if implementation in terms of policy or in terms of legal framework is in place, their effective implementation is another important matter of concern. Whether all the provisions as outlined in national laws, institutional policies and programs in implementation carry the worth as desired by international standard or not? To find out the proper answer of this question is very important and thus establishes the strong rationale of the study.

#### **1.4 Objectives of the Study**

This study shall be carried out to find the international standard of Financial Crime Compliance programs in today's world and the implementation status of Nepal in regards to those international standards.

To be more specific, following are the specific objectives of this study:

1. to analyze the international standards of financial crime compliance programs
2. To know the findings of different reports in respect of Nepal's existing financial crime compliance frameworks and to know how valid assessment they have made.
3. To find out the gap between international standard vis-a-vis Nepal's implementation
4. To find out and examine the deficient areas
5. To make appropriate recommendations to develop more effective financial crime compliance programs that is fully compliant with the international standards.

## **1.5 Limitations of the Study**

The study shall be confined to examine the Nepal's Status in terms of implementation of international standards as set by following international instruments/structures/bodies-

1. FATF 40+9 Recommendations
2. 1988 Vienna Convention
3. Palermo Convention
4. European convention and 6AMLD (European Union)
5. AML CFT Guidelines of Basel Committee of Banking Supervision
6. Egmond Group's Principles
7. Wolfsberg Group's Principles

However, this study shall not discuss in every aspects of these standards as outlined above. And the main point of weakness in implementation shall be the focus of the study.

## **1.6 Chapter Outline**

The study shall be conducted deciding the contents in 11 chapters. Basically following chapters shall be outlined in the thesis as follows:

Chapter 1- Introduction

Chapter 2- Review of related literature

Chapter 3- Research Methodology

Chapter 4- Financial Crimes and its Components or types

Chapter 5- Brief History of Evolution of Financial Crime Control Standards

Chapter 6. International Standards of Financial Crime Control Programs.

Details discussion on International Standards of Financial Crime Control Programs.

This chapter shall focus on basically 7 standards as mentioned in limitation above.

#### Chapter 7- Implementation of International Standard of Financial Crime Control Programs by Nepal

This chapter shall focus on vis-a-vis comparison and find out the gaps between standard and implementation status in Nepal. This chapter shall also discuss in details on Obligations imposed on financial institutions, designated non- financial businesses and professions to prevent the criminal use of these entities for money laundering purposes by these international standards.

#### Chapter 8- Implementation status of provisional Measures and confiscation

This chapter shall examine provisional measures and confiscation of criminal assets and then discusses the types and procedures of confiscation, including confiscation of the assets involved in financial crimes. Finally, the confiscation legislation of Nepal shall be discussed.

#### Chapter 9- Mutual Legal Assistance and Nepal's Efforts/contribution on it.

The legal basis of mutual legal assistance in reference to Nepalese laws shall be discussed in this chapter. Furthermore, suggestions shall also be provided to enhance existing laws and practice in Nepal, if found so.

#### Chapter 10- Extradition on Financial Crimes

this chapter shall focus on Nepalese legislation and implementation on extradition on financial crimes and necessary reformation of laws shall be outlined if found so.

#### Chapter 11- Conclusion and Recommendation

Reference

Appendices

## **Chapter- 2**

### **Review of Literature**

#### **2.1 Background**

From the different literature, it is obvious that global standards of financial crime control programs have basically 6 dimensions-

- i) the criminalization of financial crimes including money laundering;
- ii) jurisdiction over transnational financial crimes
- iii) provisional measures and confiscation of criminal assets;
- iv) mutual legal assistance in international level
- v) extradition for offenses; and
- vi) prevention of the use of financial institutions, designated non-financial businesses and professions for the purpose of financial crimes including money laundering (UNODC).

Some key topics that may be covered in a review of literature on AML/CFT include:

A. The history and evolution of AML/CFT laws and regulations: This would cover the development of AML/CFT laws and regulations, as well as the international standards set by organizations such as the Financial Action Task Force (FATF) and the Egmont Group of Financial Intelligence Units.

B. The role of financial institutions in AML/CFT: This would cover the responsibilities of financial institutions, such as banks and money service businesses, in detecting and preventing money laundering, terrorist financing and financing of proliferation, as well as the effectiveness of AML/CFT measures implemented by these institutions.

C. The use of technology in AML/CFT: This would cover the use of technology such as artificial intelligence and machine learning to detect money laundering and terrorist financing, as well as the challenges posed by digital currencies and other alternative remittance systems.

D. The role of international cooperation in AML/CFT: This would cover the sharing of information between countries and international organizations in the fight against money laundering and terrorist financing, as well as the effectiveness of international sanctions and other measures.

E. The effectiveness of AML/CFT measures: This would cover the evaluation of AML/CFT measures and their impact on the financial sector.

F. The challenges and vulnerabilities in AML/CFT: This would cover the challenges in implementing AML/CFT measures, such as the informal financial systems, and the vulnerabilities of the financial sector to money laundering and terrorist financing.

Several academics, practitioners and international organizations have already carried out research on some categories or on the international standards of Financial Crime Control Programs.

Guy Stessens is considered as one of the early and most comprehensive analyst in relation to international standard of AML Programs, especially regarding international cooperation in AML. He has presented the implementation status of some of the selected countries regarding international standards of money laundering programs in his book 'Money Laundering: A New International Law Enforcement Model (Cambridge University Press, 2000) though this book, however, was undertaken before the adoption of the Palermo Convention. So his book is silent on some of the important AML issues like extradition for money laundering offenses. Further he has not mentioned anything about the risk-based approach in AML in his book.

William C. Gilmore, in his book 'Dirty Money: the Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism (4<sup>th</sup> ed. Council of Europe, 2011) discuss in detail about the development and substance of the international standard of AML Programs in European region only and lack the relevance in international levels.

Peter Reuter (University of Maryland) and Edwin M. Truman (PIIE) have analyzed only briefly about the evolution of the international AML regime, its components and national

implementation of the regime, with the reference to developing countries in their book 'Chasing Dirty Money: The Fight Against Money Laundering', 2004.

There has been a significant amount of academic research conducted on AML/CFT over the years. Some of the notable academic works include "The Economics of Money Laundering: A Primer" by Donato highlights on various typologies of financial crimes.

There are many research articles on financial crimes, covering various types of financial crimes, such as money laundering, fraud, corruption, and tax evasion. Here are some examples of highly regarded research articles on financial crimes:

"Money-Laundering: Estimates in Fog" by Petrus C. van Duyne, et al. - This article provides an overview of the different typologies of money laundering and proposes a new approach for analyzing and understanding money laundering schemes.

"Preventing Fraudulent Financial Reporting: 1987-1997 An Analysis of U.S. Public Companies" by Mark S. Beasley, et al. - This article examines the prevalence and characteristics of fraudulent financial reporting by US public companies over a 10-year period.

Jennifer Shasky Calvery and Kevin Bell Summer 2016, Harvard International\_Review(Vol. 37, Issue 4) Harvard International Relations Council, Inc. describes various of financial crimes associated with real estate business particularly in US. This article discusses the link between corruption and financial crime, and the challenges of combating corruption in the financial sector.

The Impact of the Development of Society on Economic and Financial Crime. Case Study for European Union Member States by Benno Torgler

Tax Morale and Institutions by Benno Torgler. This article proposes a new theoretical model for understanding tax evasion behavior and factors that influence tax compliance.

The Psychology of White-Collar Criminals: by Eugene Soltes, A researcher reflects on conversations with nearly 50 convicted executives about why they did what they did.

"White-Collar Crime and Criminal Careers " by David Weisburd and Elin Waring . This article reviews the literature on the psychology of white-collar criminals, and identifies factors that may contribute to white-collar crime.

A study by Goksel, Guler, and Ozkan (2021) examines the effectiveness of financial crime control programs in preventing money laundering in Turkish banks. The study finds that financial crime control programs are effective in preventing money laundering in Turkish banks. The study highlights the importance of a risk-based approach to financial crime prevention. The study recommends that financial institutions should adopt a risk-based approach to financial crime prevention.

A study by Almohammad and Tayeh (2020) examines the effectiveness of financial crime control programs in preventing money laundering in Jordanian banks. The study finds that financial crime control programs are effective in preventing money laundering in Jordanian banks. The study highlights the importance of training and awareness programs in preventing financial crimes. The study recommends that financial institutions should provide regular training and awareness programs to their employees.

A study by KPMG (2021) examines the trends and challenges in financial crime control programs. The study finds that financial crime is becoming more sophisticated and complex. The study highlights the importance of technology in financial crime prevention. The study recommends that financial institutions should invest in technology to enhance their financial crime control programs.

The literature also highlights the importance of collaboration between financial institutions and regulatory bodies in preventing financial crimes. A study by Bruschi and Paleari (2020) examines the role of regulatory bodies in preventing money laundering in the European Union. The study finds that regulatory bodies play a significant role in preventing money

laundering in the European Union. The study highlights the importance of collaboration between financial institutions and regulatory bodies in preventing financial crimes.

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The literature also emphasizes the importance of customer due diligence (CDD) in financial crime prevention. CDD is a process that involves verifying the identity of customers and assessing the risks associated with them.

Simwayi and Wang (2011) studied the role of commercial banks in combating money laundering in the People's Jensen and Png (2011) examined implementation and issues related to financial action task force (FATF) recommendations 40+9 by the developing countries from the Asia-Pacific Region.

A study by Walshe and O'Connor (2020) examines the effectiveness of CDD in preventing money laundering in Irish banks. The study finds that CDD is effective in preventing money laundering in Irish banks. The study recommends that financial institutions should conduct CDD on their customers to prevent financial crimes.

Some notable AML/CFT academic researchers include:

Dr. Peter Reuter - a Professor at the School of Public Policy and Department of Criminology at the University of Maryland, who has conducted extensive research on drug enforcement, crime control, and AML/CFT policies.

Dr. Brigitte Unger - a Professor of Public Sector Economics at Utrecht University, who has published numerous papers and books on the effectiveness of AML/CFT measures, including the impact of AML/CFT regulations on economic growth. She has following notable publication on Financial Crimes specially on money laundering-

Dr. Ingo Walter - a Professor Emeritus of Finance, Corporate Governance and Ethics at the Stern School of Business at New York University, who has conducted research on the economics of AML/CFT regulations and their impact on financial institutions.

Mark Pieth - Professor of Criminal Law and Criminology at the University of Basel, Switzerland. He has extensive experience in international AML/CFT standards and served as Chairman of the OECD Working Group on Bribery.

Peter Reuter - Professor of Criminology and Public Policy at the University of Maryland, USA. He has conducted research on international AML/CFT policies and their effectiveness.

Brigitte Unger - Professor of Public Finance and Financial Management at Utrecht University, Netherlands. She has researched AML/CFT policies and their impact on money laundering and tax evasion.

Saskia Hufnagel - Associate Professor of Criminal Law and Criminology at Queen Mary University of London, UK. She has conducted research on international AML/CFT policies and their impact on human rights.

Nic Ryder - Professor of Financial Crime at the University of the West of England, UK. He has written on the international legal framework for AML/CFT and its effectiveness.

Michael Levi - Professor of Criminology at Cardiff University, UK. He has researched the nature and extent of white-collar crime, corruption, and money laundering.

Petter Gottschalk - Professor of Business Administration at BI Norwegian Business School, Norway. He has written extensively on financial fraud and forensic accounting.

Susan Rose-Ackerman - Professor of Law and Political Science at Yale University, USA. She has conducted research on corruption and the role of institutions in preventing financial crimes.

David Chaikin - Professor of Criminology at the University of Sydney, Australia. He has written on financial crime, particularly in the Asia-Pacific region.

Brigitte Unger - Professor of Public Finance and Financial Management at Utrecht University, Netherlands. She has researched money laundering, tax evasion, and the effectiveness of AML/CFT policies.

Katarina Fritzon - Associate Professor of Psychology at Bond University, Australia. She has researched white-collar crime, particularly the psychological factors that contribute to it.

Tombs Steve - Professor of Criminology at The Open University, UK. He has researched the relationship between corporations, government and financial crimes.

Petrus C. van Duyne - Emeritus Professor at the Institute for Financial Crime at the Free University of Amsterdam, Netherlands. He has conducted research on organized crime and financial crimes.

These researchers, along with many others in academia, play a critical role in advancing the understanding and development of AML/CFT policies and technologies, which are essential in preventing financial crimes and promoting financial stability.

Besides these, there are other many academic researchers who have studied international standards of financial crimes, such as anti-money laundering (AML) and combating the financing of terrorism (CFT). Here are some prominent academic researchers in this field:

"Combating Money Laundering and Terrorist Financing: A Model of Best Practice for the Financial Sector" by Mark Pieth - This book provides a comprehensive overview of AML/CFT issues and best practices for financial institutions, including risk assessment, customer due diligence, and reporting requirements.

"Handbook of Anti-Money Laundering" by Dennis Cox and Kevin Sullivan - This book covers the history, evolution, and current state of AML/CFT regulations, as well as practical guidance on implementing effective AML/CFT programs.

"The Handbook of Criminal and Terrorism Financing Law" by Colin King and Clive Walker - This book covers the legal and policy aspects of AML/CFT, including international and domestic laws, regulatory frameworks, and enforcement practices.

"Evaluating the Effectiveness of Anti-Money Laundering Measures in the Context of Cryptocurrencies" by Giancarlo Spagnolo describes various typologies used in financial crimes through cryptocurrencies.

## **2.2 Theories of Financial Crimes**

Financial crimes refer to a wide range of illegal activities that are committed in the context of financial transactions. Here are some of the theories of financial crimes:

- ***Rational Choice Theory***: The theory originated in the eighteenth century and can be traced back to political economist and philosopher, Adam Smith. This theory suggests that individuals engage in financial crimes because they perceive the benefits of the crime to outweigh the risks. Financial criminals make rational decisions to engage in illegal activities based on the potential gains and the likelihood of getting caught.
- ***Strain Theory***: This theory of criminology was developed by Robert Agnew. This theory argues that individuals may turn to financial crime as a means of coping with societal pressures and frustrations. For example, someone who is struggling to make ends meet may be more likely to engage in financial crimes in order to improve their financial situation.
- ***Social Learning Theory***: Social learning theory, proposed by Albert Bandura, emphasizes the importance of observing, modeling, and imitating the behaviors. This theory proposes that individuals learn to engage in financial crimes through exposure to others who engage in these activities. People may be more likely to commit financial crimes if they are surrounded by others who engage in these activities, or if they are exposed to media portrayals of financial crimes as glamorous or profitable.
- ***Control Theory***: It derived from functionalist theories of crime and was developed by Ivan Nye (1958), who proposed that there were three types of control: Direct: by which punishment is threatened or applied for wrongful behavior, and compliance is rewarded by parents, family, and authority figures. This theory suggests that individuals who lack social bonds or connections to society are more likely to engage in financial crimes. People who feel disconnected from society may be less likely to feel a sense of responsibility towards others, which can lead to a willingness to engage in illegal activities.
- ***Differential Association Theory***: The differential association is a theory proposed by Sutherland in 1939. It explains that people learn to become offenders from their environment. Through interactions with others, individuals learn the values, attitudes,

methods and motives for criminal behavior. This theory proposes that individuals are more likely to engage in financial crimes if they are exposed to values and beliefs that support these activities. For example, someone who grows up in a family that values financial success above all else may be more likely to engage in financial crimes to achieve that success.

- ***crying wolf theory of money laundering:*** The theory of "Crying Wolf" is based on the well-known fable "The Boy Who Cried Wolf" that is attributed to the ancient Greek storyteller Aesop. However, the concept of "crying wolf" has been applied to various contexts, including personal relationships, politics, and business, and has been discussed by many scholars and experts over time. So, there is no one specific person who propounded this theory, but it is a widely recognized concept that has been popularized through the retelling of Aesop's fable and through the observations of people in various fields of study.

The Crying Wolf theory of money laundering suggests that anti-money laundering (AML) efforts may become less effective over time if there are too many false alarms or alerts. The theory is based on the idea that if there are too many false positives, where legitimate transactions are flagged as suspicious, then compliance professionals and law enforcement may become desensitized to these alerts and start ignoring them. This can lead to a situation where genuine cases of money laundering are overlooked.

The name "Crying Wolf" refers to the Aesop's fable where a boy repeatedly falsely claims that a wolf is attacking his sheep, and the villagers eventually stop responding to his cries for help. In the same way, if compliance professionals and law enforcement are inundated with false alerts, they may start to ignore them, making it easier for actual cases of money laundering to slip through the cracks.

To avoid the Crying Wolf problem, AML programs need to balance the need for thorough monitoring and detection with the risk of false positives. This requires ongoing monitoring and calibration of AML systems to ensure that alerts are being triggered by genuine suspicious activity. It also requires education and training for compliance professionals and law enforcement to recognize the importance of each alert and to avoid becoming

desensitized to them. Overall, the Crying Wolf theory highlights the importance of effective AML programs that strike a balance between detection and false positive rates.

These theories provide insights into the various factors that can contribute to financial crimes, including individual motivations, societal pressures, and cultural values. Understanding these theories can help law enforcement and policymakers develop effective strategies to prevent and prosecute financial crimes.

### **2.3 Research on Nepalese Context**

It's worth noting that Nepal has been taking various measures to combat money laundering and terrorist financing. In compliance with the Financial Action Task Force (FATF) recommendations Nepal has enacted laws and regulations and established institutions to combat money laundering and terrorist financing. And Nepal Rastra Bank is the regulator for the banks and financial institutions which is responsible for supervising AML/CFT measures in Nepal.

Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) research works in Nepal are likely to focus on identifying and understanding the various money laundering and terrorist financing risks that are present in the country. This research can help to inform the development and implementation of effective AML/CFT policies and regulations in Nepal. Some examples of research topics that may be relevant in Nepal include:

1. Identifying the primary sources of money laundering and terrorist financing in Nepal, such as corruption, human trafficking, and illicit trade in goods and services.
- Examining the effectiveness of existing AML/CFT laws and regulations in Nepal, and identifying areas where improvements can be made.
  - Analyzing the role of informal financial systems, such as hawala, in money laundering and terrorist financing in Nepal.

- Assessing the risk of money laundering and terrorist financing through alternative remittance systems, such as digital currencies, and developing appropriate regulations for this.
- Examining the relationship between money laundering and terrorist financing and other criminal activities in Nepal, such as drug trafficking and organized crime.
- Evaluating the effectiveness of AML/CFT measures in Nepal and assessing the need to strengthen the existing measures.
- Identifying and assessing the risks of money laundering and terrorist financing in various sectors in Nepal, such as banking, real estate, and non-profit organizations.

There are a few research projects on money laundering, AML and the implementation of international standards of financial crime including money laundering in Nepal and all of them have significant limitations.

A formal study can be considered as the first ever published National Risk Assessment Report of Nepal. However, this report lacks the detail contents of global standards and their implementation status of Nepal. Of-course, this has cited some of the areas as weak, it lacks thorough oversight on every aspects of financial crimes and its control programs implemented by Nepal.

Besides, FATF's mutual evaluation reports on Nepal 2011, is the international standard reports consisting of comprehensive analysis on the implementation status of financial crime control standards globally. In a report leaked of finCen, Nepal has been sighted as the country with weak financial crime control regime.

Assets Laundering and Prevention Act(2008) of Nepal is the first attempt of Nepal to have legal framework on money laundering and terrorist financing. However, this act also lacks all of the predicate offenses in vogue globally these days and lacks to capture the typologies developed day per day.

In its report entitled 'Multi Country Study on the Smuggling of Migrants and Trafficking in Persons from Nepal' UNODC has critically described the deplorable situation of Nepal in compliance of international standards of financial crimes caused by Human Trafficking.

Bishwakarma and Koirala (2021) studied the implementation of anti-money laundering regulations in Nepalese banking sector from employee perspective. The study was focused on the awareness level of bank employees and the influencing factors that affects the effectiveness in AML practices ne Nepalese banking sector. The study found that the training and development of employee regarding AML, ethical behavior of banks, change in technology, control over business sophistication and auditing and reporting standard are equally beneficial for the effective implementation of AML practices in Nepalese banking sector.

Joshi and Shah (2020) studied the relationship between awareness of AML related factors and acceptance of AML regimes. Along with that, the study accesses the level of awareness and level of acceptance among bank clients about AML factors and AML regimes respectively. The study is based on descriptive and inferential research designs, the study made use of primary data collected through a structured questionnaire surveyed on 168 banks that are of 18 years and above, using convenience sampling technique. The study also reported that bank customers of Nepal have comparatively higher awareness of ML, TF, AML, KYC than that of AML legislation and AML investigating agency.

Besides these, some of the research works on the implementation status of international standard of financial crimes by Nepal has been carried out in course of research project required to complete academic degree.

A dissertation entitled Anti Money laundering Regulation and Practices submitted by Rameshwor Regmi to Tribhuvan University in partial fulfillment of the requirements for the Degree of Masters of Business Studies and presented the implementation status by banks on different variables like AML Regulations, AML Awareness, Perception towards AML Regulations and Opinion about AML Practices. But this study is limited only to the banking sector and lacks the over all status of the country as a whole.

Like Wise under title implementation of anti-money laundering practices in Nepalese banks: an employee and customer perspective by Priti Bhusal has also worked on the topic and concluded that That is effective implementation of AML can be done through factors that determines control over business sophistication like the technological advancement, IT infrastructure and knowledge, all showing the weak implementation status of the financial crime control programs in Nepal.

Aabha Joshi , Ajay Kumar Shah has worked on Anti-money Laundering Awareness and Acceptance among the Bank Customers of Nepal (2020) have concluded that the bank customers of Nepal have a comparatively higher understanding of ML, TF, AML and KYC than that of AML legislation and investigating agencies, thus, the concerned authorities are advised to undertaking public awareness campaigns in related areas where the awareness lacks. However, they have a similar acceptance attitude towards all three AML regimes. Still, there is ground for increment in the acceptance scale.

Dr. Gangaram Biswakarma\*; Mahesh Koirala has published their article entitled Implementation of Anti-Money Laundering Regulations in Nepalese Banking Sector in Nepal: An Employee Perspective in Asian Journal of Research in Banking and Finance and concluded that the training and development of employees regarding AML, ethical behavior of banks, change in technology, control over business sophistication, and auditing and reporting standard are equally beneficial for the effective implementation of AML practices in banking sector of Nepal, of which the control over business sophistication is most important component, that's need to emphasize more. This research also is limited to employees of Nepalese banking sector and lacks over implementation status.

Rojina Thapa (2015) has published a research work under title Evolution of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Compliance Culture in Nepal and has indicated the weak implementation status by concluding that Membership of relevant international organisations, ratification of the major UN conventions, enactments of instrumental legislation, implementation of national strategy and establishment of major

institutional infrastructure indicates Nepal’s commitment towards a robust AML/CFT regime. It now needs to strive for outcome-based effective implementation of these fundamentals.

## 2.4 Meta Analysis

Meta-analysis has been done below combining the results of multiple research studies those Addressing the relevant objectives of this paper. Below Table 2.2 of Meta analyses shows the different research done at different span with brief finding of those research works. Only selected research works have been presented in the table.

**Table No. 2.1: Meta Analysis**

Author/Year	Book/ Article Topic	Key Findings
Aabha Joshi , Ajay Kumar Shah (2020)	Anti-money Laundering Awareness and Acceptance among the Bank Customers of Nepal	bank customers of Nepal have a comparatively higher understanding of ML, TF, AML and KYC than that of AML legislation and investigating agencies, thus, the concerned authorities are advised to undertaking public awareness campaigns in related areas where the awareness lacks.
Dr. Gangaram Biswakarma*; Mahesh Koirala (2021)	Implementation of Anti- Money Laundering Regulations in Nepalese Banking Sector in Nepal: An Employee Perspective	training and development of employees regarding AML, ethical behavior of banks, change in technology, control over business sophistication, and auditing and reporting standard are equally beneficial for the effective implementation of AML practices in baking sector of Nepal

<p>Fatemi and Fooladi (2015)</p>	<p>AML Training</p>	<p>Training is a crucial component of effective AML measures. Financial institutions must ensure that their employees understand AML regulations and are able to identify and report suspicious activity. Training should be ongoing and tailored to the specific roles and responsibilities of each employee. There is also a need for more standardized and consistent AML training across the financial sector.</p>
<p>FATF (2012)</p>	<p>AML/CFT Typologies</p>	<p>AML/CFT typologies provide examples of how money laundering and terrorist financing can occur in different sectors and jurisdictions. These typologies are used to help financial institutions identify and mitigate AML/CFT risks.</p>
<p>FATF (2021)</p>	<p>International AML/CFT Standards</p>	<p>The Financial Action Task Force (FATF) is the international standard-setting body for AML/CFT. The FATF has developed a series of recommendations that provide a comprehensive framework for countries to implement AML/CFT measures. These recommendations cover areas such as customer due diligence, suspicious transaction reporting, and international cooperation.</p>

Hill et al. (2020)	Effectiveness of AML/CFT Measures	The effectiveness of AML/CFT measures is difficult to measure, but there is evidence that they have had some success in detecting and preventing money laundering and terrorist financing. However, there are also concerns about the costs of these measures and their potential impact on financial inclusion.
IMF (2019)	AML Effectiveness	The effectiveness of AML measures depends on various factors, including the quality of AML regulations, the resources and expertise of the authorities responsible for enforcing these regulations, and the level of international cooperation. There is also a need for ongoing evaluation and improvement of AML measures to ensure that they remain effective in the face of evolving financial crimes.
KPMG (2020)	AML/CFT Regulations	Many countries have implemented AML/CFT regulations in response to international standards set by the Financial Action Task Force (FATF). These regulations require financial institutions to implement AML/CFT measures to prevent and detect money laundering and terrorist financing.

<p>Latham et al. (2021)</p>	<p>AML Regulations</p>	<p>AML regulations are designed to prevent and detect financial crimes such as money laundering and terrorist financing. These regulations require financial institutions to implement various measures, including customer due diligence, suspicious activity monitoring, and reporting. While these measures can help prevent financial crimes, there are also challenges and costs associated with implementing and complying with AML regulations.</p>
<p>Levi (2017)</p>	<p>AML Risks</p>	<p>AML risks vary depending on the types of financial crimes being committed and the jurisdictions in which they are occurring. Some of the key AML risks include the misuse of offshore companies, the use of cash to evade detection, and the exploitation of weak or corrupt governance structures. Effective AML measures should be tailored to address these specific risks.</p>
<p>Levi and Reuter (2006)</p>	<p>FATF's Impact on AML/CFT</p>	<p>The FATF has had a significant impact on AML/CFT measures globally, encouraging countries to adopt new laws and regulations and promoting international cooperation. However, there are also concerns that the FATF's recommendations may not always be appropriate for all jurisdictions and that its focus on technical compliance may</p>

		not always lead to effective outcomes.
Mark Pieth (2005)	Combating Money Laundering and Terrorist Financing: A Model of Best Practice for the Financial Sector"	This book provides a comprehensive overview of AML/CFT issues and best practices for financial institutions, including risk assessment, customer due diligence, and reporting requirements.
Petter Gottschalk(2018)	Investigating White-Collar Crime: Evaluation of Fraud Examination	Professor of Business Administration at BI Norwegian Business School, Norway. He has written extensively on financial fraud and forensic accounting.
Priti Bhusal(2022)	implementation of anti-money laundering practices in Nepalese banks: an employee and customer perspective	has also worked on the topic and concluded that That is effective implementation of AML can be done through factors that determines control over business sophistication like the technological advancement, IT infrastructure and knowledge.
PWC (2017)	AML/CFT Risk Management	AML/CFT risk management requires a holistic approach that takes into account a range of factors, including the risk posed by customers, products and services, and the geographic regions in which the financial institution operates.
Rainer (2018)	AML/CFT and Financial Innovation	Financial innovation is changing the landscape of AML/CFT, with new technologies such as blockchain and artificial intelligence offering new opportunities to improve AML/CFT

		measures. However, there are also risks associated with these technologies, such as increased complexity and new forms of criminal activity.
Rameshwor Regmi(2011)	Anti Money laundering Regulation and Practices	A dissertation entitled submitted by to Tribhuvan University presented the implementation status by banks on different variables like AML Regulations, AML Awareness, Perception towards AML Regulations and Opinion about AML Practices.
Rojina Thapa (2015)	Evolution of Anti-Money Laundering and Combating the Financing of Terrorism Compliance Culture in Nepa	implementation status by concluding that Membership of relevant international organisations, ratification of the major UN conventions, enactments of instrumental legislation, implementation of national strategy and establishment of major institutional infrastructure indicates Nepal's commitment towards a robust AML/CFT regime
Shaw (2018)	FATF Mutual Evaluations	The FATF conducts mutual evaluations of countries' AML/CFT regimes to assess their compliance with its recommendations. These evaluations provide a valuable source of information for policymakers and financial institutions, but there are also criticisms of their methodology, including concerns about their focus on technical compliance rather than

		effectiveness.
Sullivan (2020)	FATF's Role in AML/CFT	The FATF plays a crucial role in promoting effective AML/CFT measures globally. It assesses countries' compliance with its recommendations and provides guidance on best practices. However, there are criticisms of the FATF's approach, including concerns about its lack of transparency and its potential to impose one-size-fits-all solutions on diverse jurisdictions.
Tsingou (2016)	FATF and Global Governance	The FATF's role in AML/CFT can be understood as part of broader trends in global governance. These trends include the increasing prominence of non-state actors such as standard-setting bodies and the emphasis on risk-based approaches to regulation. However, there are also concerns about the democratic legitimacy of these new forms of governance.
Unger et al. (2019)	AML/CFT in Virtual Currencies	Virtual currencies present unique challenges for AML/CFT efforts due to their anonymity and cross-border nature. However, there are also opportunities to use new technologies to improve AML/CFT measures in this area.
UNODC(2019)	'Multi Country Study on the Smuggling of	critically described the deplorable situation of Nepal in compliance of

	Migrants and Trafficking in Persons from Nepal'	international standards of financial crimes caused by Human Trafficking.
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From the above discussion, we can say that only a few research works have been carried out on as how international standards of AML programs have been diffused; and why countries, particularly developing countries, have implemented and complied with the international AMLS. Likewise, also showing as what factors significantly impact on the implementation of those AML standards in these countries.

## **Chapter-3**

### **Research Methodology**

#### **3.1 Introduction**

It is obvious that there are various research works published on how to assess the implementation status of international standards. So the proposed study agrees that ‘the general level of compliance with international agreements cannot be empirically verified’

The FATF assesses compliance based on the extent to which national laws and other enforceable means are compliant with the FATF Recommendations and whether the institutional AML framework is in place.

Thus, this thesis shall use this approach to evaluate Nepal’s Financial Crime Control Regime and shall exclude the examination of effectiveness of the international standard of Financial Crime Control Programs and its implementation in terms of legal and institutional/regulatory framework by Nepal vis a vis effectiveness measured through outcomes.

#### **3.2 Conceptual Framework**

A conceptual framework is a set of concepts and their relationships that provide a general understanding of a particular topic or phenomenon. The essentials of a conceptual framework include:

6. Clear definitions of key concepts: The framework should clearly define the key concepts that are central to the topic or phenomenon being studied.
7. Relationships among concepts: The framework should describe the relationships among the key concepts, including how they are related to one another and how they interact.
8. Theoretical foundations: The framework should be based on existing theory and research in the field.
9. Operational definitions: The framework should provide operational definitions of the key concepts, describing how they will be measured or operationalized in the study.

10. Assumptions: The framework should also explicitly state any assumptions that are being made about the topic or phenomenon being studied.
11. Scope: The framework should define the scope of the study, specifying what is included and what is excluded.
12. An explanation of how the framework is relevant to the research question or problem being addressed.
13. A visual representation of the conceptual framework.
14. How the research will test or use the framework.

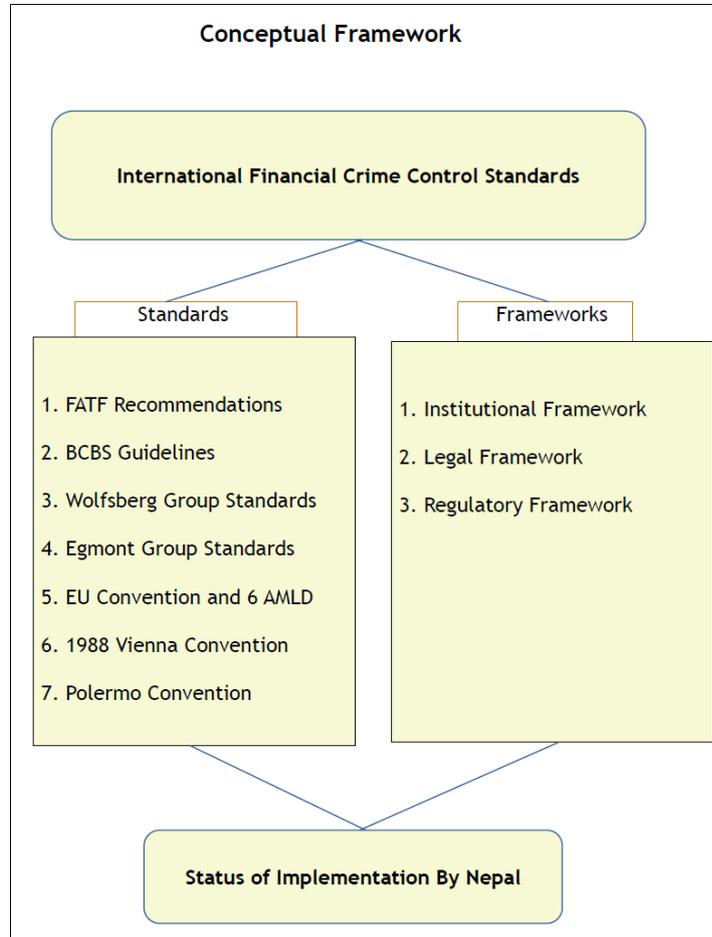
In a conceptual framework, variables are the concepts or factors that are being studied and their relationships. Variables can be independent or dependent, and are often depicted in a visual representation of the conceptual framework.

1. Independent variables: These are the factors that are believed to cause or influence the outcome of the study. They are also referred to as the predictor or explanatory variables.
2. Dependent variables: These are the factors that are being affected or measured as a result of the independent variables. They are also referred to as the outcome or criterion variables.
3. Intervening variables: These are variables that may be affected by the independent variables, but also have an effect on the dependent variables. They help to explain the mechanism by which the independent variables influence the dependent variables.
4. Control variables: These are variables that are held constant or controlled to minimize their influence on the outcome of the study.
5. Extraneous variables: These are variables that may influence the outcome of the study but are not of interest to the researcher.

A conceptual framework should clearly define the variables and their relationships, and how they will be operationalized and measured in the study. The conceptual framework should also explain how the variables are relevant to the research question or problem being addressed.

On the basis of review of literature and variables taken into consideration, conceptual framework work is developed as below-as a reference of the research design

**Figure 3.1: Conceptual Framework**



Global Standard and frameworks developed as Financial Crime Control Programs have been considered as independent variables and status of implementation by Nepal as dependent variable in this research work.

For for the purpose of study following are the variables-

***Independent Variables:***

International Instruments/standards

National Frameworks

Legal Framework

Institutional and Regulatory Frameworks

### ***Dependent Variable***

Outcomes of Implementation of Financial Crime Control Programs

### **3.3 Research Design**

Generally speaking, proposed study shall belong to the category of international and comparative research.

The research shall be of qualitative and exploratory in nature, and the research problem centers on the most sensitive issues Nepal's capability to implement the international conventions and standards in regards to Financial Crime Control Programs.

Accordingly, in order to assess correctly the capability of Nepal to establish a more effective AML-CFT regime or to find resolutions to the existing inadequacies of Nepal's legal framework vis-à-vis the requirements of the international standards, it is planned:-

- To conduct an analytical study of Nepal's laws and regulations relating to Financial Crime Control Programs,
- To conduct a comparative study of international conventions, United Nations resolutions and international standards and criteria relating financial crimes as well as related literature (documents or sources); and
- To conduct a thorough review of the related reports like Country's Mutual Evaluation Report and other related international conventions and laws like USAPATRIOT Act.

Besides some of the books shall also be referred to carry out the study.

### **3.4 Sources of Data**

In carrying out such a task, the methodology will employ a 4-step process as listed below:

1. *Identifying data:* What data to collect will be determined for measuring each of the crucial issues involved;
2. *Finding data:* In addition to existing data, additional relevant data will be collected from all available sources;
3. *Evaluating data:* Data collected will be critically evaluated as to its origin and quality; and

4. *Analyzing data*: Once data has been evaluated in terms of itself, it will be analyzed in terms of the overall research question.

Of the 4-step process, the researcher's first and foremost task shall be to identify data that would form the basis of research work. The data are classified into the following categories:

- (a) Relevant domestic laws, rules and regulations, taken as references
- (b) Relevant international conventions, UN resolutions, multilateral and bilateral treaties, and memorandums of understanding (MOUs);
- (c) Established standards and norms of international standard-setters like FATF, BCBS, Egmont Group, Wolfsberg Group, European Union etc.

The secondary data will be collected through the online databases, annual reports, regulators, professional associations and different publications.

### **3.5 Analytical Tools**

Having collected and collated the needed data, the researcher then shall embark on evaluating each material as to its origin and quality. The sources of data mainly are of two categories; official and private. Where the official source is concerned, the researcher shall rely mostly on sanitized cases as well as classified documents for which, permission shall be sought prior to utilization where required.

Finally the materials selected shall be used as direct relevance to the subject matter.

## **Chapter-4**

### **Financial Crimes and its Components**

With the development of technological advancement and also with the advancement of control measures either by regulator's side or by law enforcement agencies, criminals are also adapting and applying new typologies of crimes. So financial crimes have been widening their borders day by day.

Though there are commonly used terms worldwide to denote Financial Crimes. Most of the countries have now defined types of such crimes in their local laws. Basically crimes involving financial assets or funds for illegal activities is known as financial crimes. Basic crimes in application these days world wide majorly consists of money laundering, fraud, embezzlement, tax evasion, bribery, corruptions etc.

From this types of crimes, as described in previous paragraph, now the sphere of this types of crime is also widening day by day. And as per the severity of the crimes goes on widening, definition is also getting widened. So the concealment of illegal earning, or structuring the transactions to conceal such earning, using of shell companies, offshore accounts etc are also falls under financial crimes.

Discussions on Financial Crimes has been held in detail in 'White Collar Crime and the Financial Crisis: The Need for a Risk-Based Response' by Jennifer Arlen and William Carney, published in the Journal of Corporation Law in 2010.

Likewise, "The Financial Crisis and White-Collar Crime: The Perfect Storm?" by Kathleen F. Brickey, published in the American Criminal Law Review in 2010 also has insight on financial crimes and its components.

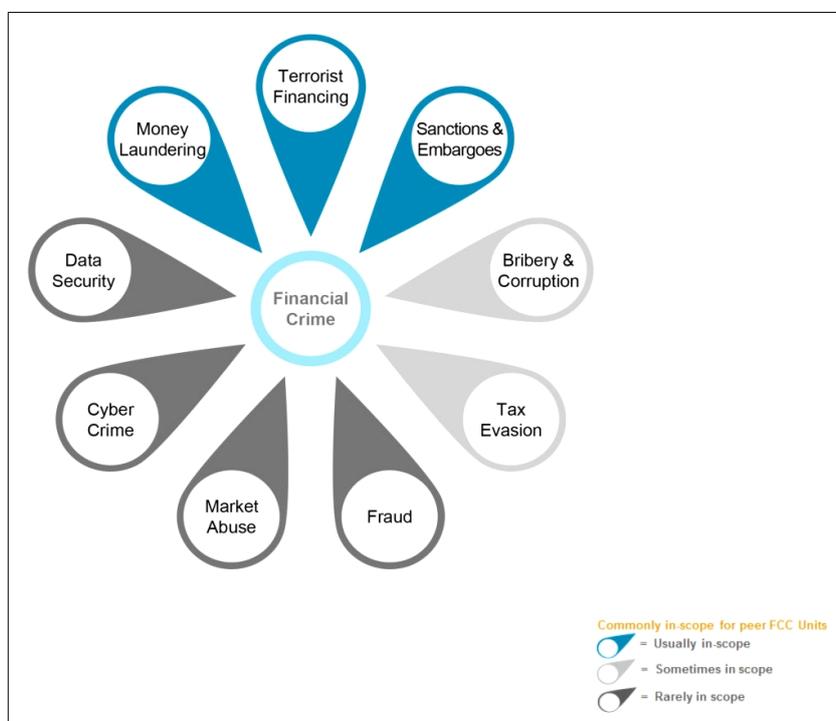
Another well known academic work "The Evolution of Financial Crimes" by H. Kent Baker and John R. Nofsinger, published in the Journal of Financial Crime in 2015 also covers the details components of Financial Crimes.

Another research work "The Anatomy of White-Collar Crime: A Comparative Perspective" by Petter Gottschalk, published in the International Journal of Comparative and Applied Criminal Justice in 2017 has also described different types of financial crimes and its components. These articles cover a range of topics related to financial crimes, including their causes, consequences, and regulatory responses. They also provide insights into specific types of financial crimes and their impact on different countries and industries.

#### 4.1 Cycle and Elements of Financial Crimes

The financial crimes cycle does not differ from any integrated information system that has been identified and dealt with, where the basic elements of inputs, processes, outputs and reverse feeding, but the only difference is that the reverse feeding in financial crimes is characterized by its orientation towards other financial crimes or from the same crime or related to its source. In the final stage, the priority is to obtain cash and then assets and services, and the speed of reinvestment and re-employment to search for profits of the same or other types. (EPA, 2019: 10) and (Picard, 2008: 1-17).

**Figure 4.1: Cycle of Financial Crimes**



source: <https://www.brinknews.com/financial-crime-compliance-current-global-state-of-play/>

While talking about types of financial crimes, it is obvious that the researchers varied in their review of the types of financial crimes on the basis of sample, society and applicable laws. the following is a table summarizing the types of Financial Crimes as identified and defined by different authors.

**Table 4.1: Some basic Financial Crimes as described by some authors**

Year	Author	Types of Financial Crimes
2001	Boorman and Ingves	ML, Fraud in bets, Credit Cards and other instruments, Tax evasion, sale of fictitious assets, embezzlement, tax avoidance, Insurance Policies etc.
2013	Witting	Fraud, Misinformation, Bribery, drugs, ML, tax evasion etc.
2016	Cray	Insurance fraud, ML, Cyber Attacks, Non-virtual trading etc.

*Source: Prepared by researcher*

Basically following components can be classified as financial crimes:

**Money Laundering:** This is the laundering process of proceeds of illegal activities to be like legitimate funds. For this, different typologies are in application by the criminals. Antonio & Yallwe clear that financial development promotes such irregularities illegal, whether from within or outside the country adds that the concepts documented by the International Monetary Fund (IMF) and FATF are a transfer and disguise of activities of criminal origin or the transfer of illegally obtained funds invested by an external part (Antoniono & Yallwe, 2011: 3)And obscuring from this source in the sense of diverting the illegal source of funds, presenting it to the economy and using it for personal purposes and interests (Antoniono & Yallwe, 2011: 3).

Previous studies agree that money laundering crime is the bedrock of all that crimes can be. Extortion, kidnapping, gambling, trafficking in human beings, women and children for sex, servitude and smuggling Alcohol, drugs, tobacco, armed robbery, forgery, list forgery and evasion Tax and misappropriation of public funds all have roots associated with money

laundering Subsystem. Moreover, the new markets have been of an evolutionary nature, such as reliance on computer use, technology, refugees, computer piracy, art trafficking, effects, theft of information, human organ trade, capital market assassinations, toxic nuclear products, and terrorist and drug financing (Antoniono & yallwe, 2011: 3-5) and (Anderson & Anderson, 2015: 521). On the other hand, given this great diversity, it is considered one of the most deadly crimes in the economy, as it undermines the legitimacy of the work of the private sector and reduces the transparency of financial markets, and with it the state loses control of its economic policy and distorts the work of the economy and industry (Antoniono & yallwe, 2011: 3-5).

**Fraud:** This types of crimes involve the use of deception in general. This occurs with the misrepresentation of criminals as the legitimate representative of any fake scheme or fake program that victimizes the common people. In hidtory, Ponzi Scheme, was the one of the biggest fraudulent scheme. The other types of fraud involves banking fraud, insurance fraud etc.

**Embezzlement:** It is commonly applied by the person in authority of financial power. They actually deceive their management or organisation which entrust them with the financial management or assets. They steals the assets or misuse of fund for their personal benefit.

**Insider Trading:** This is also popular types of financial crimes spreading these days. This types of fraud occurs by the insider within the organization based on the information available only for them, not to the public. Bank's inside information that may effect its stock price can be misused by the insider before the situation reveals for public consumption.

**Cybercrime:** Stealing money from bank's accounts or any other sensitive information by the use of internet is another mostly used trend in financial crimes these days. Victims of such crimes are from individual to big banks itself. This types of crimes involves identity theft as well.

**Bribery and Corruption:** basically in third world countries, this types of crimes are common. Transparency International index shows that public corruption in third world

countries are more in comparison to other developed countries. This type of crime involves the use of public offices for private benefit. Bribery and corruption is the deep rooted criminal activities in most of the third world countries.

**Tax Evasion:** This is also another widely applied criminal activities under which business entity or individuals evade tax showing fake accounting documents.

These are the basic forms of financial crimes, however, they can't only be limited in these forms.

In Nepal, financial crimes are defined in 'Assets Laundering and Prevention Act' as predicate offenses. This act defines predicate offenses as any other criminal offenses generating proceeds for laundered. Drug trafficking, extortion, fraud, bribery, embezzlement are some of the main predicate offenses among total 32 offenses (annexed) defined by the act. Besides, National Risk Assessment on AML CFT has also identified Tax Evasion, Hundi and Bribery/corruption as the three major risks in term of financial crimes in Nepal.

**Bets:** It is one of the modern types of financial crime that has become popular in recent years due to its entry into several areas such as leagues and sports clubs as an entrance to double profits.

Some of the illustrative example some of the common components of financial crimes have been illustrated in Table No 4.2 in next page.

**Table 4.2: components of financial crimes**

<b>Component</b>	<b>Definition</b>
Money Laundering	The process of making illegally obtained funds appear legitimate
Fraud	Intentionally deceiving someone for financial gain
Embezzlement	Stealing money or assets from an employer or organization
Bribery and Corruption	Offering or accepting something of value to influence an official or business decision
Insider Trading	Using non-public information to make a profit or avoid a loss in the stock market
Cybercrime	Using technology to commit financial crimes such as hacking or identity theft
Tax Evasion	Illegally avoiding paying taxes owed
Ponzi Schemes	A fraudulent investment scheme where returns are paid to earlier investors with the funds of new investors

It's important to note that financial crimes can take many forms and may involve a combination of these components or others not listed in this table.

## **4.2 Implications of Financial Crimes**

The process of extracting the implications of financial crimes is extremely difficult, since it requires a second reading of all the concepts, intersections, Genesis, types and their economic, political, legal and social dimensions. On the other hand, a rethinking of how the types arose and evolved in order to combat them. Most of those who wrote about the implications discussed in a deeper way their distinction from the rest of crimes, their characteristics, their interconnection with each other and their possible repetition in the future, the most important of implications are:

1. These crimes do not differ from the usual crimes in terms of elements, despite their advanced types, but it is possible to investigate and follow them in all that is abnormal and non-standard or normal or even logical transactions and some financial behaviors and the result profits at the level of companies, sectors and markets. The key challenge here is the large volume of these transactions, particularly following technical developments, and the fact that financial institutions are following the trend of economies of scale applications to reduce costs (Cray, 2016: 1).

2. Despite their high numbers, they were not targeted by proactive actions, but just by reactions. In some countries it has not been targeted to combat it even in its legal dimension, which is a crime in one country that is not in another, although its impact is greater than that of street crime (Tsingou, 2005: 2-25).

3. It is a series of interconnected and ongoing processes by people, institutions and companies that affect governments, people, institutions, companies and the community. The distinctive feature is recycling because of the high profits that stimulate risk, as the output of the criminal process in its reverse feed is input to operations and other crimes of the same or other type, but without borders, penetrating and seizing legal opportunities and gaps (EPA, 2019: 10).

4. As such, a type of crime and a variety of crimes always seek to quickly convert their profits into current criticism, it is the basis for the work and the ultimate goal as outputs from its integrated system to be targeted as inputs to other operations. On the second hand it is seen as a mediator for future high profits illicit (Picard, 2008: 1-17).

5. The proportionality is Reverse between it and the increase in electronic financial services, as today's world is witnessing a revolution in this field and the world has become in the midst of a great storm of economic pressures due to it, which called for the establishment of countermeasures such as electronic measures (Regulation Technology) or what it symbolizes (REGTECH), which is an environment at the same time It gives opportunities and squeezes threats (Deloitte & thupson ruterer, 2017: 3).

6. The risk is one of its characteristics and implications, it weakens efficiency, impedes expansion and growth, increases operational risk (TSINGOU, 2005: 2-25), and also puts companies at risk of reputational and losses estimated at (20) billion dollars annually (Oracle financial service, 2009:1).

7. The concept of opportunities which is usually repeated as one of the motives for financial crimes, runs in two main directions: Exploiting weak procedures, changes in the financial environment, and seizing the failure of risk management systems and the second trend is to drive and crowd out investment opportunities and business as usual for the possibility of losses against high profits in the size of such projects (Picard, 2008: 1-17).

8. There is a marked disparity in international considerations and dealings with financial crimes, and some researchers have even called some forms of financial crimes as lubrication and greasing as an informal concept of corruption, as it facilitates payments faster (Boorman & Ingves, 2001: 5) and (Eisenberg, 2017: 529-530).

9. Another of its most important implications is that the possibility of isolating its species from each other is somewhat complicated, as one is generated from the other .And it leads to the fact that the motives are the same, which is high profits. The process of identifying, measuring and managing the source of risk requires the continuity of follow-up from the sources to the estuaries and branches and all this does not mean reducing them and preventing them completely, but rather in reducing their results as much as possible(Chaikin, 2009: 20).

To sum-up Implications of Financial crimes can have widespread effects. They can have serious implications for individuals, organizations, and society as a whole. Some of the key implications of financial crimes include:

- Financial Losses: Financial crimes can lead to significant financial losses for individuals, companies, and even governments. For instance, a fraudulent investment scheme can lead

to significant financial losses for investors, while embezzlement can result in financial losses for companies.

- **Economic Impact:** Financial crimes can also have a negative impact on the economy, particularly if they involve large amounts of money or affect a significant number of people. For example, the collapse of a major financial institution due to fraud or other financial crimes can have a ripple effect on the entire economy.
- **Legal Consequences:** Financial crimes are illegal, and individuals or organizations found guilty of committing them can face serious legal consequences. This can include fines, imprisonment, and other legal penalties.
- **Reputation Damage:** Financial crimes can also damage an individual's or organization's reputation. For example, a company involved in a financial scandal may lose the trust of its customers and stakeholders, which can have long-term implications for its business.
- **Social Consequences:** Financial crimes can also have broader social consequences, particularly if they involve issues such as corruption or bribery. These crimes can erode public trust in institutions and undermine the rule of law, which can have negative implications for society as a whole.

In this way, we can conclude that financial crimes can have far-reaching implications for individuals, organizations, and society as a whole. They can lead to financial losses, have a negative impact on the economy, result in legal consequences, damage reputations, and have broader social implications.

## **Chapter- 5**

### **Brief History of Evolution of Financial Crime Control Standards**

Financial crime control standards have evolved over time in response to changes in technology, global economic conditions, and the emergence of new forms of criminal activity. Some of the key developments in financial crime control include the introduction of anti-money laundering (AML) laws and regulations, the development of know-your-customer (KYC) guidelines, and the creation of financial intelligence units (FIUs) to detect and investigate suspicious activity.

Over time, financial crime control standards have become more comprehensive and sophisticated, reflecting the changing nature of financial crime and emerging threats. The focus has shifted from a rules-based approach to a risk-based approach, with a greater emphasis on effective implementation and enforcement. Financial institutions are expected to implement robust AML/CFT programs that comply with these standards, and regulatory

In the preliminary stage or even before the recent past, the main focus of financial institutions used to comply with regulatory guidance, prevailing law of the land, and supervisor's instructions. But now the dimension of financial institutions has been widened and they have to focus on different types of Risk Management compliance of best practices around the world. This type of dimensional enhancement is due to the enhanced requirement of regulators on one hand and in another hand driven by the development of different types of financial crimes including fraud, terrorist financing, money laundering, etc.

Likewise, improved technology has not only facilitated banking but also elevated the level of financial risks for any financial organization. This has also triggered to the adoption of more stringent mechanisms for the financial institution to adopt to fight against them.

So the evolution of financial crime compliance programs can be said as driven by changing technological and fraudulent typologies by criminals. Nevertheless, we can divide the

timeline of the evolution of financial crime compliance programs around the world as follows:

***Infantry Stage (1970-1980):***

In this infantry stage of the financial crime control program, Bank Secrecy Act was promulgated in 1970 in the USA. This was the first act requiring financial institutions to report Suspicious Transactions and maintain customer-related records so that the same could be referred to at the time of need in the future.

***Preliminary Stage (1980-1990):***

1990 is the most important year in terms of financial crime compliance programs worldwide. A multinational inter-governmental body to set the standard for the Financial Crime compliance program, Financial Action Task Force (FATF) was established in 1990. In today's financial world, 40+9 Recommendations of FATF are the basis of the implementation and evaluation of Financial Crime Compliance Programs. EU also issued its first AML Directives (1AMLD) in 1990.

***Early Development Stage (2000-2010):***

Especially after the terrorist attack on New York Twin Tower, the USA became more aggressive in adopting different measures against financial crimes including terrorist financing. In response to the terrorist attack of 9/11, it then promulgated USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act in October 2001, soon after a month after the terrorist attack. This has also remained a vital legal document in today's financial crime compliance programs world wide.

***Development Stage (2010-2020):***

European Union is also actively involved in setting the standard to fight against financial crimes and terrorist financing. In this reference, the EU promulgated different AMLD (AML Directives) and especially in 2010, it issued AMLD4 that specifies the requirement of Enhanced Due Diligence for people possessing Higher Risk for financial institutions. This also focused on Risk Based Approach in financial crime compliance programs.

### ***Modern Stage (2020 Onward):***

In May 2018, 5AMLD of the European Union was adopted and implemented in national laws by its countries by 10 January 2020 and strengthened the Risk-Based Approach even deeply defining the Risk Scores of the Countries, establishing of robust CDD process, and filing STRs. After this 6AMLD was promulgated and the deadline for its implementation was December 3, 2020.

Details of the requirements as specified by these instruments have been illustrated while discussing the international Standards of Financial Crime Compliance Programs in respective chapters.

### ***History of the Basel Committee***

Banking supervisors are generally not responsible for the criminal prosecution of money laundering in their countries. However, they have an important role in ensuring that banks have procedures in place, including strict AML policies, to avoid involvement with drug traders and other criminals, as well as in the general promotion of high ethical and professional standards in the financial sector.

The Bank of Credit and Commerce International (BCCI) scandal in the early 1990s, the indictments and guilty pleas of former officials of the Atlanta branch of the Italian Banca Nazionale del Lavoro in 1992 and other international banking scandals prompted banking regulators in the richest nations to agree on basic rules for the supervision and operation of multinational banks.

In 1988, the Basel Committee issued a Statement of Principles called *Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering* in recognition of the vulnerability of the financial sector to misuse by criminals. This was a step toward preventing the use of the banking sector for money laundering. The statement set out principles was developed in reference to different components of financial crime control programs. Basically these principles are focused with respect to-

- customer identification;
- compliance with laws;
- conformity with high ethical standards and local laws and regulations;
- full cooperation with national law enforcement to the extent permitted and without breaching customer confidentiality;
- staff training; and
- record-keeping and audits.

These principles preceded AML legislation regarding the disclosure of client information to enforcement agencies and protection from civil suits brought by clients for breach of client confidentiality.

Therefore, these principles stressed cooperation within the confines of confidentiality.

In 1997, the Basel Committee issued its *Core Principles for Effective Banking Supervision*, a basic reference for authorities worldwide. It stated that, “Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict ‘know-your-customer’ rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.” It also urged nations to adopt FATF’s 40 Recommendations. The Core Principles were prepared with the assistance of 15 non-G-10 nations, including Brazil, Chile, Hong Kong, Mexico, Russia, Singapore and Thailand.

To facilitate implementation and assessment, the committee developed and published the *Core Principles Methodology* in October 1999. Since 1997, however, significant changes have occurred in banking regulation, much experience has been gained with implementing the Core Principles in individual countries, and new regulatory insights in regulation have become apparent. These developments made it necessary to update the Core Principles and the associated assessment methodology.

Based on the findings of an internal survey of cross-border banking conducted in 1999, the committee identified deficiencies in a large number of countries’ know-your-customer (KYC)

policies. “KYC policies in some countries have significant gaps and in others they are nonexistent. Even among countries with well-developed financial markets, the extent of KYC robustness varies,” observed the committee in an October 2001 paper called *Customer Due Diligence for Banks*. The paper followed a consultation document issued in January 2001.

The committee’s interest in KYC centers on the use of due diligence requirements to mitigate the dangers of bad customers. Without due diligence, banks can be subject to reputational, operational, legal and concentration risks, which can result in significant financial cost. Sound KYC policies and procedures are critical to protecting the safety and soundness of banks, as well as the integrity of banking systems. An example is the BCCI scandal that began in 1988 when nine BCCI officials were arrested in Florida for allegedly laundering drug money. It escalated and in 1991, BCCI was shut down by regulators, resulting in more than 70,000 creditors with admitted or in-progress claims that were valued at \$9 billion.

The committee’s 2001 paper reinforced the principles established in earlier committee papers by providing more precise guidance on KYC standards and their implementation. In developing the guidance, the working group that wrote the paper drew on practices in member countries and took into account evolving supervisory developments. The essential elements presented in this paper are guidance as to minimum standards for worldwide implementation for all banks. However, these standards may need to be supplemented or strengthened with further measures tailored to the risks in particular institutions and in the banking system of individual countries. For example, enhanced due diligence is required for higher risk accounts and for banks that seek high net-worth customers.

A number of specific sections in the paper offer recommendations for tougher standards of due diligence for higher risk areas within a bank. The paper addresses

1. importance of KYC standards for supervisors and banks;
2. essential elements of KYC standards;
3. the role of supervisors; and
4. implementation of KYC standards in a cross-border context.

Evolution of Financial Crime Compliance Programs has been illustrated in Table No. 5.1

**Table No. 5.1. Major milestones on Financial Crime Control Programs**

Time Period	Key Events and Standards
<b>1989-1999</b>	
1989	The Financial Action Task Force (FATF) is established by the G-7 Summit in Paris to develop policies to combat money laundering.
1990	FATF releases its first report titled "Money Laundering".
1991	FATF expands its mandate to include the financing of terrorism.
1996	The United Nations General Assembly adopts the Vienna Convention to combat drug trafficking, which includes provisions on money laundering.
1998	The Basel Committee on Banking Supervision issues "Customer Due Diligence for Banks" paper, which sets out the basic principles of customer identification and verification.
1999	FATF releases the "Revised Forty Recommendations", which include comprehensive and detailed anti-money laundering and counter-terrorist financing measures.
<b>2000-2009</b>	
2000	FATF expands its mandate to include non-cooperative countries and territories (NCCTs).
2001	The 9/11 terrorist attacks in the US lead to the creation of the USA PATRIOT Act, which enhances law enforcement's ability to investigate and prevent money laundering and terrorist financing.
2003	FATF releases the "Special Recommendations on Terrorist Financing", which address the specific issues related to terrorist financing.
2004	The Third EU Money Laundering Directive is adopted,

Time Period	Key Events and Standards
	strengthening anti-money laundering and counter-terrorist financing measures in the EU.
2005	The Wolfsberg Group, a group of international banks, publishes "Anti-Money Laundering Principles for Correspondent Banking".
2006	FATF updates the Forty Recommendations and the Nine Special Recommendations on Terrorist Financing.
<b>2010-2019</b>	
2010	FATF releases the "Revised Forty Recommendations" and the "Revised Nine Special Recommendations on Terrorist Financing", which strengthen anti-money laundering and counter-terrorist financing measures.
2012	The Fourth EU Money Laundering Directive is adopted, expanding the scope of anti-money laundering and counter-terrorist financing measures to include virtual currencies and prepaid cards.
2013	FATF releases guidance on the risk-based approach to anti-money laundering and counter-terrorist financing.
2014	The Financial Stability Board (FSB) publishes its "Guidance on Supervisory Interaction with Financial Institutions on Risk Culture".
2016	The Fifth EU Money Laundering Directive is adopted, further strengthening anti-money laundering and counter-terrorist financing measures.
2019	FATF releases guidance on virtual assets and virtual asset service providers.
<b>2020 on-wards</b>	
2020	FATF releases guidance on the implementation of its standards in the context of the COVID-19 pandemic.

Time Period	Key Events and Standards
2020	The European Commission proposes a new EU Anti-Money Laundering Action Plan, which includes the creation of an EU-wide authority to combat money laundering.
2021	The United States Congress passes the Anti-Money Laundering Act of 2020, which updates and strengthens US anti-money laundering and counter-terrorist financing laws.
2021	FATF updates its guidance on virtual assets and virtual asset service providers
2022	FATF updates its Recommendations

## Chapter-6

### International Standards of Financial Crime Control Programs

#### 6.1 Introduction

International Standard of Financial Crime Control Programs are set by many international organizations. However, while talking about international standard of financial crime control programs, primarily FATF comes in mind. It is the primary setter of International standard in relation to develop financial crime control Programs. So for the purpose of this study, basically following Standards set by different entities have been taken as the basis of the study.

- FATF 40+9 Recommendations
- Vienna Convention
- Palermo Convention
- European Convention and 6 AMLD
- AML CFT Guidelines of Basel Committee of Banking Supervision
- Egmont Group's Principles
- Wolfsberg Group's Principles

here is a table summarizing the major international standard setters in the field of Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT)

**Table No. 6.1: List of Major International Standard Setters**

Standard Setter	Description	Important Documents
Financial Action Task Force (FATF)	An intergovernmental organization that sets global standards for AML/CFT policies and best practices. Intergovernmental body with 34 member countries and two international organizations, Sets money laundering and terrorist financing standards	40 Recommendations on Money Laundering and Terrorist Financing (Last updated February 2012)
Egmont Group	A global network of financial intelligence units that promotes the exchange of financial intelligence and cooperation in the fight against financial crime.	Statement of Purpose (last updated 2004) Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases (2001) Best Practices for the Exchange of Information Between Financial Intelligence Units (2004)
Basel Committee on Banking Supervision	A forum of central banks and bank supervisors that develops global prudential standards for banking regulation, including AML/CFT requirements for banks. Established by the central bank governors of the G-10 Promotes sound supervisory	Customer Due Diligence for Banks Paper (2001), Sharing of Financial Records Between Jurisdictions in Connection With the Fight Against Terrorist Financing (2002), General Guide to Account Opening and Customer Identification

Standard Setter	Description	Important Documents
	standards worldwide	(2003, updated 2016), Consolidated KYC Risk Management Paper (2004, updated 2016)
Wolfsberg Group	An association of global banks that sets high standards for AML/CFT compliance in the financial sector. Association of 13 global banks Aims to develop standards on money laundering controls for banks	Wolfsberg Anti-Money Laundering Principles for Private Banking (last updated 2002) ,The Suppression of the Financing of Terrorism Guidelines (2002), Anti-Money Laundering Principles for Correspondent Banking (2002)
European Union	A politico-economic union of 28 member states that are located primarily in Europe Issues AML/CFT directives regarding legislation that member states must issue to prevent their domestic financial systems being used for money laundering and terrorist financing	First EU Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering (1991) Second Directive (2001) Third Directive (2005) Fourth Directive (2015)
World Bank and International Monetary Fund (IMF)	An international financial institution that promotes global monetary cooperation and financial stability, including through the development of AML/CFT policies and best practices. These organizations	Reference Guide to Anti-MoneyLaundering and Combating the Financing of Terrorism: A Manual for Countries to Establish and Improve Their Institutional Framework 2002 (revised

Standard Setter	Description	Important Documents
	work together and in conjunction with FATF to encourage countries to have adequate anti-money laundering laws and to review anti-money laundering laws and procedures of FATF member countries.	2007).

These international standard setters work together to develop and promote global AML/CFT standards and best practices, with the aim of combating financial crime and maintaining the integrity of the global financial system.

Besides these, International Monetary Fund (IMF) and World Bank also sets some of the standard of financial crime compliance programs.

## 6.2 FATF and its Recommendations

This is the primary institution that sets the International standard of financial crime control programs. FATF is an inter governmental body with the membership of 45 countries world wide.

There are as many as 6 FATF Styles Regional Bodies (FSRB) that also plays role as FATF in different regions where FATF has no member countries directly.

**Table No. 6.2- List of FATF Style Regional Bodies**

S.No.	Regional Bodies
1	Asia/Pacific Group on Money Laundering (APG)
2	Caribbean Financial Action Task Force (CFATF)
3	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL, formerly PC-R-EV)

4	Eurasian Group (EAG)
5	Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
6	Financial Action Task Force of Latin America (GAFILAT) (formerly known as Financial Action Task Force on Money Laundering in South America (GAFISUD))
7	Intergovernmental Action Group against Money Laundering in West Africa (GIABA)
8	Middle East and North Africa Financial Action Task Force (MENAFATF)
9	Task Force on Money Laundering in Central Africa (GABAC)

To fight with financial crimes of all types, FATF has developed 40 points recommendations that are required by its member countries to combat financial crimes.

Based on the recommendations, FATF evaluates the countries mutually based on the implementation effectiveness of its recommendations. On the basis of evaluation and the effectiveness of the implementation of its recommendations, countries are categorized as ‘grey list or black list.

FATF on money laundering and Financing of terrorist activities, It creates international standards to fight against, and based on these standards, every country should develop legal structures, regulations, strategies and institutional mechanisms to identify and control financial support in money laundering and terrorist activities and implement them effectively. Based on the effectiveness of the implementation of these standards, the task force evaluates any country

### **6.2.1 Development of 40 Point Recommendations: Brief Historical Background**

The Financial Action Task Force first presented 40-point recommendations on asset laundering in 1990 After that, those suggestions were revised in 1996, 2003 and 2012 while making them relevant. Similarly, in the eight points presented by him in 2001 as a special suggestion, later in 2004, he added another special suggestion point to 9 points. He has updated the 40-point recommendations of 2012 only about 6 months ago and the revised 40-

point recommendations in March 2022 and the 9-point special recommendations presented in 2001 and 2004 are the latest recommendations of FATF.

Recently revised FATF recommendations are divided into 7 different headings Under the first title named 'Money Laundering Policy and Coordination', two suggestions regarding money laundering risk assessment, risk-based policy development and cooperation and coordination between countries have been presented.

According to the first suggestion, it is stated that any country should provide appropriate mechanisms and authorities for the purpose of identifying, evaluating and understanding the risks related to financial enrichment that may occur in the money laundering and terrorist activities existing in their country, and for the purpose of coordinating and working to control them in a proper manner. It is also mentioned in the suggestion that a risk-based method should be developed in order to adopt high and normal level control measures accordingly to the areas of high and low risk identified on the basis of such risk assessment. In addition, this suggestion also identifies the risks related to financial transactions that may occur due to non-compliance with targeted economic sanctions. It is mentioned that appropriate mechanisms and authorities should be arranged for their control after evaluation and understanding It has also been suggested that control measures should be adopted on the basis of risk

This suggestion states that financial institutions and other designated non-financial institutions of any country should also identify, assess and understand the risks related to financial support that may occur in money laundering and terrorist activities and develop mechanisms to control them based on risk.

According to the second suggestion of the first title, in addition to formulating a policy related to money laundering in any country, for the effective implementation of the said policy, there should be mutual cooperation between policy makers, financial intelligence units, law enforcement agencies such as the police, supervisory agencies and other authorized agencies. Also, a mechanism should be developed to maintain mutual coordination for risk control For this, it is expected that proper coordination will be maintained between those agencies, from the exchange of necessary information to the formulation of necessary

policies and their implementation, and effective activity in the control of financial support that may be involved in money laundering and terrorist activities.

There are two recommendations of FATF under the second title named 'asset laundering and confiscation'. According to the first suggestion under this title, according to the Vienna Convention and the Palermo Convention, any country should define money laundering as a crime. Also, with the intent to widen the scope of the offence, the crime of money laundering should also be included in the context of any type of serious crime.

In the second suggestion of this title, the law enforcement and other official bodies in any country should have a legal arrangement so that they can retain or confiscate property. Assets to be confiscated in this way include assets acquired by any person or organization through money laundering, criminal assets used or intended to be used for that purpose, assets used or intended to be used in terrorist activities or by terrorist organizations or allocated for such purposes. belong to

In addition, such bodies should develop legal measures to identify, evaluate, and control activities such as dealing, transferring, or destroying such assets, thereby providing legal certainty to the right to withhold or confiscate, and any type of investigation. Provisions to adopt measures are also included in the suggestion In addition, the suggestion also directs that the accused person/organization must gather evidence about the legal source of such confiscation or detention, ensuring the right to confiscate and detain such items even if the crime is not proven.

Under the third title of the recommendations, four recommendations related to the financing of terrorist activities and investment in the expansion of weapons of mass destruction are included.

According to the first and overall fifth recommendations under this title, any country should legally define the financing of terrorist activities as a crime. In addition, even if there is no direct involvement in any specific terrorist activities, this point suggests that the financial support of terrorist organizations and related persons should also be considered as a crime.

Another recommendation under this title is the United Nations Security Council. According to the 'Proposal on Controlling and Suppressing the Financial Support of Terrorist Activities', it has been mentioned that the financial restrictive measures targeting any country and individual should be fully implemented as soon as possible. Under this arrangement, the assets of the related persons and organizations designated to be withheld or not available to be able to enjoy such assets are included.

Similarly, the third and overall seventh suggestions under this title have to ensure the effective implementation of targeted financial sanctions in accordance with the resolution of the United Nations Federal Security Council regarding the financial enrichment, suppression and obstruction of such enrichment that may be used in the expansion of weapons of mass destruction. The last and eighth suggestion of this chapter covers the issue of having reasonable legal and structural arrangements for controlling financial support that may be used in terrorist activities through non-profit organizations so that such organizations cannot be misused by terrorist organizations in various ways.

Under the recommendations, the fourth title includes various preventive measures that countries should adopt as a measure to prevent money laundering and terrorist financing. An attempt has been made to make preventive measures more effective by including different sub-headings under this title. Such subheadings include customer identification and continuous monitoring of customer transactions and financial activities, record keeping, additional measures for monitoring specific types of customers and activities, dependence, control and financial groups, Subheadings such as reports on suspicious transactions and activities and targeted non-financial businesses and professions have been kept. By dividing these into various sub-headings, suggestions numbered 9 to 23 are included under this fourth heading. These suggestions seem to be relatively more related to banks and financial institutions than to other sectors. And since it is the most discussed in Nepal and the regulation is also tight and effective, the effectiveness of the implementation of these suggestions will have a positive effect on the overall results of the mutual evaluation to a large extent.

To recall, the fourth title of FATF's recommendations includes various preventive measures that countries should adopt as a measure to prevent money laundering and terrorist financing. These suggestions seem to be relatively more related to banks and financial institutions and other indicator institutions than other sectors. And due to the fact that Nepal is the most discussed and the regulation is also agile and effective, due to the effectiveness of the implementation of these suggestions, it can be assumed that it will have a positive effect on the overall results of the mutual evaluation to a large extent. The law related to asset laundering has also addressed the fact that the implementation of these recommendations should not be hindered due to the legal arrangements related to privacy that may be in any country contained in the ninth recommendation.

In the sixth section of the recommendations of FATF, the authority of the designated authorities and other institutional arrangements for the purpose of implementing these overall recommendations and their supervision are kept. The status of implementation of these provisions and other suggestions will be discussed in the next article as the last article of this series.

Under the sixth section, a total of 10 suggestions from 26 to 35 of FATF have been mentioned. The 26th recommendation titled 'Regulation and Supervision of Financial Institutions' states that financial institutions of any country should be subject to adequate regulation and supervision and it should ensure that all these recommendations are implemented. In addition, it is mentioned in this suggestion that no country should allow the establishment of 'shell' banks that do not physically exist under regulation.

The 27th suggestion stipulates that if financial institutions do not effectively operate programs related to money laundering and terrorist activities, the right to pay fines should be vested in supervisory and regulatory institutions.

The 28th recommendation under this section states that in the case of non-financial professions and businesses such as casinos, notaries, chartered accountants, gold and silver businesses, as in the case of financial institutions, regulatory and supervisory arrangements, as well as effective monitoring systems, should also be in place for those entities to prevent

money laundering and terrorist activities. If the remedial programs are not implemented effectively, the relevant regulator has suggested that there should be an effective, proportionate and dissuasive punishment system.

According to the 29th point of the suggestion, a financial information unit should be established to receive reports on suspicious transactions and other related additional information from the indicator institutions, disseminate the results based on the analysis and implement the law as needed, and establish access to the financial and administrative bodies in a timely manner.

It can be felt that there is a place to raise questions about the implementation of the suggestion number 30 in the context of the fact that other officials who implement the law and investigate should be assigned more responsibilities to conduct investigations related to money laundering and also seek to ensure that investigations are carried out in a coordinated manner with official persons of other countries. Suggestion No. 31, which is a supplementary suggestion, mentions the authority to be given to the relevant authorities to carry out the above responsibilities. Its implementation may also not be satisfactory to the assessor.

In the last and seventh section of FATF recommendations, provisions related to international cooperation are included Under this, in the 36th recommendation, countries are encouraged to ratify and implement international conventions such as Vienna Convention, Palermo Convention.

The 37th on mutual legal assistance and the 38th recommendation on control and seizure under this is FATF Similarly, for international mutual cooperation, the 39th suggestion includes the provision of legal arrangements to prevent the extradition of those involved in financial crimes related to money laundering and terrorist activities.

As the last suggestion of the 40-point suggestion, any country should develop a reasonable legal and organizational system to quickly and effectively receive and provide international assistance to its officials, and should be given the authority to enter into bilateral and multilateral agreements with various countries as needed.

**Table 6.3: 40 Points Recommendations (last updated March 2022)**

Number	Old Number	Recommendation Topic
A – AML/CFT POLICIES AND COORDINATION		
1	-	Assessing risks & applying a risk-based approach
2	R.31	National cooperation and coordination
B – MONEY LAUNDERING AND CONFISCATION		
3	R.1 & R.2	Money laundering offence
4	R.3	Confiscation and provisional measures
C – TERRORIST FINANCING AND FINANCING OF PROLIFERATION		
5	SRII	Terrorist financing offence
6	SRIII	Targeted financial sanctions related to terrorism and terrorist financing
7		Targeted financial sanctions related to proliferation
8	SRVIII	Non-profit organisations
D – PREVENTIVE MEASURES		
9	R.4	Financial institution secrecy laws
Customer due diligence and record keeping		
10	R.5	Customer due diligence
11	R.10	Record keeping
Additional measures for specific customers and activities		
12	R.6	Politically exposed persons
13	R.7	Correspondent banking
14	SRVI	Money or value transfer services

15	R.8	New technologies
16	SRVII	Wire transfers
Reliance, Controls and Financial Groups		
17	R.9	Reliance on third parties
18	R.15 & R.22	Internal controls and foreign branches and subsidiaries
19	R.21	Higher-risk countries
Reporting of suspicious transactions		
20	R.13 & SRIV	Reporting of suspicious transactions
21	R.14	Tipping-off and confidentiality
Designated non-financial Businesses and Professions (DNFBPs)		
22	R.12	DNFBPs: Customer due diligence
23	R.16	DNFBPs: Other measures
E – TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND ARRANGEMENTS		
24	R.33	Transparency and beneficial ownership of legal persons
25	R.34	Transparency and beneficial ownership of legal arrangements
F – POWERS AND RESPONSIBILITIES OF COMPETENT AUTHORITIES AND OTHER INSTITUTIONAL MEASURES		
Regulation and Supervision		
26	R.23	Regulation and supervision of financial institutions
27	R.29	Powers of supervisors
28	R.24	Regulation and supervision of DNFBPs
Operational and Law Enforcement		
29	R.26	Financial intelligence units

30	R.27	Responsibilities of law enforcement and investigative authorities
31	R.28	Powers of law enforcement and investigative authorities
32	SRIX	Cash couriers
General Requirements		
33	R.32	Statistics
34	R.25	Guidance and feedback
Sanctions		
35	R.17	Sanctions
G – INTERNATIONAL COOPERATION		
36	R.35 & SRI	International instruments
37	R.36 & SRV	Mutual legal assistance
38	R.38	Mutual legal assistance: freezing and confiscation
39	R.39	Extradition
40	R.40	Other forms of international cooperation

### 6.3 Provisions in Vienna Convention 1988

It was the first major initiative in the prevention of money laundering held in December 1988. The Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1988, is a United Nations treaty that provides a legal framework to address the illicit drug trade.

The Convention includes provisions aimed at combating financial crimes related to the illicit drug trade. These provisions include:

1. Obligations to criminalize money laundering: The Convention requires states to criminalize money laundering, defined as the conversion or transfer of property

derived from drug trafficking with the intention of concealing or disguising its illicit origin.

2. Cooperation and information exchange: The Convention requires states to cooperate with one another in their efforts to combat drug trafficking and related financial crimes. This includes the exchange of information and intelligence and the provision of mutual legal assistance.
3. Confiscation and forfeiture: The Convention requires states to take measures to confiscate and forfeit the proceeds and instrumentalities of drug trafficking and related financial crimes.
4. Bank secrecy laws: The Convention requires states to take measures to ensure that bank secrecy laws do not obstruct their efforts to combat drug trafficking and related financial crimes.

The provisions of the Vienna Convention are designed to support international cooperation in the fight against drug trafficking and related financial crimes. By establishing a legal framework for the exchange of information and cooperation among states, the Convention helps to ensure that countries can work together effectively to detect and disrupt illicit drug networks and the financial crimes that support them.

#### **6.4 AML CFT Related Palermo Convention**

The Palermo Convention, also known as the United Nations Convention against Transnational Organized Crime, is a legally binding international treaty that was adopted by the United Nations General Assembly in 2000. One of the objectives of the Palermo Convention is to combat money laundering and the financing of terrorism (AML/CFT), as well as other forms of transnational organized crime, such as drug trafficking and human trafficking.

The Palermo Convention requires its parties to take measures to prevent and combat money laundering, including the criminalization of money laundering and the establishment of

financial intelligence units to gather, analyze, and disseminate information related to suspicious financial transactions. The Convention also requires its parties to cooperate with one another in investigating and prosecuting money laundering cases and to freeze or confiscate the proceeds of crime.

In order to ensure the effective implementation of the Palermo Convention, the United Nations Office on Drugs and Crime (UNODC) has established the Conference of the Parties to the Palermo Convention, which is responsible for monitoring and promoting the implementation of the Convention by its parties. The Conference of the Parties also provides technical assistance to states that are in need of support in establishing effective AML/CFT systems.

It is important to note that the Palermo Convention is not the only international legal instrument addressing AML/CFT. Other relevant instruments include the Financial Action Task Force (FATF) Recommendations, the EU Anti-Money Laundering Directive, and the United Nations Security Council Resolutions.

In terms of AML/CFT, the Palermo Convention requires signatory states to establish criminal offenses related to money laundering and terrorism financing, as well as the participation in an organized criminal group. It also requires signatory states to adopt measures to freeze, seize, and confiscate proceeds of crime, and to ensure that financial institutions have effective measures in place to prevent and detect money laundering and terrorism financing.

The Palermo Convention has been ratified by over 180 countries and is considered one of the most important international instruments for combating transnational organized crime, including money laundering and terrorism financing. It has been widely adopted and implemented in many jurisdictions around the world.

**Table No. 6.4: summarizing the Palermo Convention and its declaration**

<b>Palermo Convention</b>	<b>Palermo Declaration</b>
A global treaty aimed at preventing and combating transnational organized crime, including money laundering and terrorism financing.	A political declaration adopted by the United Nations General Assembly in conjunction with the Palermo Convention, reaffirming the commitment of member states to combating transnational organized crime.
Adopted by the United Nations General Assembly in 2000 and entered into force in 2003.	Adopted by the United Nations General Assembly in 2000, along with the Palermo Convention.
Provides a framework for international cooperation in the fight against organized crime, including provisions on mutual legal assistance, extradition, and the recovery and repatriation of proceeds of crime.	Reaffirms the need for member states to cooperate with each other to prevent and combat transnational organized crime, including money laundering and terrorism financing.
Requires signatory states to establish criminal offenses related to money laundering and terrorism financing, as well as the participation in an organized criminal group.	Calls on member states to strengthen their legal frameworks to prevent and combat transnational organized crime, including by implementing the provisions of the Palermo Convention.
Requires signatory states to adopt measures to freeze, seize, and confiscate proceeds of crime, and to ensure that financial institutions have effective measures in place to prevent and detect money laundering and terrorism financing.	Recognizes the importance of international cooperation in the fight against transnational organized crime, including by sharing information and best practices.
Ratified by over 180 countries and is considered one of the most important international instruments for combating transnational organized crime, including money laundering and terrorism financing.	Is not legally binding, but provides a framework for member states to strengthen their efforts to combat transnational organized crime.

The Palermo Convention and its declaration represent a major step forward in the fight against transnational organized crime, including money laundering and terrorism financing. The Convention provides a framework for international cooperation and sets out clear requirements for signatory states to establish criminal offenses related to AML/CFT, adopt

measures to freeze, seize, and confiscate proceeds of crime, and ensure that financial institutions have effective AML/CFT measures in place. The declaration reinforces the commitment of member states to combating transnational organized crime and emphasizes the importance of international cooperation and information sharing.

The United Nations 2000 Convention Against Transnational Organized Crime, also known as the Palermo Convention, defines money laundering as

- the conversion or transfer of property, knowing it is derived from a criminal offense, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of his or her actions;
- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property knowing that it is derived from a criminal offense; and
- the acquisition, possession or use of property, knowing at the time of its receipt that it was derived from a criminal offense or from participation in a crime.

## **6.5 EU Conventions and 6AMLD**

An EU directive is a legislative act that establishes a common goal for all EU member states to achieve. Each country is given the flexibility to devise its own laws and frameworks on how to meet the directive's goals.

Like FATF's 40+9 Recommendations, the European Union's AML directives are legally non-binding, but failure to adhere to them exposes member states to possible fines and other punitive measures. While the 10 January deadline has come and gone, most EU countries still haven't met its requirements due to the complex nature of AMLD5 and the regulatory challenges it presents.

The unique nature of the EU as a community of states makes it fundamentally different from other international organizations. The EU can adopt measures that have the force of law even without the approval of the national parliaments of the various member states. Plus, European law prevails over national law in the case of directives. In this respect, EU Directives have far more weight than the voluntary standards issued by groups such as the Basel Committee or FATF. Of course, the Directive applies only to EU member states and not to other countries.

### **6.5.1 European Union Directives on Money Laundering**

#### ***First directive***

The First European Union Directive, *Money Laundering: Preventing Use of the Financial System* (Directive 91/308/EEC), was adopted by the Council of the European Communities in June 1991. Like all directives adopted by the Council, it required member states to achieve (by amending national law, if necessary) the specified results. This First Directive required the members to enact legislation to prevent their domestic financial systems from being used for money laundering.

The First Directive of 1991 confined predicate offenses of money laundering to drug trafficking as defined in the 1988 Vienna Convention. However, member states were encouraged to extend the predicate offenses to other crimes.

#### ***Second directive***

In December 2001, the EU agreed on a Second Directive (Directive 2001/97/EEC) that amended the first one to require stricter money laundering controls across the continent. Member states agreed to implement it as national law by June 15, 2003; however, only Denmark, Germany, the Netherlands and Finland met the deadline, with Ireland and Spain complying shortly afterwards. Other member states eventually followed.

The following were the key features of the Second Directive.

- It extended the scope of the First Directive beyond drug-related crimes. The definition of criminal activity was expanded to cover not just drug trafficking, but all

serious crimes, including corruption and fraud against the financial interests of the European community.

- It explicitly brought bureaux de change and money remittance offices under AML coverage.
- It clarified that knowledge of criminal conduct can be inferred from objective factual circumstances.
- It widened the businesses and professions that are subject to the obligations of the Directive.

Certain persons, including lawyers when they participate in the movement of money for clients, were required to report to authorities any fact that might indicate money laundering. Covered groups included auditors, external accountants, tax advisers, real estate agents, notaries and legal professionals.

The Second Directive was a tremendous step forward because its applicability included many of the important financial centers of the world. It went well beyond similar standards issued by other organizations, such as the U.N. and even FATF.

### ***Third directive***

A Third EU Directive, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Directive 2005/60/EC), based on elements of FATF's revised 40 Recommendations, was adopted in 2005.

The Third Directive was to be implemented by member states by December 15, 2007. Although several countries did not meet this original deadline, the Directive was eventually implemented by all members.

In line with FATF's anti-money laundering recommendations, the Third EU Directive extended the scope of the First and Second Directives by

- defining money laundering and terrorist financing as separate crimes. The directive's measures were expanded to cover not only the manipulation of money derived from crime but also the collection of money or property for terrorist purposes;
- extending customer identification and suspicious activity reporting obligations to trusts and company service providers, life insurance intermediaries, and dealers selling goods for cash payments of more than 15,000 euros;
- detailing a risk-based approach to customer due diligence. The extent of due diligence that is performed on customers, whether simplified or enhanced, should be dependent on the risk of money laundering or terrorist financing they pose;
- protecting employees who report suspicions of money laundering or terrorist financing. This provision instructs member states to "do whatever is in their power to prevent employees from being threatened;
- obligating member states to keep comprehensive statistics regarding the use of and results obtained from suspicious transaction reports, such as the number of suspicious transaction reports filed; the follow-up given to those reports; and the annual number of cases investigated, persons prosecuted and persons convicted; and
- requiring all financial institutions to identify and verify the beneficial owner of all accounts held by legal entities or persons. "Beneficial owner" refers to the natural person who directly or indirectly controls more than 25 percent of a legal entity or person.

The Third Money Laundering Directive applies to

- credit institutions;
- financial institutions;
- auditors, external accountants and tax advisors;
- legal professionals;
- trust and company service providers;
- estate agents;

- high-value goods dealers who trade in cash over 15,000 euros; and
- casinos.

There were three main points of contention with regard to the Third Directive.

1. The definition of politically exposed persons (PEPs). The Third Directive defined PEPs as “natural persons who are or have been entrusted with prominent public functions and the immediate family members, or individuals known to be close associates, of such persons.” Close associates must be identified only when their relationship with a PEP is publicly known or when the institution suspects there is a relationship. Finally, the commission said persons should not be considered PEPs after 1 year of not being in a prominent position.

2. The inclusion of lawyers among those who are required to report suspicious activity.

3. The precise role of a comitology committee. The European Commission coined the term

#### ***Fourth directive***

Directive (EU) 2015/849 of the European Parliament and of the Council of 20, May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, entered into effect on June 26, 2015. Member states had 2 years from that date to adapt their national legislations accordingly. This directive repealed the Third Directive and its predecessors.

Changes in the Fourth Money Laundering Directive include the following.

- Natural or legal persons trading in goods will be covered to the extent that they make or receive cash payments of EUR 10,000 or more (decreased from EUR 15,000)
- The scope of obliged entities was enlarged from just casinos to all “providers of gambling services.
- Customer due diligence is to be applied for transfers of funds exceeding 1,000 euros.

- New definitions for correspondent relationship; PEPs' family members and persons known to be close associates; and senior management and others.
- Tax crimes relating to direct and indirect taxes are included in the broad definition of criminal activity, in line with the revised FATF Recommendations.
- An explanation of “financial activity on an occasional or very limited basis” was included.
- The European Commission must submit a report every 2 years on the findings of the risk assessment
- The EU executive is also in charge of identifying third-country jurisdictions having strategic deficiencies with regard to AML and CFT (i.e., high-risk third countries).
- Special attention is given to PEPs. In this regard, enhanced due diligence (EDD) should be applied to every PEP, whether the individual is a domestic or third-country citizen. The risk these people pose is for at least 12 months and measures they are subject to must also be applied to their family members and their known close associates.
- For groups (and their branches and subsidiaries), this directive sets the criteria for adequate compliance related to third parties for customer due diligence.
- New requirements regarding beneficial ownership information have been introduced, particularly for trusts and similar legal arrangements. Subject to data protection rules, this information must be held in central registers in each member state and must be made available to competent authorities, financial intelligence units (FIUs), obliged entities and any person with legitimate interest.

### ***Fifth directive***

The 5th Anti-Money Laundering Directive (AMLD5) is an update to the European Union's anti-money laundering (AML) legal framework. It was first published on June 19th, 2018 in

the Official Journal of the European Union as an iteration of the 4th Anti-Money Laundering Directive (AMLD4).

The AMLD5, also known as 5AMLD or 5MLD, came into effect on July 9, 2018, and mandated the European Union (EU) bloc's 28 member countries to transpose (transfer) its requirements into domestic laws before a deadline of 10th of January of 2020.

AMLD5 was followed a few months later in November 2018 by the 6th Anti-Money Laundering Directive (AMLD6), which is primarily also an update of AMLD4, and must be transposed by the EU countries on 3 December 2020 latest.

AMLD5's introduction was expedited by the 2015-2017 proliferation of high-profile terrorist attacks in Europe as well as political scandals like the Panama Papers that followed in the wake of AMLD4.

AMLD5 perfectly highlights the regional and technical challenges involved in creating a reasonable and practical global compliance framework to regulate virtual assets and hopefully can inspire other regional blocs to draw from best practice while avoiding common pitfalls.

Together with other regulatory requirements such as the FATF travel rule, AMLD5 is however unmistakably pushing European countries and crypto service providers towards a more transparent regime of virtual asset transacting and investing. AMLD5 also compels the EU to play catch-up with Asian countries like Japan and Korea (who are currently leading the world in AML/CFT compliance) and China, who will release their central bank digital currency (CBDC) soon.

### ***Sixth directive***

Published on November 2018, It is also known as AMLD6 and it updates both AMLD4 and AMLD5, broadens the scope of criminal liability to legal professionals, introduces maximum jail sentences of 4 years, updates the list of predicate offenses and imposes tougher penalties for AML transgressors. AMLD6 has a self-imposed deadline of 3 December 2020 for

countries to transpose its measures into local law.

It updates and improves the EU's current anti-money laundering (AML) and counter-terrorism funding (CFT) policies. It closes AML4 loopholes still being exploited by financial criminals. It brings the European Union bloc's AML/CFT efforts in line with the new FATF Standards as updated in June 2019.

However, there is still no provision for a European "crypto travel rule" as introduced by the FATF's amended Recommendation 16 on Wire Transfers last year.

The 6th Anti-Money Laundering Directive (6AMLD): 6AMLD is a European Union directive that was adopted in 2018 to update and strengthen the EU's AML/CFT framework. 6AMLD requires EU member states to implement a number of measures to combat ML and FT, including:

- Customer due diligence (CDD) requirements, which include enhanced CDD for high-risk customers and transactions;
- The creation of central registers of beneficial ownership information;
- The introduction of more stringent requirements for politically exposed persons (PEPs);
- The expansion of the scope of the directive to cover virtual currencies and pre-paid instruments;
- The creation of a framework for the supervision of AML/CFT compliance by EU member states.

6AMLD is a key component of the EU's AML/CFT framework and helps to ensure that EU member states have robust measures in place to combat ML and FT and to cooperate with one another in their investigations.

By implementing these conventions and regulations, the EU is working to create a safer and more secure financial system that is less susceptible to ML and FT.

6AMLD lists 22 specific predicate offences, which are particular criminal activities that serve to enable more serious crimes. With the introduction of 6AMLD, there is now a single definition of predicate offences across all EU member states.

1. Corruption
2. Counterfeiting and piracy of products
3. Counterfeiting currency
4. Environmental crime
5. Extortion
6. Forgery
7. Fraud
8. Human trafficking and migrant smuggling
9. Illegal arms trafficking
10. Illicit trafficking in narcotics and psychotropic substances
11. Insider trading and market manipulation
12. Kidnapping and hostage taking
13. Murder and grievous bodily harm (GBH)
14. Participating in an organised crime group or racketeering
15. Piracy
16. Robbery and theft
17. Sexual exploitation
18. Smuggling
19. Tax crime relating to both direct and indirect taxes
20. Trafficking in stolen goods

**Table 6.5: List of European Union’s Directives on Money Laundering**

AMLD1 (June 1991)	Europe’s first AML/CFT framework, introducing preventative actions such as user identification, suspicious transaction reporting (STR) and customer due diligence (CDD) a full 2 years before the EU was officially created.
AMLD2 (December 2001)	updated 1AMLD and brought EU policy in line with FATF’s 40 Recommendations.
AMLD3 (June 2006)	brought EU standards in line with FATF’s revised AML/CFT

	policy and applied it to lawyers, accountants, casinos and real estate agents.
AMLD4 (June 2015)	resolved ambiguities in the 3rd Directive (which hadn't been updated for a decade and strengthened global AML/CFT efforts by consulting the comprehensive FATF Standards update in 2012. AMLD4 had to be transposed by member states two years later, by 26 June 2017.
AMLD5 (June 2018)	updated the 4th Directive and introduced new requirements for cryptocurrencies, UBO registers, and prepaid card transaction limits. It had to be transposed by countries before 10 January 2020.
AMLD6 (November 2018)	updates both AMLD4 and AMLD5, broadens the scope of criminal liability to legal professionals, introduces maximum jail sentences of 4 years, updates the list of predicate offenses and imposes tougher penalties for AML transgressors.

In addition to the above-mentioned Directives, the EU legislation on AML and CFT also includes the following.

- Joint Action (1998) on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime and its subsequent amendment
- Framework Decision (2001)
- Framework Decision (2000) on European FIUs', cooperation
- Regulation (2001) on restrictive measures for combating terrorism and its amending Regulation (2003)
- Cash Control Regulation (2005)
- Wire Transfer Regulation (2015)

## 6.6 BCBS Guidelines on AML CFT

The BCBS AML/CFT standards are designed to promote a comprehensive and risk-based approach to AML/CFT regulation in the banking sector. The standards provide guidance on the key components of an effective AML/CFT program, including customer due diligence, risk assessment, record keeping and reporting, compliance management, sanctions screening, correspondent banking, and PEPs. The standards are widely recognized as a benchmark for AML/CFT regulation in the banking sector and are implemented in many jurisdictions around the world.

The Basel Committee on Banking Supervision, established in 1974 by the central bank governors of the G-10 countries, promotes sound supervisory standards worldwide. The Committee is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Its mandate is to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability. The Committee's Secretariat is located at the Bank for International Settlements in Basel, Switzerland, and is staffed mainly by professional supervisors on temporary assignment from member institutions.

The Basel Committee on Banking Supervision is a global standard-setting body for the banking industry that is based in Basel, Switzerland. One of its areas of focus is anti-money laundering (AML) and countering the financing of terrorism (CFT).

The AML/CFT guidelines of the Basel Committee provide a framework for banks to implement effective AML/CFT programs. These guidelines set out the minimum standards that banks should meet in order to identify and mitigate the risk of money laundering and terrorism financing. The key elements of the guidelines include:

***Customer due diligence (CDD) procedures:*** Banks are required to know their customers and their financial dealings, including the nature of their business, source of funds, and the purpose of their transactions.

**Risk assessment:** Banks are required to assess the risk of money laundering and terrorism financing associated with their customers, products, services, transactions and countries.

**Internal controls:** Banks are required to have robust internal controls in place to prevent, detect and report suspicious transactions.

**Monitoring and reporting:** Banks are required to monitor transactions and report suspicious transactions to the relevant authorities.

**Employee training:** Banks are required to provide ongoing training to their employees on AML/CFT issues.

**Cooperation with law enforcement:** Banks are required to cooperate with law enforcement agencies in their AML/CFT investigations.

The Basel Committee's AML/CFT guidelines are widely adopted by banks around the world, and the implementation of these guidelines is a crucial part of maintaining a safe and stable financial system.

In 1997, the Basel Committee issued its *Core Principles for Effective Banking Supervision*, a basic reference for authorities worldwide. It stated that, “Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict ‘know-your-customer’ rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.” It also urged nations to adopt FATF’s 40 Recommendations. The Core Principles were prepared with the assistance of 15 non-G-10 nations, including Brazil, Chile, Hong Kong, Mexico, Russia, Singapore and Thailand.

To facilitate implementation and assessment, the committee developed and published the *Core Principles Methodology* in October 1999. Since 1997, however, significant changes have occurred in banking regulation, much experience has been gained with implementing the Core Principles in individual countries, and new regulatory insights in regulation have

become apparent. These developments made it necessary to update the Core Principles and the associated assessment methodology.

Based on the findings of an internal survey of cross-border banking conducted in 1999, the committee identified deficiencies in a large number of countries' know-your-customer (KYC) policies. "KYC policies in some countries have significant gaps and in others they are nonexistent. Even among countries with well-developed financial markets, the extent of KYC robustness varies," observed the committee in an October 2001 paper called *Customer Due Diligence for Banks*. The paper followed a consultation document issued in January 2001.

In February 2016, the Basel Committee issued *Sound Management Of Risks Related To Money Laundering And Financing Of Terrorism* and its revised *General Guide to Account Opening*. The guidelines on management of risks related to money laundering and the financing of terrorism describe how banks should include these risks within their overall risk management framework.

The guidelines state that prudent management of these risks, together with effective supervisory oversight, is critical in protecting the safety and soundness of banks as well as the integrity of the financial system. Failure to manage these risks can expose banks to serious reputational, operational and compliance risks among others. The guidelines discuss the following issues.

***Three lines of defense:*** The committee describes three lines of defense in the bank's AML efforts: first, the line of business; second, compliance and internal control functions and third, internal audit.

***The line of business*** is responsible for creating, implementing and maintaining policies and procedures, as well as communicating these to all personnel. It must also establish processes for screening employees to ensure high ethical and professional standards and deliver appropriate training on AML policies and procedures based on roles and functions performed so employees aware of their responsibilities. To facilitate this, employees should be trained as soon as possible after being hired, with refresher training as appropriate.

***The AML compliance function***, as well as the larger compliance function, human resources and technology departments, are the second line of defence. In all cases, the AML officer is responsible for ongoing monitoring for AML compliance, including sample testing and a review of exception reports, to enable the escalation of identified noncompliance or other issues to senior management and, where appropriate, the board. The AML officer should be the contact point for all AML issues for internal and external authorities and should have the responsibility for reporting suspicious transactions. To enable the successful oversight of the AML program, the AML officer must have sufficient independence from the business lines to prevent conflicts of interest and unbiased advice and counsel. The officer should not be entrusted with the responsibilities of data protection or internal audit.

***The audit function*** should report to the audit committee of the board of directors (or similar oversight body) and independently evaluate the risk management and controls of the bank through periodic assessments, including the adequacy of the bank's controls to mitigate the identified risks, the effectiveness of the bank's staff's execution of the controls, the effectiveness of the compliance oversight and quality controls and the effectiveness of the training. The audit function must have knowledgeable employees with sufficient audit expertise. Audits should be conducted on a risk-based frequency; periodically, a bank-wide audit should be conducted. Audits should be properly scoped to evaluate the effectiveness of the program, including where external auditors are used. Auditors should proactively follow up on their findings and recommendations.

AML/CFT standards of the Basel Committee on Banking Supervision (BCBS) have been illustrated in Table 6.6

**Table 6.6: AML CFT Standard of Basel Committee on Banking Supervision**

Standard	Description
Customer Due Diligence (CDD)	Requires banks to identify and verify the identity of their customers, as well as understand the nature of their business and risk profile. Banks should also monitor their customers' transactions and conduct ongoing due diligence.
Risk-Based Approach (RBA)	Requires banks to assess the risks of money laundering and terrorism financing associated with their customers, products, services, and geographic locations. Banks should also implement risk-based controls and procedures to manage these risks.
Record Keeping and Reporting	Requires banks to keep records of their transactions and customer due diligence measures, as well as report suspicious transactions to the relevant authorities. Banks should also have procedures in place to respond to requests for information from the authorities.
Compliance Management	Requires banks to have effective compliance management systems, including policies, procedures, and training programs, to ensure compliance with AML/CFT laws and regulations. Banks should also have independent testing and audit functions to assess the effectiveness of their AML/CFT controls.
Sanctions Screening	Requires banks to screen their customers and transactions against lists of sanctioned individuals and entities, as well as implement procedures to detect and report suspicious activity related to sanctions.
Correspondent Banking	Requires banks to apply enhanced due diligence measures when dealing with correspondent banks, particularly those in high-risk jurisdictions. Banks should also conduct ongoing monitoring of correspondent banking relationships.
Politically Exposed Persons (PEPs)	Requires banks to apply enhanced due diligence measures when dealing with PEPs, as they may pose a higher risk of corruption and money laundering. Banks should also have procedures in place to identify and monitor PEPs.

## **6.7 AML CFT Guidelines of Wolfsberg Group**

The Wolfsberg Group is an association of thirteen global banks that was established in 2000 with the goal of promoting high standards in the area of anti-money laundering (AML) and countering the financing of terrorism (CFT). The group is named after the Wolfsberg Castle in Austria, where its first meeting took place.

The Wolfsberg Group AML/CFT standards are designed to promote a comprehensive and risk-based approach to AML/CFT regulation in the financial sector. The standards provide guidance on the key components of an effective AML/CFT program, including customer due diligence, risk assessment, PEPs, correspondent banking, wire transfers, record keeping and reporting, compliance management, and sanctions screening. The standards are widely recognized as a benchmark for AML/CFT regulation in the financial sector and are implemented in many jurisdictions around the world.

The Wolfsberg AML/CFT Guidelines are a set of principles and standards that provide a framework for banks to manage their AML/CFT risks. The guidelines are intended to assist banks in implementing effective AML/CFT programs and are based on the recommendations of the Financial Action Task Force (FATF), an international organization that develops and promotes policies to combat money laundering and terrorism financing.

The Wolfsberg AML/CFT Guidelines are widely recognized as a benchmark for AML/CFT best practices in the banking industry. They are periodically updated to reflect changes in the global AML/CFT landscape and to ensure that they remain relevant and effective in addressing the challenges posed by money laundering and terrorism financing.

The Wolfsberg Group is an association of 13 global banks that aims to develop financial services industry standards and guidance related to know your customer anti-money laundering and counter-terrorist financing policies. The Wolfsberg Group, which has no enforcement powers, issued the guidelines to manage its members' own risks to help make sound decisions about clients and to protect their operations from criminal abuse.

The Group first came together in 2000 at the Wolfsberg castle in Switzerland, accompanied by representatives of Transparency International, to draft anti-money laundering guidelines for private banking that, when implemented, would mark an unprecedented private-sector assault on the laundering of corruption proceeds.

The Wolfsberg *Anti-Money Laundering Principles for Private Banking* was published in October 2000 and was revised in May 2002 and again in June 2012. These principles recommend controls for private banking that range from the basic, such as customer identification, to enhanced due diligence, such as heightened scrutiny of individuals who ‘have or have had positions of public trust.’

The banks that released the principles with Transparency International said that the principles would “make it harder for corrupt people to deposit their ill-gotten gains in the world’s banking system.”

The principles state that banks must ‘endeavor to accept only those clients whose source of wealth and funds can be reasonably established to be legitimate. They highlight the need to identify the beneficial owner of funds “for all accounts” when that person is someone other than the client and urge private bankers to perform due diligence on ‘money managers and similar intermediaries’ to determine that the middlemen have a satisfactory due diligence process for their clients or a regulatory obligation to conduct such due diligence. The principles recommend that “at least one person other than the private banker” should approve all new clients and accounts.

The Principles list several situations that require enhanced due diligence, including activities that involve-

- politically exposed persons, such as public officials, holding or having held “senior, prominent or important public positions with substantial authority over policy, operations or the use of allocation of government-owned resources, such as senior government officials, senior executive of government corporations, senior politicians, important political party officials, as well as their close family and close associates”;
- people residing in and/or having funds from high-risk countries, including countries “identified by credible sources as

having inadequate anti-money laundering standards or representing highrisk for crime and corruption”; and • people involved in types of “economic or business activities or sectors known to be susceptible to money laundering.”

Clients may also require greater scrutiny as a result of-

- information gained from monitoring their activities;
- external inquiries;
- derogatory information, such as negative news reporting; and
- other factors that may expose the bank to reputational risk.

The Wolfsberg principles say that banks should have written policies on the “identification of and follow-up on unusual or suspicious activities,” and should include a definition of what is suspicious, as well as examples of such activity. They recommend a sufficient monitoring system that uses the private banker’s knowledge of the types of activity that would be suspicious for particular clients. They also outline mechanisms that can be used to identify suspicious activity, including meetings, discussions and in-country visits with clients and steps that should be taken when suspicious activity is detected.

The Principles also addressed on-

- reporting to management of money laundering issues;
- AML training;
- retention of relevant documents;
- deviations from policy; and
- creation of an anti-money laundering department and an AML policy.

One of the key revisions made in May 2001 related to the prohibition of the use of internal nonclient accounts (sometimes referred to as concentration accounts) to keep clients from being linked to the movement of funds on their behalf. It stated that banks should forbid the use of such internal accounts in a manner that would prevent officials from appropriately monitoring movements of client funds.

The Wolfsberg Group also issued guidelines in early 2002 on the suppression of the financing of terrorism, outlining the roles of financial institutions in the fight against money laundering and terrorism financing.

The group released *Monitoring, Screening and Searching Wolfsberg Statement* in September 2003 and further updated in 2009 to provide further guidance on “the design, implementation and ongoing maintenance of transaction monitoring frameworks for real-time screening, transaction monitoring and retroactive searches.” This document discussed the need for appropriate monitoring of transactions and customers to identify potentially unusual or suspicious activity and transactions and for reporting such to competent authorities. In particular, it covered issues related to the development of risk-based processes for monitoring, screening and searching transactions and customers.

As of March 2023, the Wolfsberg Standards listed on the website were as follows.

- Wolfsberg Principles for Using Artificial Intelligence and Machine Learning in Financial Crime Compliance 2022
- Wolfsberg Group Financial Crime Principles for Correspondent Banking 2022
- [Wolfsberg Group Transaction Monitoring Request for Information Best Practice Guidance 2022](#)
- Wolfsberg Group Guidance on Digital Customer Lifecycle Risk Management 2022
- Wolfsberg Group Tax Evasion Guidance 2019
- Wolfsberg Group Trade Finance Principles 2019
- Wolfsberg Group Sanctions Screening Guidance 2019
- Wolfsberg Group Payment Transparency Standards 2017
- Wolfsberg Group Anti-Bribery & Corruption Guidance 2017
- Wolfsberg Group PEP Guidance 2017
- Wolfsberg Group Publication Statement on PEPs 2017
- Wolfsberg Group SWIFT Relationship Management Application Due Diligence Guidance 2016
- Wolfsberg CB Principles 2014

- Wolfsberg Group MIPS Paper, 2014
- Wolfsberg Private Banking Principles, May 2012
- Wolfsberg Guidance on Prepaid & Stored Value Cards Oct 14, 2011
- Wolfsberg Anti-Corruption Guidance (2011)
- Statement on the publication of the Wolfsberg Anti-Corruption Guidance August 2011
- The Wolfsberg Trade Finance Principles (2011)
- Wolfsberg Monitoring Screening Searching Paper—November 9, 2009
- Wolfsberg AML Guidance on Credit/Charge Card Issuing and Merchant Acquiring Activities May 2009
- Wolfsberg Group, Clearing House Statement on Payment Message Standards April 2007
- Wolfsberg Group, Notification for Correspondent Bank Customers April 2007
- Wolfsberg Statement Guidance on a Risk Based Approach for Managing Money Laundering Risks March 2006
- Wolfsberg Statement Anti-Money Laundering Guidance for Mutual Funds and Other Pooled Investment Vehicles March 2006
- Wolfsberg Statement on The Suppression of the Financing of Terrorism January 2002
- Wolfsberg Group Mobile and Internet Payment Services Guidance 2014
- Wolfsberg Group Private Banking Principles 2012
- Wolfsberg Group Prepaid and Stored Value Cards Guidance 2011
- Wolfsberg Group Credit Cards Guidance 2009
- Wolfsberg Group Statement on Payment Message Standards 2007
- Wolfsberg Group Notification on Correspondent Bank Customers 2007

- Wolfsberg Group RBA Guidance 2006
- Wolfsberg Group Statement on the Suppression of the Financing of Terrorism 2002

**Table No. 6.7 summarizing the AML/CFT standards of the Wolfsberg Group:**

<b>Standard</b>	<b>Description</b>
Customer Due Diligence (CDD)	Requires banks to identify and verify the identity of their customers, as well as understand the nature of their business and risk profile. Banks should also monitor their customers' transactions and conduct ongoing due diligence.
Risk-Based Approach (RBA)	Requires banks to assess the risks of money laundering and terrorism financing associated with their customers, products, services, and geographic locations. Banks should also implement risk-based controls and procedures to manage these risks.
Politically Exposed Persons (PEPs)	Requires banks to apply enhanced due diligence measures when dealing with PEPs, as they may pose a higher risk of corruption and money laundering. Banks should also have procedures in place to identify and monitor PEPs.
Correspondent Banking	Requires banks to apply enhanced due diligence measures when dealing with correspondent banks, particularly those in high-risk jurisdictions. Banks should also conduct ongoing monitoring of correspondent banking relationships.
Wire Transfers	Requires banks to have procedures in place to identify and verify the originator and beneficiary of wire transfers, as well as monitor wire transfers for suspicious activity.
Record Keeping and Reporting	Requires banks to keep records of their transactions and customer due diligence measures, as well as report suspicious transactions to the relevant authorities. Banks should also have procedures in place to respond to requests for information from the authorities.
Compliance Management	Requires banks to have effective compliance management systems, including policies, procedures, and training programs, to ensure compliance with AML/CFT laws and regulations. Banks should also have independent testing and audit functions to assess the effectiveness of their AML/CFT controls.
Sanctions Screening	Requires banks to screen their customers and transactions against lists of sanctioned individuals and entities, as well as implement procedures to detect and report suspicious activity related to sanctions.

## **6.8 AML CFT Guidelines of Egmont Group**

The Egmont Group is an international organization made up of financial intelligence units (FIUs) from around the world. The group was established in 1995 with the aim of improving international cooperation in the fight against money laundering and the financing of terrorism.

The Egmont Group AML/CFT standards are designed to promote effective and efficient cooperation among FIUs and between FIUs and other law enforcement agencies in the fight against money laundering and terrorism financing. The standards provide guidance on the key components of an effective AML/CFT program, including the establishment of a FIU, a legal framework for AML/CFT, customer due diligence, risk assessment, PEPs, correspondent banking, wire transfers, record keeping and reporting, and international cooperation. The standards are widely recognized as a benchmark for AML/CFT regulation and are implemented in many jurisdictions around the world.

The Egmont Group's AML/CFT Guidelines provide a framework for its members to effectively exchange financial intelligence and other information related to money laundering and terrorism financing. The guidelines are designed to promote standardization and consistency in the exchange of information among FIUs, as well as to enhance the effectiveness of their investigations.

The key components of the Egmont Group's AML/CFT Guidelines include:

- **Legal framework:** Members are required to have a legal framework in place that allows for the exchange of financial intelligence and other information related to money laundering and terrorism financing.

- Confidentiality: Members are required to maintain the confidentiality of the information exchanged among them and to use it only for the purpose for which it was provided.
- Information security: Members are required to have appropriate measures in place to ensure the security of the information they exchange.
- Cooperation: Members are required to cooperate with one another in their AML/CFT investigations and to respond promptly to requests for assistance.
- Capacity building: Members are encouraged to share their expertise and to support the development of the capacity of other FIUs, particularly those in developing countries.

The Egmont Group's AML/CFT Guidelines play a critical role in facilitating international cooperation in the fight against money laundering and terrorism financing. By establishing a common set of standards and procedures for exchanging information, the Egmont Group helps to ensure that FIUs are able to work together effectively to detect and disrupt financial crime.

**Table No. 6.8 : AML/CFT standards of the Egmont Group:**

<b>Standard</b>	<b>Description</b>
Financial Intelligence Units (FIUs)	Requires countries to establish a FIU to receive, analyze, and disseminate financial intelligence related to money laundering and terrorism financing. FIUs should also have access to relevant financial and other data to support their analysis.
Legal Framework	Requires countries to have a legal framework that criminalizes money laundering and terrorism financing, as well as related offenses such as corruption and tax evasion. The legal framework should also provide for international cooperation and asset forfeiture.
Customer Due Diligence	Requires financial institutions to identify and verify the identity

(CDD)	of their customers, as well as understand the nature of their business and risk profile. Financial institutions should also monitor their customers' transactions and conduct ongoing due diligence.
Risk-Based Approach (RBA)	Requires financial institutions to assess the risks of money laundering and terrorism financing associated with their customers, products, services, and geographic locations. Financial institutions should also implement risk-based controls and procedures to manage these risks.
Politically Exposed Persons (PEPs)	Requires financial institutions to apply enhanced due diligence measures when dealing with PEPs, as they may pose a higher risk of corruption and money laundering. Financial institutions should also have procedures in place to identify and monitor PEPs.
Correspondent Banking	Requires financial institutions to apply enhanced due diligence measures when dealing with correspondent banks, particularly those in high-risk jurisdictions. Financial institutions should also conduct ongoing monitoring of correspondent banking relationships.
Wire Transfers	Requires financial institutions to have procedures in place to identify and verify the originator and beneficiary of wire transfers, as well as monitor wire transfers for suspicious activity.
Record Keeping and Reporting	Requires financial institutions to keep records of their transactions and customer due diligence measures, as well as report suspicious transactions to the relevant authorities. Financial institutions should also have procedures in place to respond to requests for information from the authorities.
International Cooperation	Requires countries and FIUs to cooperate with each other and with other countries and organizations to combat money

	laundrying and terrorism financing. Cooperation should include the exchange of financial intelligence, mutual legal assistance, and extradition.
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Besides these, some other international organizations are also playing vital role in setting international standard on financial crime control programs. Basically, in this category the World Bank and the international Monetary Fund are the prominent international standard setters in terms of financial crime control programs.

## **6.9 The World Bank and the International Monetary Fund**

The International Monetary Fund (IMF) and the World Bank have supported the efforts of FATF in addressing the resistance of certain nations to joining the international battle against money laundering. Since 2001, the two institutions have required countries that benefit from their financial and structural assistance programs to have effective money laundering controls.

In an April 2000 joint policy paper called, “Enhancing Contributions To Combating Money Laundering,” the two organizations detailed the steps that they would take to strengthen the global assault on money laundering.

In September 2001, the IMF and the World Bank started to fully integrate the battle against money laundering and other financial crimes into its surveillance exercises and programs. That month, the International Monetary and Financial Committee (IMFC), the advisers to the IMF’s board of governors, issued a communiqué that said it would “explore incorporating work on financial abuse, particularly with respect to international efforts to fight against money laundering, into its various activities, as relevant and appropriate.”

In February 2001, the IMFC, along with the IMF and the World Bank, issued *Financial System Abuse, Financial Crime, and Money Laundering*, which explored how the institutions could “play ... role[s] in protecting the integrity of the international financial system from abuse” through use of their influence to promote national anti-corruption programs.

In 2002, the World Bank and the IMF developed the *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* in an effort to provide practical steps for countries implementing AML/CFT regimes in accordance with international standards. A Second Edition and Supplement on Special Recommendation IX was published in 2006. The guide describes the global problem of money laundering and terrorist financing on the development agenda of individual countries and across regions. It explains the basic elements required to build an effective AML/CFT legal and institutional framework and summarizes the role of the World Bank and the IMF in those efforts.

Since then, the IMF and the World Bank have become more active in combating money laundering by-

- concentrating on money laundering over other forms of financial abuse;
- helping to strengthen financial supervision and regulation in countries;
- more closely interacting with the Organization for Economic Co-operation and Development (OECD) and the Basel Committee on Banking Supervision; and
- insisting on the application of international AML standards in countries that ask for financial assistance.

In a joint meeting in April 2004, the two bodies agreed to permanently adopt their pilot program that assesses a nation's compliance with international AML and anti-terrorist financing standards. The program put an end to FATF's practice of publicizing non-cooperative countries and territories (NCCTs).

The World Bank and the IMF established a collaborative framework with FATF for conducting comprehensive assessments using a single global methodology of countries' compliance with FATF's 40 Recommendations. The assessments are carried out as part of the Financial Sector Assessment Program and result in the Report on Observance of Standards

and Codes (ROSCs). ROSCs summarize the extent to which countries observe 12 areas and associated standards for their operational work of the Fund and the World Bank. The 12 areas include: accounting; auditing; AML/CFT; banking supervision; corporate governance; data dissemination; fiscal transparency; insolvency and creditor rights; insurance supervision; monetary and financial policy transparency; payments systems; and securities regulation. The ROSCs are prepared and published at the request of the member country and summarize a country's observance of the standards. The Reports are used to help sharpen the institutions' policy discussions with national authorities and in the private sector, including by rating agencies, for risk assessment purposes. Updates to the ROSCs are produced regularly, however, new reports are prepared and published every several years.

## **6.10 Key U.S. Legislative and Regulatory Initiatives**

Besides above mentioned standards, some of the US laws also are considered as the international standards in Financial Crime Compliance issues. Basically following laws are considered in this category-

### ***USAPATRIOT Act***

Motivated by the attacks of September 11, 2001, and the urgent need to decipher and disable mechanisms that finance terrorism, the U.S. Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) in October 2001 to strengthen money laundering laws and the Bank Secrecy Act (BSA) to levels unseen since the original passage of the BSA in 1970 and the Money Laundering Control Act of 1986 AND Public Law 99-570), the world's first law to criminalize money laundering.

Title III of the USA PATRIOT Act (U.S. Public Law 107-56), entitled, "The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001," contains most, though not all, of the anti-money laundering-related provisions in this diverse law. The purpose of Title III is "increasing the strength of U.S. measures to prevent, detect, and prosecute international money laundering and the financing of terrorism, to provide a national mandate for subjecting to special scrutiny foreign jurisdictions, financial institutions operating outside the United States, and classes of international transactions or types of

accounts that pose particular opportunities for criminal abuse, and to ensure that all appropriate elements of the financial services industry are subject to appropriate requirements to report potential money laundering transactions to proper authorities.”

As noted in its purpose, the USA PATRIOT Act has implications for U.S. institutions and non-U.S. institutions that do business in the United States. It is important to note that the regulations issued under the USA PATRIOT Act by the U.S. Treasury Department provide the detailed requirements that financial institutions must follow to comply with the provisions of the Act. These regulations are compiled in 31 Code of Federal Regulation Chapter X.

Key provisions of the USA PATRIOT Act stem from the premise that international access points to the U.S. financial system must be controlled. Thus, the law covers a wide range of anti-money laundering and terrorism-financing provisions affecting foreign businesses. These include the following.

***Section 311: Special Measures for Primary Money Laundering Concerns (31 U.S.C. 5318A).*** This section provides the U.S. Treasury Department with the authority to apply graduated, proportionate measures against a foreign jurisdiction, a foreign financial institution, a type of international transaction or a type of account that the Treasury Secretary determines to be a “primary money laundering concern.” By designating a country or a financial institution as a primary money laundering concern, the U.S. government can force U.S. banks to halt many of their financial dealings with the designee. Once identified, the Treasury Department can require U.S. financial institutions to follow any or all of the following five special measures.

Section 311 actions are distinct from designations brought by Treasury’s Office of Foreign Assets Control (OFAC), which are applied more broadly and can also trigger asset freezing obligations.

***Section 312: Correspondent and Private Banking Accounts (31 U.S.C. 5318(i)).*** Requires due diligence and, in certain situations, enhanced due diligence for foreign correspondent

accounts (which includes virtually all account relationships that institutions can have with a foreign financial institution) and private banking for non-U.S. people.

**Section 313:** Prohibition on correspondent accounts for foreign shell banks. Prohibits U.S. banks and securities brokers and dealers from maintaining correspondent accounts for foreign, unregulated shell banks that have no physical presence anywhere. The term physical presence is defined as a place of business that is maintained by a foreign bank located at a fixed address (as opposed to solely an electronic address) where: it is authorized to conduct banking activities; employs one or more individuals on a full-time basis at that location; maintains operating records at that location; and is subject to inspection by the banking authority which licensed it at that location. The term *shell bank* does not include a bank that is a regulated affiliate of a bank that maintains a physical presence.

The section also requires financial institutions to take reasonable steps to ensure that foreign banks with correspondent accounts do not themselves permit access to such accounts by foreign shell banks. Banks and securities brokers are permitted to use a certification form to comply with the rule. That process requires the foreign banks to certify at least once every 3 years that they are not themselves shell banks and that they do not permit shell banks access to the U.S. correspondent account through a nested correspondent relationship.

Sections 314 (A) and 314(B): Help “law enforcement identify, disrupt, and prevent terrorist acts and money laundering activities by encouraging further cooperation among law enforcement, regulators, and financial institutions to share information regarding those suspected of being involved in terrorism or money laundering.”

**Section 314(a):** FinCEN’s regulations under Section 314(a) enable U.S. federal, state, local and foreign (European Union) law enforcement agencies, through FinCEN, to reach out to more than 43,000 points of contact at more than 22,000 financial institutions to locate accounts and transactions of persons that may be involved in terrorism or money laundering. To obtain documents from a financial institution that has reported a match of a subject, a law enforcement agency must meet the legal standards that apply to the particular investigative tool that it chooses to use to obtain the documents.

**Section 314(b):** Provides financial institutions with the ability to share information with one another, under a safe harbor that offers protections from liability, in order to better identify and report potential money laundering or terrorist activities. 314(b) information sharing is a voluntary program. Entities that may participate in 314(b) include U.S. financial institutions subject to an anti-money laundering program requirement under FinCEN regulations and any association of such financial institutions. This currently includes the following types of U.S. financial institutions.

- Banks
- Casinos and card clubs
- Money services businesses
- Brokers or dealers in securities
- Mutual funds
- Insurance companies
- Futures commission merchants and introducing brokers in commodities
- Dealers in precious metals, precious stones or jewels
- Operators of credit card systems
- Loan or finance companies

**Section 319(a): Forfeiture from U.S. Correspondent Account (18 U.S.C. 981(k)).** In situations where funds have been deposited with a foreign bank, this section permits the U.S. government to seize funds in the same amount from a correspondent bank account in the United States that has been opened and maintained for the foreign bank. The U.S. government is not required to trace the funds, because they are deemed to have been deposited into the correspondent account. However, the owner of the funds may contest the seizure order.

**Section 319(b):** Records relating to Correspondent Accounts for Foreign Banks (31 U.S.C. 5318(k)). Allows the appropriate federal banking agency to require a financial institution to produce within 120 hours (5 days) records or information related to the institution's AML compliance or related to a customer of the institution or any account opened, maintained, administered or managed in the United States by the financial institution.

## **Chapter-7**

### **Implementation of International Standards of Financial Crime Control Programs by Nepal**

#### **7.1 FATF 40+Recommendations and status of their implementation by Nepal**

FATF sets international standards to fight against financial crimes like on money laundering and Financing of terrorist activities. Based on these standards, every country should develop legal structures, regulations, strategies and institutional mechanisms to identify and control financial crimes like money laundering and terrorist activities and implement them these mechanisms effectively. On the basis of effectiveness of implementation of these standards, the FATF evaluates its member countries and assign risks accordingly.

Non FATF-member countries are evaluated by FSRB (FATF Styled Regional Bodies) and the basis of evaluation is the same, i.e. the standards and recommendations as set by FATF.

Nepal, being a member of Asia Pacific Group on Money Laundering (AGGML), a FSRB, its mutual evaluation is done by APGML itself.

#### ***Development of 40 point recommendations***

The Financial Action Task Force first developed a set of 40-point recommendations to fight against money laundering ring in 1990. After that, those recommendations were revised in 1996, 2003 and 2012 making them more relevant and contextual. Similarly, it further developed additional eight recommendations in 2001 and as a special suggestion, later in 2004, it added another special 9<sup>th</sup> recommendation. FATF has recently updated its 40-point recommendations of 2012 in March 2022.

The FATF's forty recommendations are categorized in seven categories and it cover the following areas:

1. AML/CFT Policies and Coordination (1, 2)
2. Money Laundering and Confiscation (3, 4)
3. Terrorist Financing and Financing of Proliferation (5-8)
4. Preventive Measures (9-23)
5. Transparency and Beneficial Ownership of Legal Persons and Arrangements (24,25)
6. Powers and Responsibilities of Competent Authorities and Other Institutional Measures (26-35)
7. International Cooperation (36-40)

Recently revised FATF recommendations are divided into 7 different headings. Under the first heading titled 'Money Laundering Policy and Coordination', two suggestions regarding ML Risk Assessment, Risk-based Policy development and cooperation and coordination between countries have been recommended.

According to the first recommendation, any country should develop appropriate mechanisms and authorities for the purpose of identifying, evaluating and understanding the risks related to financial enrichment that may occur in the money laundering and terrorist activities existing in their country, and for the purpose of coordinating and working to control them in a proper manner. It is also mentioned in the recommendation that a risk-based method should be developed in order to adopt high and normal level of control measures accordingly to the areas of high and low risk as identified on the basis of risk assessment on ML/TF. In addition, this recommendation also identifies the risks related to financial transactions that may occur due to non-compliance in relation to targeted economic sanctions. It is mentioned that appropriate control mechanisms and authorities should be adopted by each countries based on the evaluation and understanding of the level of ML TF risk.

This Recommendation states that financial institutions and other designated non-financial institutions of any country should also identify, assess and understand the risks related to financial crimes that may occur in the form of money laundering and terrorist activities and develop effective control mechanisms.

According to the second recommendation under this first heading, in addition to formulating a policy related to money laundering in any country, for the effective implementation of the said policy, there should be mutual cooperation between policy makers, financial intelligence units, law enforcement agencies such as the police, supervisory agencies and other authorized agencies. Also, a mechanism should be developed to maintain mutual coordination for risk control as well. For this purpose, it is expected that proper coordination will be maintained between those agencies, from the exchange of necessary information to the formulation of necessary policies and their implementation, and effective activity in the control of financial support that may be required to fight against financial crimes like money laundering and terrorist activities.

Now let's discuss the status of implementation of these initial two recommendations of the Financial Action Task Force and other recommendations in Nepal

Talking about the assessment of national risk related to money laundering, such an assessment was started by Nepal for the first time in 2012 and it continued till 2016. The risk assessment report initiated at that time has not been readily available yet. In the background of this, for the second time, the country's money laundering risk assessment report based on the period from 2015 to 2018 published in 2020 and this is the only risk assessment report available so far. In this way, it seems that Nepal has identified, assessed and understood the risks associated with financial crimes that may occur in the form of money laundering and terrorist activities.

Based on this risk assessment report, some of the legal and institutional frameworks were developed. These framework include the Assets (Money) Laundering Prevention Act, AML Regulations, Financial Intelligent Unit, and Money Laundering Investigation Department.

Likewise, exchange of information necessary coordination and cooperation between law enforcement agencies have been started.

Banks and financial institutions have effectively implemented risk-based control programs and their effective supervision is done by regulator, Nepal Rastra Bank. However, in other designated non-financial institutions, the level of implementation seems to be very weak. Under these specified non-financial businesses and professions, real estate related businesses, businesses dealing in precious metals and stones, legal professions such as lawyers and notaries, and other independent accounting professions etc. are included.

According to the recommendations of the Financial Action Task Force, these sectors should adopt risk-based control measures to control the financial crimes that may be involved money laundering and terrorist activities. In the same way, since the parliament was dissolved in November 2022, without amending some of the required laws (16) as per Nepal's commitment to FATF, from this point of view, it is clear that Nepal lacks the effective implementation of these two initial recommendations of FATF.

There are two recommendations of FATF under the heading titled 'Asset Laundering and Confiscation'. According to the first suggestion under the heading, according to the Vienna Convention and the Palermo Convention, any country should define money laundering as a crime. Also, with the intent to widen the scope of the predicate offense, the crime of money laundering should also be included in the context of any type of serious crime.

In the second recommendation under this heading, the law enforcement and other official bodies in any country should have a legal arrangement so that they can retain or confiscate property. Assets to be confiscated in this way include assets acquired by any person or organization through financial crimes like money laundering, criminal assets used or intended to be used for that purpose, assets used or intended to be used in terrorist activities or by terrorist organizations or allocated for such purposes.

In addition, government should develop legal measures to identify, evaluate, and control activities such as dealing, transferring, or destroying such assets, thereby providing legal

certainty to the right to withhold or confiscate, and any type of investigation. Provisions to adopt measures are also included in the recommendation. In addition, the recommendation also directs that the accused person/organization must gather evidence about the legal source of such confiscation or detention, ensuring the right to confiscate and detain such items even if the crime is not proven.

Based on the legal and institutional structures developed by Nepal for the implementation of these recommendation, it can be considered as effective. Nepal has issued not only the Law on Asset Laundering Prevention but also the Regulations on Asset Laundering based on it. Also, under the institutional structure required for their effective implementation, with the establishment of bodies like the National Research Center, the National Coordination Committee, Financial Intelligent Unit, Nepal Rastra Bank, Money Laundering Investigation Department, it seems that legal and other rights have also been provided to them. In addition to the establishment of a constitutional body such as the Abuse of Authority Investigation Commission to investigate and investigate corruption-related crimes, the institutional and legal arrangements adopted by Nepal based on these recommendation of FATF seem to be effective.

Now the remaining recommendations of the Financial Action Task Force in Nepal and their implementation status are discussed

Under the third heading of the 40 points recommendations, four recommendations related to the financing of terrorist activities and investment in the proliferation of weapons of mass destruction are included.

According to the first and overall fifth recommendations under this title, any country should legally define the financing of terrorist activities as a crime. In addition, even if there is no direct involvement in any specific terrorist activities, this point suggests that the financial support of terrorist organizations and related persons should also be considered as a crime.

Another recommendation under the heading is about sanction compliance. According to the recommendation on ‘Controlling and Suppressing the Financial Support of Terrorist

Activities', it has been mentioned that the financial restrictive measures imposed by United Nations Security Council targeting any country and individual should be fully implemented as soon as possible. Under this arrangement, the assets of the related persons and organizations designated to be withheld or not available to be able to enjoy such assets are included.

Similarly, the third and overall seventh suggestions under the heading requires to ensure the effective implementation of targeted financial sanctions in accordance with the resolution of the United Nations Security Council regarding the financial enrichment, suppression and obstruction of such enrichment that may be used in the expansion of weapons of mass destruction. The last and eighth recommendation of this chapter covers the issue of having reasonable legal and structural arrangements for controlling financial support that may be used in terrorist activities through non-profit organizations so that such organizations cannot be misused by terrorist organizations in various ways.

Now if we are to consider the implementation status of these suggestions in Nepal, legally, the social welfare Act is in place that states the requirement of approval from the Social Welfare Council while receiving any type of foreign aid, donation and subsidy by non-governmental organizations. In addition, Assets Laundering Prevention Act also has provision that the Ministry of Foreign Affairs and the Ministry of Home Affairs should coordinate to publish the list of targeted individuals and organizations received from the United Nations Security Council to inform the relevant agencies as soon as possible.

But the level of implementation of these legal arrangements is not so satisfactory. The list has not been published on time. There is no update since 2077 In Ashwin (October 2020). The list is also vaguely published on the website of the Ministry of Home Affairs only in recent days, the integrated lists of the United Nations have been included. From this, it seems that the country is trying to show its effort only in the threshold of mutual evaluation. Again, since there is no arrangement to make the list public even after publishing it, it does not seem that arrangements have been made to freeze the assets of the listed individuals and groups as per the provision of the United Nations Security Council. From banks and financial institutions to other agencies, monitoring the website of the Ministry of Home Affairs at all

times, it is not impossible to check whether such a list is updated, but it does not seem so easy in practice.

Again the parties included in such list are not being properly verified by with effective tools/mechanism by concerned stakeholders. Only 'A' financial institutions have applied the mechanism to identify such individuals and groups. But apart from these A class financial institutions like banks,, there is a complete lack of such a mechanism.. Therefore, if we analyze the existing structure and mechanism, questions may arise from different angles on the effectiveness of the implementation of the four recommendations of FATF under this heading.

As per the next recommendations of FATF, various preventive measures that countries should adopt as a measure to prevent money laundering and terrorist financing. An attempt has been made to make preventive measures more effective by including different sub-headings under this heading, there are some subheadings including customer identification and continuous monitoring of customer transactions and financial activities, record keeping, additional measures for monitoring specific types of customers and activities, dependence, control and financial groups, reporting of suspicious transactions and activities etc.

Designated non-financial businesses and professions have been kept by dividing these into various sub-headings under recommendations No. 9 to 23. These recommendations seem to be relatively more related to banks and financial institutions than other sectors of country.

Regarding the ninth recommendation, the law related to asset laundering has also addressed the fact that the implementation of these recommendations should not be hindered due to the legal arrangements related to privacy that may be in any country contained.

Likewise The implementation of provisions related to customer identification in recommendation 10, provision to keep records in 11, provision to identify high-ranking persons in 12, including provisions related to correspondent banking and money and value transfer in 13 and 14 seems to be satisfactory in the context of Nepal. In terms of identifying and controlling wealth laundering through the use of new technologies under this section, it

can be assumed that the level of its implementation can be measured accordingly in the perspective that not only Nepal but the whole world is facing challenges on the same. Digital transactions and crypto related transactions are increasing worldwide using new technologies and the identification and control of this types of transactions in Nepalese perspective is a bit challenging.

On the implementation part of recommendation No 16 related to cross border wire transfer, as the compliance of requirement is inevitable because of requirement of counter parties as well, its implementation is obviously effective.

The 17<sup>th</sup> recommendation is related to dependency on the third party and it is not found that the Nepali financial sector are not relying on third parties except some limited works of remittance payment. As the system of adequate identification and continuous monitoring will be implemented for the work related to remittance payment, the implementation of this recommendation can also be considered as effective and satisfactory.

18<sup>th</sup> recommendation is about internal control and foreign branches and the 19<sup>th</sup> recommendation is about transactions with high risk countries. As Nepali financial sector is also operating in accordance with international standards, it seems that these recommendations have been properly implemented in the context that most of the 'A' category banks are applying required technologies as well.

Compared to 'A' category banks, it is seen that relatively less reports of suspicious transactions are sent to the Financial Information Unit from other indexing bodies, but there is no doubt about the implementation of the 20<sup>th</sup> recommendation in terms of the increase in the number of such reports. Regarding the privacy to be maintained in relation to such questionable transactions, due to some practical weaknesses, there may be some doubts about the effectiveness of the implementation of the 21<sup>st</sup> suggestion, although due to the clear legal provisions, it can cover small practical weaknesses.

**Table No. 7.1. STR submitted by different sectors to FIU Nepalese**

S.N.	Reporting Institutions (REs)	2073/74 (2016/17)	2074/75 (2017/18)	2075/76 (2018/19)	2076/77 (2019/20)	2077/78 (2020/21)
1	Commercial Banks	949	660	910	924	1403
2	Development Banks	31	23	135	93	64
3	Finance Companies	0	3	8	1	12
4	Insurance Companies	4	2	31	4	3
5	Micro Finance	0	0	0	0	3
6	Remittance Companies	69	194	263	52	29
7	Securities Companies	0	2	3	14	18
8	Cooperative	0	2	1	2	0
9	Government agencies	0	1	0	0	1
<b>Total</b>		<b>1053</b>	<b>887</b>	<b>1351</b>	<b>1090</b>	<b>1533</b>

*Source: FIU-Nepal*

The twenty-second and twenty-third recommendations are related to Designated Non-Financial Professions and Businesses. Those professions and businesses include casinos, real estate buying and selling businesses, businesses dealing in precious metals and commodities, lawyers, accountants, notaries, trust and company service providers. They also identify their customers in the same way as banks and financial institutions do. If the transaction seems suspicious, all actions up to reporting STR should be done by them as well.

However, it seems that some questions may arise regarding the implementation of these two suggestions in the mentioned bodies in the context of the general understanding that the matter related to asset cleansing is only related to banks and financial institutions.

According to the two recommendations under the fifth section with heading regarding transparency beneficial ownership of legal persons, countries should ensure that adequate, accurate and up-to-date information regarding legal arrangements and persons' real ownership and control is available.

The context of the implementation of these suggestions is to be considered. It seems that there are limited difficulties in the identification of natural persons who are the ultimate beneficiaries of some commercial establishments opened with the investment of foreign companies. In the past, even the bodies that permits foreign investment have not collected

such information and documents sufficiently and as a consequences, the ultimate beneficiary of some legal persons and arrangements that have been doing business for a long time may not have been identified.

Even the lack of adequate awareness and knowledge regarding the ultimate beneficiary seems to have created some confusion in this direction. Although these problems are gradually being solved in the banking sector, there is a lack of such transparency towards other non-banking sectors and even in concerned govt. authority like 'Office of the Registrar of Companies'

In the sixth section of the recommendations of FATF, the power and responsibilities authority of the designated authorities and other institutional arrangements for the purpose of implementing these overall recommendations and their supervision are kept. The status of implementation of these provisions and other suggestions will be discussed now in brief.

Under the sixth section of FATF recommendations, a total of 10 suggestions (from 26 to 35) have been mentioned. The 26th recommendation titled 'Regulation and Supervision of Financial Institutions' states that financial institutions of any country should be subject to adequate regulation and supervision and it should ensure that all these recommendations are implemented. In addition, it is mentioned in this recommendation that no country should allow the establishment of 'shell' banks that do not physically exist under regulation.

The 27<sup>th</sup> recommendation stipulates that if financial institutions do not effectively operate control programs related to money laundering and terrorist activities, the right to pay fines should be vested in supervisory and regulatory institutions.

In the context that Nepal Rastra Bank has been given the right to take necessary actions and fines with regulatory and supervisory role, there is no question about the implementation of these two suggestions.

The 28<sup>th</sup> recommendation under this section states that in the case of non-financial professions and businesses such as casinos, notaries, chartered accountants, gold and silver businesses, as in the case of financial institutions, regulatory and supervisory arrangements,

as well as effective monitoring systems, should also be in place for those entities to prevent money laundering and terrorist activities. If the remedial and control programs are not implemented effectively, then there should be an effective, proportionate and dissuasive punishment system through concerned regulator.

Even in financial institutions other than 'A' category, these remedial programs are gradually becoming ineffective, and we cannot expect satisfactory results regarding the effective implementation of the suggestions given by FATF in relation to these non-financial professions and businesses.

According to the 29<sup>th</sup> point of the FATF recommendation, a financial information unit should be established to receive reports on suspicious transactions and other related additional information from the reporting entities, disseminate the results based on the analysis and implement the law as needed, and establish access to the financial and administrative bodies in a timely manner. In view of the fact that the Financial Intelligent Unit (FIU-Nepal) has been established in Nepal and has been operating for many years, the implementation of this recommendation can be considered as 'effective'.

It can be felt that there is a place to raise questions about the implementation of the recommendation number 30 in the context of the fact that other officials who implement the law and investigate should be assigned more responsibilities to conduct investigations related to money laundering and also seek to ensure that investigations are carried out in a coordinated manner with official persons of other countries. Suggestion No. 31, which is a supplementary suggestion, mentions the authority to be given to the relevant authorities to carry out the above responsibilities. Its implementation may also not be satisfactory from the assessor's perspective.

Regarding the declaration and other details to be submitted as per the recommendation number 32 regarding the movement of cash across the border, satisfactory implementation can't be over ruled.

**Table No. 7.2: No. of Cases disseminated by FIU to LEAs**

S.N.	Agencies	2073/74 (2016/17)	2074/75 (2017/18)	2075/76 (2018/19)	2076/77 (2019/20)	2077/78 (2020/21)
1.	DMLI	39	44	27	39	26
2.	Nepal Police	124	78	36	119	98
3.	DRI	174	144	107	200	75
4.	IRD	8	51	42	26	3
5.	CIAA	9	8	2	15	2
6.	Dept. of Co-operatives	-	-	-	18	1
7.	Others	37	19	2	2	7
	<b>Total</b>	<b>391*</b>	<b>344*</b>	<b>216*</b>	<b>419*</b>	<b>212*</b>

*Source: FIU-Nepal*

There is no reason to be dissatisfied with the implementation of the provision to keep records of all types of data related to money laundering and financial support in terrorist activities as recommended in recommendation 33. In the same way, the suggestion of another number that the regulator or supervisor should provide necessary support and support to the related financial and non-financial institutions in relation to suspicious transaction reports and other issues can be considered to be effectively implemented in the context of Nepal. It is found that Nepal has addressed to some extent through the relevant laws the provisions contained in the recommendation number 35, especially the recommendations numbered 6 to 8, which are applicable to natural and legal persons as well as designated non-financial professionals and businessmen and their directors and senior managers.

In the last and seventh section of FATF recommendations, provisions related to international cooperation are included. Under this, in the 36<sup>th</sup> recommendation, countries are encouraged to ratify and implement international conventions such as Vienna Convention, Palermo Convention etc. Nepal has ratified most of these conventions.

The 37<sup>th</sup> recommendation is on mutual legal assistance and the 38<sup>th</sup> recommendation is about freezing and confiscation. Similarly, for international mutual cooperation, the 39<sup>th</sup> recommendation includes the provision of legal arrangements to prevent the extradition of those involved in financial crimes related to money laundering and terrorist activities. For the implementation of such recommendation on international mutual assistance, Nepal has

Mutual Legal Assistance Act and Extradition Act in place and the FIU is playing a coordinating role to implement these recommendations.

As the last suggestion of the 40-point suggestion, any country should develop a reasonable legal and organizational system to quickly and effectively receive and provide international assistance to its officials, and should be given the authority to enter into bilateral and multilateral agreements with various countries as needed. Nepal has also tried to address this point through the Mutual Legal Assistance Act.

FATF Mutual Evaluation Report reflects Implementation status of Nepal

FATF has identified 11 Immediate Outcomes (IOs), as stated in FATF Methodology that an effective AML/CFT framework should achieve. During its mutual evaluations, the FATF assesses the effectiveness of a country's efforts against each of these 11 immediate outcomes. The extent to which a country implements the technical requirements of each of the FATF Recommendations remains important; they are after all the building blocks for an effective framework to protect the financial system. But, adopting compliant laws and regulations is not sufficient. Each country must enforce these measures, and ensure that the operational, law enforcement and legal components of an AML/CFT system work together effectively to deliver the results. During an assessment, the FATF evaluates how well all these components are working together in the context of the risks that the country is exposed to.

## **7.2 AML CFT Guidelines of Basel Committee on Banking Supervision (BCBS) and their Implementation by Nepal**

The Basel Committee on Banking Supervision (BCBS) sets the global standards for the prudential regulation of banks and provides a forum for regular cooperation on banking supervisory matters. It was formed in 1974 by the central bank governors of the group of 10 countries. Its 45 members comprise central banks and bank supervisors from 28 jurisdictions.

The committee has no formal international supervisory authority or force of law. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practices on a wide range of bank supervisory issues. These standards and guidelines are

adopted with the expectation that the appropriate authorities within each country will take all necessary steps to implement them through detailed measures, statutory, regulatory or otherwise, that best suit that country's national system.

Basel committee has issued guideline regarding sound management of risks related to money laundering and financing of terrorism regarding assessment, understanding, management and mitigation of risks, customer acceptance policy, customer and beneficial owner identification, verification and risk profiling, ongoing monitoring, management of information and reporting of suspicious transactions and asset freezing. The Principle no 29 of BCBS provides guideline on prevention on Abuse of Financial Services.

***BCBS: Principle 29: Abuse of financial services***

The supervisor determines that banks have adequate policies and processes, including strict customer due diligence (CDD) rules to promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, *for criminal activities*.

AML/CFT regulation should follow a proportionate or “risk-based approach” consistent with the standards of the Financial Action Task Force (FATF) – requiring financial institutions to adopt enhanced CDD measures for transactions or products that present higher AML/CFT risks and permitting them to use simplified CDD measures where risks are lower.

Subject to a jurisdiction's assessment of its money laundering and terrorist financing risks, financial inclusion products and services may present lower risk if they are subject to appropriate restrictions such as: (i) low-value limits, whether for account balances, individual transactions, or total value of transactions in a given period; (ii) geographic restrictions (eg no or limited international transactions); or (iii) restrictions on the customer who may be offered and use the products and services (eg only individuals). Among RoP Survey respondents, the most common means of establishing “lower risk” was the imposition of low-value thresholds.

Where risks are proven to be low, the regulator should have the option of permitting the application of simplified CDD measures, and should do so where appropriate.

Regulation that requires documentation to verify identity creates potential barriers to access to financial services and products. It is therefore important to consider the purpose and design of the verification measures. Acceptance of non-standard identification documentation is particularly important in jurisdictions that lack a national identity document or other widespread means of identity verification. For services that involve remote account opening via mobile phone or agent, explicit permissibility of non-face-to-face CDD (by agents or mobile device) is essential.

Appropriate employment by banks and nonbank financial institutions of simplified CDD is especially important as overly-strict CDD rules can prevent unserved and underserved customers from accessing formal financial services and products and potentially increase the risk of money laundering and terrorist financing by shifting transactions to the informal economy.

As the standards set by BCBS is related to Banking industries only and being internationally transacting banks in Nepal, implementation of BCBS standards are effective in terms of policy and governance. But due to the limitation of use of technology, their effectiveness are not at par the international standards.

### **7.3 AML CFT Guidelines of Wolfsberg Group and their Implementation by Nepal**

The Wolfsberg Group is a global association of thirteen leading international financial institutions that aims to develop and promote financial industry standards and practices for anti-money laundering, counter-terrorist financing, and sanctions compliance. The group has established a set of principles that provide guidelines for financial institutions to develop and implement effective anti-money laundering (AML) and counter-terrorist financing (CFT) programs.

The Group first came together in 2000 at the Wolfsberg castle in Switzerland, accompanied by representatives of Transparency International, to draft anti-money laundering guidelines for private banking that, when implemented, would mark an unprecedented private-sector assault on the laundering of corruption proceeds.

The Wolfsberg *Anti-Money Laundering Principles for Private Banking* was published in October 2000 and was revised in May 2002 and again in June 2012. These principles recommend controls for private banking that range from the basic, such as customer identification, to enhanced due diligence, such as heightened scrutiny of individuals who “have or have had positions of public trust.”

As a member of the international community, Nepal is expected to adhere to these principles and implement them in its financial sector. The Nepalese government has taken several steps to strengthen its AML/CFT framework and align it with international standards, including the Wolfsberg Group principles.

In Nepal, the Financial Information Unit (FIU) is responsible for implementing AML/CFT measures, and it has made significant progress in enhancing its institutional capacity to combat money laundering and terrorist financing. The FIU has also issued various directives and guidelines for financial institutions to follow, including measures to implement customer due diligence, record-keeping, and reporting suspicious transactions.

However, there are still challenges in implementing the Wolfsberg Group principles in Nepal. The country's financial sector is still largely cash-based, making it difficult to monitor and detect suspicious transactions. In addition, there is a lack of coordination and information sharing between different government agencies, which hinders effective AML/CFT enforcement.

To address these challenges, Nepal needs to continue strengthening its AML/CFT framework and implementing the Wolfsberg Group principles. This will require sustained political commitment, adequate resources, and technical assistance from the international community. Furthermore, there is a need to increase public awareness and collaboration between

government agencies, financial institutions, and other stakeholders to effectively combat money laundering and terrorist financing in Nepal

#### **7.4 AML CFT Guidelines of Egmont Group and their Implementation by Nepal**

The Egmont Group is a global network of financial intelligence units (FIUs) that aims to facilitate cooperation and information sharing among FIUs to combat money laundering, terrorist financing, and other financial crimes. Nepal is a member of the Egmont Group and has committed to implementing Egmont Group standards.

To implement Egmont Group standards, Nepal has established a national FIU, known as the Financial Information Unit Nepal (FIU-Nepal), which serves as the central agency responsible for receiving, analyzing, and disseminating suspicious transaction reports (STRs) and other financial intelligence to relevant law enforcement agencies.

FIU-Nepal has implemented various measures to comply with Egmont Group standards, including the establishment of an online reporting system for submitting STRs, the development of guidelines for reporting entities, and the adoption of procedures for conducting financial investigations.

In addition, Nepal has also implemented various laws and regulations to combat money laundering and terrorist financing, including the Anti-Money Laundering Act, the Anti-Money Laundering Rules, and the Terrorism Financing Prevention Rules. These laws and regulations require reporting entities, including financial institutions, to implement know-your-customer (KYC) measures and to report suspicious transactions to FIU-Nepal.

Overall, Nepal has taken significant steps to implement Egmont Group standards and combat financial crimes. However, there is still room for improvement, particularly in terms of enhancing the effectiveness of its AML/CFT regime and improving coordination and cooperation among relevant agencies.

## **7.5 EU Conventions and 6AMLD and their Implementation by Nepal**

The 6th Anti-Money Laundering Directive (6AMLD) is a European Union (EU) directive aimed at strengthening the fight against money laundering and terrorist financing. The directive was adopted on October 2018 and was required to be transposed into national law by the member states by December 2020.

Nepal, being a non-EU country, is not bound to implement the 6AMLD. However, Nepal is a member of the Asia Pacific Group on Money Laundering (APG), which is a regional body affiliated with the Financial Action Task Force (FATF), an intergovernmental organization that sets global standards for anti-money laundering and counter-terrorist financing.

As a member of the APG, Nepal is obligated to implement international standards for anti-money laundering and counter-terrorist financing. Nepal has already implemented several laws and regulations to combat money laundering and terrorist financing, including the Anti-Money Laundering Act 2008 and the Prevention of Money Laundering and Terrorist Financing Regulation 2013.

In recent years, Nepal has made progress in strengthening its anti-money laundering and counter-terrorist financing regime. For example, in 2020, Nepal's Department of Money Laundering Investigation (DMLI) signed a memorandum of understanding with the Financial Intelligence Unit (FIU) of India to strengthen cooperation in the fight against money laundering and terrorist financing.

While Nepal is not directly required to implement the 6AMLD, it is expected to continue to align its anti-money laundering and counter-terrorist financing regime with international standards set by the FATF and its regional bodies such as the APG.

## **7.6 Provisions in Vienna Convention 1988 and their Implementation by Nepal**

United nations convention against illicit traffic in narcotic drugs and psychotropic substances adopted in vienna, 19 december 1988 (excerpts) the parties to this convention, deeply

concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society, It was the first major initiative in the prevention of money laundering and-

This convention laid down the groundwork for efforts to combat money laundering by obliging the member states to criminalize the laundering of money from drug trafficking.

It promotes international cooperation in investigations and makes extradition between member states applicable to money laundering.

The convention also establishes the principle that domestic bank secrecy provisions should not interfere with international criminal investigations.

Nepal ratified the UNODC Vienna Convention and has taken various steps to implement its provisions. The country has enacted several laws and regulations to control drug trafficking and abuse, including the Narcotic Drugs Control Act of 1976 and the Psychotropic Substances Control Act of 1976. These laws provide the legal framework for controlling the production, trafficking, and abuse of illicit drugs.

Nepal has also established a national drug control agency, the Narcotic Control Bureau, which is responsible for implementing the country's drug control policies and programs. The agency works in close collaboration with international organizations, including the UNODC, to combat drug trafficking and related crimes.

In addition to these measures, Nepal has also launched public awareness campaigns to educate the public about the dangers of drug abuse and the importance of drug control. The country has also participated in various international conferences and meetings on drug control to share its experiences and learn from other countries.

Overall, Nepal has made significant efforts to implement the provisions of the UNODC Vienna Convention and combat drug trafficking and abuse in the country. However,

challenges remain, including the lack of resources and the increasing use of Nepal as a transit point for drug trafficking.

Nepal has ratified this Convention against Corruption in Feb. 24, 2011 and Offences have been made part of the Assets Laundering and Prevention Act.

## **7.7 AML CFT Related Palermo Convention and their Implementation by Nepal**

The Palermo Convention, also known as the United Nations Convention against Transnational Organized Crime, is a comprehensive international legal framework designed to combat various forms of organized crime, such as human trafficking, smuggling of migrants, and illicit drug trafficking.

Nepal is a signatory to the Palermo Convention and has implemented various measures to combat transnational organized crime. Ratification of this Convention was done by Nepal on June 24, 2011 and Offenses mentioned there have been made part of the Assets Laundering and Prevention Act.

Nepal's implementation of the Convention has included the enactment of the Human Trafficking and Transportation (Control) Act, which criminalizes human trafficking and provides for the protection of victims. The country has also established a national committee to oversee the implementation of the Convention and to coordinate efforts to combat organized crime.

Additionally, Nepal has implemented measures to combat money laundering and terrorist financing, including the enactment of the Money Laundering Prevention Act and the establishment of a Financial Information Unit to monitor and investigate suspicious financial transactions.

Overall, Nepal's implementation of the Palermo Convention reflects its commitment to combating organized crime and protecting the human rights of its citizens.

## Chapter-8

### Implementation Status of Provisional Measure and Confiscation

#### 8.1 Introduction

In the context of financial crimes, provisional measures and confiscation can play a significant role in the investigation, prosecution, and punishment of financial fraud, money laundering, and other related offenses. Jurisdictions should have the ability to freeze / seize assets in the course of a tax crime investigation, and the ability to confiscate assets.

Freezing or seizing of assets involves “temporarily prohibiting the transfer, conversion, disposition or movement of assets or temporarily assuming custody or control of assets on the basis of an order issued by a court or other competent authority” Freezing is an action that temporarily suspends rights over the asset and for example, may apply to bank accounts which are fungible. Seizure is an action to temporarily restrain an asset or put it into the custody of the government and may apply to physical assets such as a vehicle. Generally, these measures are used to temporarily prevent the movement of assets pending the outcome of a case.

Confiscation of assets, on the other hand, can be defined as “the permanent deprivation of assets by order of a court or other competent authority”. Confiscation (which may be referred to as asset forfeiture) is generally used after the final outcome of a case, as it is a final measure that stops criminals from accessing assets obtained from a crime. Freezing, seizing and confiscation powers must be exercised in accordance with national law, including requirements as to proportionality.

In order to be able to successfully conduct criminal investigations and to ensure that the assets that gave rise to, or are the product of tax crime are adequately secured throughout the investigations, it is important that the investigation agencies can freeze or seize such assets for the duration of the investigation and the criminal procedure. As noted above, in the investigation of tax offenses, being able to interrupt the movement of financial assets can be essential in identifying or preventing an offense. In addition, agencies should have the

authority to confiscate assets that gave rise to, or are the product of tax crimes. This is particularly relevant in fighting tax crimes, as financial assets are easily removed from one jurisdiction to another and can lead to financial losses for governments.

The freezing, seizing and confiscation of assets are necessary in order to prevent the proceeds of a crime from being disposed of or being enjoyed by a suspect, or to preserve physical evidence of a crime. In some jurisdictions, the confiscation or forfeiture of an asset may be a sanction on its own, or a means to ensure pecuniary fines are paid. Freezing, seizing and confiscation disrupts criminal activity by inhibiting access to assets that would have been beneficial to the individual or organization committing the crime or can prevent the criminal assets from being employed to commit further crimes. The freezing, seizing and confiscating of criminal assets is also a deterrent measure as it can reduce the profitability of committing tax crimes.

Jurisdictions should ensure that the freezing, seizing and confiscating of assets is possible for both domestic and foreign tax investigations and judgments. The legal power to do so should be in domestic law, or for international cases may be undertaken in response to a request for mutual legal assistance in accordance with international agreements such as a mutual legal assistance treaty (MLAT).

The available mechanisms for the freezing, seizing and confiscating of assets will vary between jurisdictions, but the mechanisms described below may be relevant to consider.

### ***Rapid freezing of assets***

Speed can be essential when it comes to freezing and seizing assets, as criminals can quickly transfer funds out of the agencies' reach or dispose of property if they become aware that the criminal investigation agencies are investigating them. The legal authority and operational capacity to freeze assets rapidly in urgent cases is relevant, for example, where the loss of property is imminent.

### ***Extended confiscation***

This is an action that involves not only confiscating property associated with a specific crime, but also additional property which the court determines constitutes the proceeds of other crimes. This might be useful to effectively tackle organised criminal activities to not only confiscate property associated with a specific crime, but also additional property which the court determines to be the proceeds of other crimes.

### ***Value-based confiscations***

This is a method of confiscation that enables a court to impose a pecuniary liability equivalent to the amount of the criminal proceeds. This applies once the court determines the amount of the benefit accruing directly or indirectly to an individual from criminal conduct, and the order is realisable against any asset of the individual.

### ***Third party confiscations***

This is a measure made to deprive someone other than the offender the third party of criminal property. This applies where that third party is in possession of assets which are knowingly transferred to him/her by the offender to frustrate confiscation. Third party confiscation can alleviate the risk that an agency could be frustrated by the suspect transferring criminal property to a third party to avoid confiscation.

### ***Non-conviction based confiscation***

Non-conviction based confiscation is the power to seize assets without a criminal trial and conviction and is an enforcement action taken against the asset itself and not the individual. It is a separate action from any criminal proceeding and requires proof that the property is the proceeds or an instrumentality of crime. In some jurisdictions, the criminal conduct must be established using a standard of proof of the balance of probabilities, which reduces the burden for the agency and means that it may be possible to obtain the assets even where there is insufficient evidence to support a criminal conviction.

(Source: UNODC [www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf](http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf))

Provisional measures, such as asset freezes, can be used to prevent the accused from disposing of assets that could be subject to confiscation or to preserve the assets for potential restitution to victims. In some cases, the authorities may also use provisional measures to secure the cooperation of the accused, who may be more willing to assist in the investigation if they believe their assets will be protected.

Confiscation, also known as forfeiture, can be used as a means of penalizing the accused for the financial crime committed and of compensating the victims. Confiscation proceedings can be initiated by the government and may involve the seizure of assets, including bank accounts, real estate, and other property, that were either directly or indirectly involved in the crime.

In financial crimes cases, it is important to ensure that confiscation proceedings are carried out in a manner that is consistent with due process and human rights standards. This includes the right to a fair trial and the right to appeal. In some jurisdictions, there may also be legal limits on the extent of confiscation, such as a maximum amount that can be seized or restrictions on the confiscation of certain types of property, such as a primary residence.

## **8.2: Provisions in Nepal**

In Nepal, provisional measures and confiscation are used as tools to combat financial crimes, such as money laundering, corruption, and fraud. The country has a legal framework in place to address these types of offenses, including the Money Laundering Prevention Act and the Corruption Prevention Act.

The government of Nepal has established laws to combat financial crimes, including the Money Laundering Prevention Act, 2064 (2008) and the Prevention of Corruption Act, 2059 (2002). These laws authorize the government authorities to seize and freeze assets that are believed to be connected to financial crimes.

Under Nepali law, provisional measures, such as asset freezes and injunctions, can be requested by the competent authorities during an investigation into financial crimes. These

measures can be used to prevent the accused from disposing of assets that could be subject to confiscation or to preserve assets for potential restitution to victims.

Under these laws as mentioned above, the government can freeze a suspect's assets or properties for up to 90 days during the investigation period. The government may also confiscate assets permanently if the suspect is convicted of the financial crime.

Confiscation of assets is also a possible outcome of financial crime investigations in Nepal. The authorities can initiate confiscation proceedings against assets that were directly or indirectly involved in the crime, and the assets can be seized and forfeited to the state. In some cases, the assets may be sold and the proceeds used to compensate the victims of the crime.

It is important to note that confiscation proceedings in Nepal must be carried out in accordance with due process and human rights standards, including the right to a fair trial and the right to appeal. The exact legal requirements for confiscation may vary depending on the specific financial crime and the nature of the assets involved.

In Nepal, the government has the legal authority to freeze or confiscate property under certain circumstances. This can be done under the following circumstances:

**Seizure by court order:** If a court has ordered the seizure of property as part of an investigation or legal proceeding, the government can freeze or confiscate that property.

**Confiscation as a punishment:** If a person is convicted of a crime, the court can order the confiscation of property as a punishment. This is typically done in cases where the property is believed to be linked to the crime in question.

**Forfeiture for non-payment of taxes:** If a person or business owes taxes to the government and fails to pay, the government can seize and sell their property to recover the amount owed.

Confiscation of illegal property: If the government determines that a person's property was obtained through illegal means, such as fraud, corruption, or drug trafficking, it can be confiscated.

In addition, the government has established the Financial Information Unit (FIU) as a central agency to investigate and monitor financial transactions in Nepal. The FIU works closely with other government agencies, such as the Central Investigation Bureau and the Inland Revenue Department, to detect and prevent financial crimes.

It is important to note that the government must follow due process and obtain a court order before freezing or confiscating any property. The suspect also has the right to challenge the government's actions in court.

#### ***Assets Laundering Prevention Act, 2008 (ALPA)***

The law that mainly deals with the freezing and confiscation of property is the ALPA. This law empowers the government to freeze and confiscate any property that is suspected to be the proceeds of a crime, including money laundering and terrorist financing.

Under the ALPA, the government can freeze the property by issuing a "Freezing Order," which prohibits the transfer, disposal, or dealing of the property. The Freezing Order can be issued by the Department of Money Laundering Investigation (DMLI) or the Court. The order remains in force for 60 days initially, which can be extended up to 180 days, subject to certain conditions.

Confiscation of property can be ordered by the Court after the investigation and prosecution of the case. If the court finds that the property is the proceeds of a crime, it can order the confiscation of the property. The property is then transferred to the government, and the owner loses all rights to the property.

Overall, the ALPA provides a legal framework for the government to freeze and confiscate property suspected to be the proceeds of a crime in Nepal.

ALPA enables the Department of Revenue Investigation to “cause to freeze assets relating to the offense under this Act and cause inquiry and investigation of the offense”.

Aside from the ALPA itself, Rule 6(b) of the AML Rules 2015 purports to confer upon the FIU the power to “write to concerned organization to freeze the property for 30 days at maximum if the analysis of the transaction or the information, particulars received from the reporting institution presents reasonable ground to believe that the property involved in the suspicious transaction is likely to be transferred, sold or in any manner transformed or changed unless frozen at once.”

#### ***Narcotics (Drugs) Control Act 1976***

“Narcotic drugs and other materials connected with the offense, and any other document which may serve as evidence” may be seized. The ambit of this power is clearly limited to evidence preservation, rather than the preservation of, for example, “any building, land or vehicle” or “movable or immovable property earned from any narcotics related offending” that may ultimately be confiscated under powers of forfeiture.

#### ***Prevention of Corruption Act 2002 & CIAA Act 1991***

Under clause 39 of this Act, funds in accounts may be “frozen” via directive of an investigating authority if it “appears that there has been financial transaction or operation of an account... with any bank or financial institution within the country or in any foreign country”.

#### ***Abuse of Authority Act 1991***

#### ***Human Trafficking and Transportation (Control) Act 2007***

As noted above, clause 18 of this Act enables the “seizure” of movable or immovable property, including houses, land and vehicles. However, in context this appears to relate solely to post-conviction confiscation, rather than interim restraint.

#### ***Banks and Financial Institutions Act 2006***

Section 80 of the Banks and Financial Institutions Act 2006 empower Nepal Rastra Bank (NRB) to order licensed financial institutions to freeze accounts. This power is available “in

the course of carrying out the investigation of any type of crime or maintaining the national interests by controlling national or international terrorist activities or organized crimes”. The freeze is effected via a directive to the institution to “freeze any account... in such a manner as to prevent the withdrawal or transfer of funds in any way from that account”.

### ***Proceed of Crime (seizing, freezing and confiscation) Act, 2070***

It has established the proceeds of crime management department under s.13, to manage, secure, auction, and hold the seized and freeze proceeds of crime and audit the proceeds of crime management fund. Nepali legal system had mainly concerned its attention to crime against bodily harm and harm to individual’s property. Before the formulation of MLPA, these crimes were controlled under Corruption Prevention Act, 2059. The Act has made the provisions as a separate government agency for accelerating anti-money laundering activities by interpreting the Act on behalf of the government of Nepal.

### ***Mutual Legal Assistance Act***

Besides above mentioned Acts, Mutual Legal Assistance Act also describes about freezing or confiscating of property under different conditions. Some of the provisions laid down in the act are as under-

Request for freezing or confiscating property:

- (1) If there are adequate grounds to believe that the whole or any part of property related with the judicial proceedings is located in a foreign state, the Court may make an order for the freezing or confiscation of such property.
- (2) If an order is made under sub-section (1), the Court shall communicate it to the central authority for the freezing or confiscation of such property.

### ***Additional Elements***

Similarly, under the Prevention of Corruption Act 2002 public officials are obliged to attest to their asset-holdings. Under section 20, where any “property statement” discloses assets disproportionate to the official’s earnings and the official is unable to show lawful provenance, the assets are deemed to have been obtained in an “illegal manner”. On that

account, the official is liable to conviction and the assets are amenable to confiscation. Such deeming will also occur where an official maintains an improbable lifestyle or makes gifts or other asset dispositions that are incommensurate with his/her earnings.

Some of the enactments containing provisions of seizure of instrumentalities of crime has been illustrated in Table No. 8.1.

**Table No. 8.1: Some of the enactments containing provisions of seizure of instrumentalities of crime**

ACT	RELEVANT PROPERTY
<b>Black-marketing and Some Other Social Offences and Punishment Act 1975</b>	“Goods, vehicles, documents and cash” related to the sale of goods in contravention of price fixing requirements; excessive “profiteering; “hoarding and artificial shortage”; sale and distribution by misrepresentation; sale of “adulterated medicine”.
<b>Commission for the Investigation of Abuse of Authority Act 1991</b>	Instrumentalities (and proceeds) of “improper conduct” by a person holding a public post (such as: failure to comply with mandatory procedures; exercising powers for improper purpose; failure to discharge a duty; abuse of immunity or privileges).
<b>Copyright Act 2002</b>	Devices used to reproduce materials in breach of copyright.
<b>Explosives Act</b>	Explosives produced, imported, possessed or sold without a licence.
<b>Foreign Exchange (Regulation) Act 1962</b>	Any foreign exchange “related” to the following offences: Engaging in foreign exchange transactions without a licence; importation or exportation of currency or bullion without a licence; receiving payment for exported goods via un-prescribed channels; exporting or transmitting securities without authority of Nepal Rastra Bank; entering into agreements in contravention of the objectives of the Act.
<b>Forest Act 1993</b>	Any “load carriers, tools, quadruped and any other equipment” seized in connection with offences relating to deforestation or defilement of National Forest.
<b>Gambling Act 1963</b>	All “cash and goods” used or intended to be used for the purposes of gambling.
<b>Human Trafficking and Transportation (Control) Act 2007</b>	Any “movable or immovable property” acquired as a result of an offence related to human trafficking and “any house, land or vehicle” used for the commission of such offences.
<b>Narcotic Drugs (Control) Act 1976</b>	Any building, land or vehicle used in the commission of narcotics related offences as well as any narcotics, materials or equipment used in the manufacture of narcotics. (As noted earlier any movable or immovable property earned from any narcotics related offending may also be confiscated.)
<b>National Parks and Wildlife Conservation Act 1973</b>	Any “trophies, weapons, means of transport and other materials” connected with illegal hunting or entry into national parks or reserves and associated trading in trophies without a licence.
<b>Nepal Rastra Bank Act 2002</b>	Any assets related to accepting deposits, issuing credit or debentures or other financial instruments in contravention of the Act or rules and by-laws framed there-under.
<b>Postal Act 1963</b>	Prohibited newspapers, magazines, books or other documents.
<b>Patent Design and Trade Mark Act 1965</b>	Goods or commodities “related to” offences committed in breach of patent or trade mark protection.
<b>Prevention of Corruption Act 2002</b>	Any “graft, gifts or commission” accepted by a public servant other than in accordance with prior approval and any property earned as a result of private trade or business carried on by the public service contrary to a prohibition. Additionally, under s 20 any property acquired by a public servant that “seems to be incompatible or unnatural may be confiscated.

## **Chapter-9**

### **Mutual Legal Assistance and Nepal's Efforts on it**

#### **9.1 Introduction**

Mutual legal assistance (MLA) is a process by which countries provide each other with assistance in connection with criminal investigations, prosecutions, and other legal proceedings. This assistance can include the gathering and sharing of evidence, the service of legal documents, and the taking of testimony from witnesses or suspects.

#### **9.2 Mutual Legal Assistance Treaties**

Mutual legal assistance is inevitable if evidence on financial crime is required from another jurisdiction. For that purpose, treaties are done between the nations and such treaties (MLATs) provide a legal basis for transmitting evidence that can be used for prosecution and judicial proceedings.

Procedures to obtain/provide legal assistance can vary country to country, but the typical process is outlined as below-

The central authority of the requesting country sends a *commission rogatoire* (letters rogatory or letter of request) to the central authority of the other country. The letter includes the information sought, the nature of the request, the criminal charges in the requesting country and the legal provision under which the request is made.

The central authority that receives the request sends it to a local financial investigator to find out if the information is available.

An investigator from the requesting country then visits the country where the information is sought and accompanies the local investigator during visits or when statements are taken.

The investigator asks the central authority for permission to remove the evidence to the requesting country.

The central authority sends the evidence to the requesting central authority, thereby satisfying the request for mutual legal assistance. Local witnesses may need to attend court hearings in the requesting country.

Nepal has made efforts to improve its legal framework and capacity for MLA in recent years. Nepal is a member of the South Asian Association for Regional Cooperation (SAARC) and has ratified the SAARC Convention on Mutual Assistance in Criminal Matters which calls for the mutual assistance of its member countries in criminal matters, including the extradition of wanted persons and MLA.

In addition, Nepal has also signed bilateral mutual legal assistance treaties with a number of countries, including India, China, and Bhutan. These treaties provide a legal framework for cooperation between the countries in relation to criminal investigations and prosecutions.

Nepal's Ministry of Law, Justice and Parliamentary Affairs is responsible for coordinating MLA requests and providing assistance to foreign countries in criminal matters. The Ministry is also responsible for maintaining and updating the list of designated authorities and officials authorized to receive and execute MLA requests on behalf of Nepal.

The Nepal Police is also actively involved in MLA, as it is responsible for receiving MLA requests from foreign countries and coordinating with other relevant authorities to provide assistance.

Nepal has also established a Financial Information Unit (FIU) which is responsible for receiving and analyzing information on suspicious financial transactions and providing assistance to foreign countries in relation to money laundering and other financial crimes.

### **9.3. Mutual Legal Assistance Act**

Nepal has Mutual Legal Assistance Act, 2070 (2014) also in place which defines details provisions and conditions for exchange of mutual legal assistance. Some of the legal conditions the mutual legal assistance can be sought are-

Where there exists a bilateral treaty between Nepal and a foreign state on the exchange of mutual legal assistance, mutual legal assistance may be exchanged between Nepal and such a foreign state.

Notwithstanding anything contained in sub-section (1), if a foreign state makes a request, through the diplomatic channel, to the Government of Nepal for mutual legal assistance in respect of any particular legal proceedings and the request is accompanied by the assurance of affording mutual legal assistance in similar type of judicial proceedings in the future, nothing shall bar the extension of legal assistance on a basis of reciprocity.

Provided that a judgment made by a foreign court in any matter not covered by a treaty may not be enforced.

Likewise, the Act has also mentioned Conditions of not exchanging mutual legal assistance and as per the act, mutual legal assistance shall not be extended if-

1. in relation to a matter of civil nature, the judicial proceedings involve the amount in controversy of less than one hundred thousand rupees,
2. in relation to a matter of criminal matter, the offence is punishable by imprisonment for less than one year or a fine of less than fifty thousand rupees,
3. the extension of mutual legal assistance as requested by a foreign state undermines or results in the undermining of the public order (*ordre public*) or sovereignty of Nepal.

According to the Mutual Assistance Act, mutual legal assistance may be provided between Nepal and a foreign state in the following matters related with judicial proceedings:

- taking, collecting or receiving document or evidence,
- providing information and evidence by inspecting any relevant thing or place,
- providing originals or certified copies of relevant documents including banking, financial or business records,
- executing searches and seizures of objects, locating or identifying persons,
- facilitating the appearance of persons who can assist in a matter of criminal nature,

- serving summons,
- freezing or confiscating movable or immovable property,
- enforcing judgments.

### **9.3.1 Some of the provisions outlined in the Act:**

The Mutual Legal Assistance Act has defined clear procedures in regards to obtaining and providing legal assistance mutually. Basically following procedures for have been outlined in Obtaining Mutual Legal Assistance in the act-

### **9.3.2 Request for provision of evidence:**

- (1) If the authority competent to make investigation or prosecution in accordance with the prevailing law has adequate grounds to believe that any document, evidence, information or object, including any banking, financial or business records, which may be of assistance in the investigation or prosecution of any offense, is in a foreign state, the authority may request the Central Authority for the provision of such document, evidence, information or object.
- (2) If there are adequate grounds to believe that any document, evidence, information or object, including any banking, financial or business records, which may be of assistance in the judicial proceedings, is in a foreign state, the Court may make an order for that purpose.
- (3) If an order is made under sub-section (1), the Court shall request the Central Authority for the provision of such document, evidence, information or object.
- (4) If, in making a request for the provision of any document, evidence, information or object under sub-section (1) or (3), it appears necessary to search any place or object or freeze any object, the concerned authority or Court may make a request also for executing the search of such place or object or freezing any object.

### **9.3.3 Request for appearance of and locating persons:**

- (1) If there are adequate grounds to believe that any person, who may be of assistance in the judicial proceedings, resides in a foreign state, the Court may make an order for that purpose.
- (2) If it is necessary to locate or identify any person, who is related to any judicial proceedings and is in the territory of a foreign state, the Court may make an order for that purpose.
- (3) If an order is made under sub-section (1) or (2), the Court may make a request to the Central Authority for the availability of such person or for locating the place in the foreign state where such person is staying or for identifying such person.

### **9.3.4 Request for service of process or judicial document:**

- (1) If, in any case filed in the Court, it is necessary to serve any process or judicial document on any person who is residing or staying in a foreign state, the Court may make an order for that purpose.
- (2) If an order is made under sub-section (1), the Court shall request the Central Authority for the service of such process or judicial document on the person residing or staying in the foreign country.

### **9.3.5 Request for taking evidence:**

- (1) If, in respect of any case *sub judice* in the Court, it is necessary to take any evidence in a foreign country, the Court may make an order for that purpose.
- (2) If an order is made under sub-section (1), the Court shall write to the Central Authority to that end.

### **9.3.6 Request for examination of witness and service of written interrogations:**

- (1) If, in the course of any judicial proceedings, it is necessary to examine any person, who is residing or staying in a foreign country as a witness, and that person does not want or is not able to travel to Nepal, the Court may order that such person be examined by the court of the foreign country as a witness.
- (2) If an order is made for the examination of a witness under sub-section (1) and such witness is not able to appear before the court of foreign country, the Court may make an order for the examination of witness by way of written interrogatories.
- (3) Notwithstanding anything contained in sub-section (2), the Court may, at the request of the concerned party, may make orders for the examination of witness and for deposition by way of written interrogatories at the same time.
- (4) If a witness is unable to appear in the court of a foreign country because of old age or physical illness or to appear in the Court of Nepal because of residing or staying abroad and the Court considers it reasonable to examine such witness through video conferencing, it may make an order for the examination of such witness through video conferencing.
- (5) If an order is made under this Section, the Court shall communicate it to the Central Authority.

### **9.3.7 Request for freezing or confiscating property:**

- (1) If there are adequate grounds to believe that the whole or any part of property related with the judicial proceedings is located in a foreign state, the Court may make an order for the freezing or confiscation of such property.
- (2) If an order is made under sub-section (1), the Court shall communicate it to the central authority for the freezing or confiscation of such property.

**Table No. 9.1: Information Exchange with Foreign FIUs by FIU Nepal**

Mode	Type of request	Quarter I			Quarter II			Quarter III			Quarter IV			Total
		Jul/ Aug	Aug/ Sep	Sep/ Oct	Oct/ Nov	Nov/ Dec	Dec/ Jan	Jan/ Feb	Feb/ Mar	Mar/ Apr	Apr/ May	May/ Jun	Jun/ Jul	
ESW	Requests received from foreign FIUs	-	1	-	-	-	-	2	-	-	1	1	-	5
	Requests sent to foreign FIUs	6	-	-	-	-	2	3	2	1	-	-	2	16
	Spontaneous disclosures from foreign FIUs	-	-	-	-	-	1	1	-	-	1	1	-	4
	Spontaneous disclosures made to foreign FIUs	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total information exchange from ESW</b>		<b>6</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3</b>	<b>6</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>25</b>
Email	Information Request sent via email	1	-	-	-	-	-	-	-	-	-	-	-	1
<b>Grand Total</b>		<b>7</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3</b>	<b>6</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>26</b>

*Source: FIU-Nepal*

**9.3.8 Request for enforcement of judgment:**

- (1) If it appears that any judgment made by a Court of Nepal is to be enforced by a foreign court, the Court may make an order for that purpose.
- (2) If an order is made under sub-section (1), the Court shall communicate it to the Central Authority.

**9.3.9 To be admissible in evidence:**

- (1) An evidence taken by a foreign country in accordance with the law of that country pursuant to a request made under Section 15 and made available to the Court through the Central Authority may be taken in evidence as if it were taken in accordance with law.
- (2) Notwithstanding anything contained elsewhere in this Act, nothing shall bar the settlement of a case by examining the other available evidence for the sole reason that

a foreign state has refused to take evidence or evidence has not been taken by the competent authority of such state.

- (3) A certificate issued on behalf of the competent authority of a foreign state indicating the value of the property confiscated in the foreign state, and the date of confiscation, pursuant to a request for mutual legal assistance under Section 15 may be taken in evidence for any judicial proceedings.
- (4) Notwithstanding anything contained in the laws in force, examination of witness or interrogatories executed in a foreign country pursuant to this Act may be taken in evidence as if such examination of witness or written interrogatories were executed in the Court of Nepal.

Information Exchange with Foreign FIUs by FIU Nepal has been illustrated in Table No. 9.2

**Table No. 9.2: Information Exchange with Foreign FIUs by FIU Nepal**

Year/ Action Taken	Requests received from foreign FIUs	Requests sent to foreign FIUs	Spontaneous disclosures from foreign FIUs	Spontaneous disclosures made to foreign FIUs
2009/10	-	1	-	-
2010/11	-	3	-	-
2011/12	-	4	-	-
2012/13	-	2	-	1
2013/14	-	-	1	1
2014/15	-	-	1	1
2015/16	10	3	-	-
2016/17	11	12	-	1
2017/18	12	11	1	1
2018/19	20	16	13	5
2019/20	4	24	10	1
2020/21	5	17	4	0

*Source: FIU-Nepal*

In summary, Nepal has made efforts to improve its legal framework and capacity for MLA in recent years through its participation in multilateral agreements and by signing bilateral mutual legal assistance treaties. The Ministry of Law, Justice and Parliamentary Affairs, Nepal Police and Financial Information Unit are the key government bodies responsible for handling MLA requests and providing assistance to foreign countries in criminal matters.

## **Chapter-10**

### **Extradition on Financial Crimes**

Extradition is the process by which a country surrenders a person to another country for prosecution or punishment for a criminal offense. In the context of financial crimes, extradition can be used to bring individuals who have committed financial crimes in one country to another country for prosecution.

International extradition is governed by treaties between countries. These treaties outline the legal procedures and requirements for extradition, and the types of crimes for which extradition can be sought. Many countries have extradition treaties with other countries, but not all countries have extradition treaties with each other.

In terms of financial crimes, the most common types of crimes for which extradition may be sought include money laundering, fraud, and embezzlement. However, the specific crimes for which extradition can be sought will vary depending on the country and the extradition treaty in question.

Extradition can be a complex and time-consuming process, and it may be subject to political considerations. In some cases, countries may be unwilling to extradite individuals for financial crimes, particularly if they are high-profile or politically sensitive cases.

In recent years, many countries have increased their efforts to extradite individuals suspected of financial crimes, as part of a broader effort to combat global financial crime and to hold individuals accountable for their actions.

Nepal is a sovereign nation and has its own laws and regulations regarding extradition. Nepal Extradition Act, 1964 is the main legal instrument that governs the extradition process in Nepal. This act applies to both Nepalese citizens and foreign nationals who are accused or convicted of an extradition offense in Nepal or any other country.

According to the Extradition Act of Nepal, the offenses for which extradition may be sought include murder, kidnapping, robbery, embezzlement, forgery, counterfeiting, extortion, and other serious crimes. But it doesn't include financial crimes.

The act also specifies the process for extradition, which begins with the receiving country (the country requesting extradition) submitting a formal request to the Nepalese government, along with the relevant evidence and documentation. The Nepalese government then conducts its own investigation to determine whether the person in question should be surrendered for extradition.

Extradition proceedings in Nepal are generally conducted through the Ministry of Home Affairs and the Ministry of Foreign Affairs. The final decision on whether to grant extradition is made by the Government of Nepal, taking into account the facts of the case, the applicable laws and regulations, and any other relevant considerations.

It should be noted that Nepal has extradition treaties with few countries, with India, Bhutan, China, Bangladesh, Sri Lanka, and Pakistan. The provisions of these treaties may override or supplement the domestic extradition law.

In summary, the Extradition Act of Nepal applies to a limited range of criminal offenses, and financial crimes are not included in the list of offenses for which extradition may be sought. Also, Nepal has extradition treaties with few countries, and the process of extradition is largely decided by the Government of Nepal.

As I mentioned earlier, financial crimes are not included in the list of offenses for which extradition may be sought in Nepal under the Extradition Act of 1964. This means that individuals accused or convicted of financial crimes such as money laundering, fraud, or embezzlement cannot be extradited to another country under this act.

However, it's worth noting that Nepal has ratified the United Nations Convention Against Corruption (UNCAC), which requires countries to criminalize money laundering and provide for the extradition of individuals accused or convicted of money laundering offenses.

Despite this, the process of extradition for financial crimes may still be challenging in Nepal due to the lack of specific provisions for financial crimes in the Extradition Act and the limited number of countries with which Nepal has extradition treaties.

Additionally, Nepal is a member of the South Asian Association for Regional Cooperation (SAARC) and has also ratified the SAARC Convention on Mutual Assistance in Criminal Matters which calls for the mutual assistance of its member countries in criminal matters, including the extradition of wanted persons.

In light of this, if a country requests the extradition of an individual accused or convicted of a financial crime, the government of Nepal may consider the request on a case-by-case basis and based on the facts and circumstances of the case, the applicable laws and regulations, and any other relevant considerations, including the bilateral and multilateral agreements Nepal has with other countries.

It's also worth noting that Nepal has been making efforts to improve its legal framework and capacity to combat financial crimes and money laundering in recent years, as well as cooperation with other countries to combat these crimes.

Nepal has extradition arrangements with various countries for the extradition of fugitives wanted for financial crimes. The Extradition Act, 2041 (1984) and its subsequent amendments govern the extradition process in Nepal. The act provides for the extradition of persons who have committed criminal offenses that are punishable under the laws of Nepal and the requesting country.

Under the act, extradition can be initiated when a request is made by a foreign government through diplomatic channels or by an international organization. The request must be supported by documents such as an arrest warrant, evidence of the crime committed, and a copy of the relevant law.

However, the extradition process in Nepal can be time-consuming and complex due to various legal and administrative requirements. In addition, extradition may not be possible if

the offense in question is not recognized as an offense in Nepal or if the person sought is a Nepali citizen.

The authorities in Nepal have also been working to strengthen their legal framework and international cooperation in the area of extradition and mutual legal assistance. Nepal has signed several agreements and conventions with other countries and international organizations to facilitate the exchange of information and the extradition of fugitives wanted for financial crimes. For example, Nepal is a signatory to the United Nations Convention against Corruption and the South Asian Association for Regional Cooperation (SAARC) Convention on Mutual Legal Assistance in Criminal Matters. But Nepal has rarely used the Extradition Act (either to extradite a foreign national or to prosecute a Nepali) since its enactment in 1988. As per mutual evaluation report 2011 of APGML the extradition process enables considerable executive intervention and is not likely to enable the swift surrender of requested persons. However, it suspects that gaps the ML offense and absence of any TF offense may impede Nepal's ability to provide mutual legal assistance, including extradition.

# **Chapter-11**

## **Conclusion and Recommendations**

### **11.1 Introduction**

Nepal is a member of APG, a FATF Styled Regional Body and is obliged to comply with all the standard of financial crime control programs. The implementation of all the international standards are evaluated by the international team comprising experts from different fields and such evaluation identify the status of implementation and gap if any by the country.

Based on the evaluation reports, it is obvious that Nepal has tried by in large, to implement international standard of financial crime control programs.

Nepal has implemented various financial crime control programs to prevent and combat financial crimes. Some of the notable programs are:

National Anti-Money Laundering Strategy and Action Plan (NAMLS/AP): The NAMLS is a comprehensive strategy developed by the Financial Information Unit (FIU) of Nepal to combat money laundering and terrorist financing. The strategy outlines various measures and initiatives to be taken by relevant agencies to prevent and detect money laundering activities.

Nepal Payment System Development Strategy (NPSDS): This is a strategy developed by Nepal Rastra Bank (NRB) to enhance the efficiency, safety, and resilience of the payment system. It includes measures to prevent and detect financial crimes related to payment systems, such as fraud and cybercrime.

Financial Sector Assessment Program (FSAP): FSAP is a joint program of the International Monetary Fund (IMF) and the World Bank to assess the stability and resilience of the financial system of member countries. Nepal has undergone two FSAP assessments, in 2004 and 2017, which have helped identify areas of weakness

and recommended measures to strengthen the financial system and prevent financial crimes.

**Anti-Corruption Programs:** Nepal has implemented various anti-corruption programs and initiatives to prevent and combat corruption, which is a significant financial crime. The Commission for Investigation of Abuse of Authority (CIAA) is responsible for investigating and prosecuting corruption cases, while the Office of the Auditor General (OAG) conducts audits to ensure transparency and accountability in the use of public funds.

Overall, Nepal has taken significant steps to prevent and combat financial crimes. However, there is still a very wide room for improvement, and the relevant agencies need to continue working together to enhance the effectiveness of these programs

As discussed in previous chapters, International standards of financial crime control programs are based on the tools and standards set by different international governmental and non governmental bodies. And the standards set by these bodies are by in large accumulated in recommendations of FATF.

So the gap can be mapped in light of the implementation status of FATF Recommendations by the country, and such gaps are identified through ME of the country and even if the structural and legal implementation might be satisfactory, the effectiveness of such implementations can be evaluated from publicly available data.

## **11.2 Implementation of Legal Framework**

Nepal has promulgated different laws, rules and regulations in regards to control financial crimes in different forms. Basically following are the major items developed by the country in this regards-

- Asset (Money) Laundering Prevention Act (ALPA), 2008
- The Prevention of Corruption Act, 2002
- Criminal Assets and Resources (Prevention, Control and Seizure) Act, 2070

- Mutual Legal Assistance Act, 2070
- Organized Crime Prevention Act, 2070
- Assets (Money) Laundering Prevention Rules, 2016
- Mutual Legal Aid Rules, 2070
- Prevention of Money Laundering (confiscation of assets or funds of listed Persons, group or organization) Rules, 2070
- Criminal Assets and Resources (Prevention, Control and Seizure) Rules, 2077
- AML/CFT related directives and circulars issued by respective regulators
- Other relevant laws and regulations

These policies, especially the Assets Laundering Prevention Act has incorporated most of the provisions as suggested by international standards. So from legal point of view, required laws have been developed by Nepal. However, there are many issues left to include the laws as suggested by FATF. Keeping in view the gaps identified by the evaluator, Nepal has recently tabled new amendment of existing Money Laundering Laws in the parliament with addition of missing clauses and provision. Once the bill is passed by the parliament, country's implementation of international standards in regards to legal frame-wok by Nepal can be said effective.

Besides these, Nepal has also ratified some of the major international conventions on financial crimes as shown in Table No. 11.4.

**Table No. 11.1: International Conventions Ratified by Nepal**

SN	Convention	Ratification year
1	United nation convention against Drugs and psychotropic substances	
2	UN Convention against corruption, 2003	2011
3	UN International Convention for the suppression of the Financing of terrorism 1999	2011
4	UN convention against transnational organized crime, 2000	2011

This also implies the legal commitment of Nepal to fight against financial crimes through the tools and standard developed in international arena.

### 11.3 Implementation of Institutional and Regulatory Framework

For the purpose of having proper institutional and regulatory framework on financial crime control programs, Nepal has developed different institutional structures.

Basically following entities are established for the purpose of controlling financial crimes in the control-

In Nepal, there are several institutions responsible for looking after financial crimes. These institutions include:

***Nepal Rastra Bank (NRB):*** The central bank of Nepal, NRB has the responsibility of supervising and regulating the banking sector. It works to ensure the safety and stability of the financial system and prevent financial crimes like money laundering, fraud, and corruption.

***Financial Intelligence Unit (FIU):*** FIU is a central agency responsible for receiving, analyzing, and disseminating financial intelligence related to money laundering and terrorist financing. It is also responsible for investigating suspicious transactions and sharing information with law enforcement agencies.

***Nepal Police:*** The Nepal Police has a special unit, the Central Investigation Bureau (CIB), which investigates financial crimes such as fraud, embezzlement, and corruption.

***Commission for Investigation of Abuse of Authority (CIAA):*** CIAA is an anti-corruption agency responsible for investigating and prosecuting corruption cases involving government officials, politicians, and public servants.

***Office of the Auditor General (OAG):*** OAG is responsible for auditing the financial statements of government agencies and ensuring transparency and accountability in the use of public funds.

***Department of Money Laundering Investigation:*** The Department responsible for investigating and prosecuting cases related to money laundering in the country

***Revenue Investigation Office:*** This regulator is responsible for tax related issues.

Likewise for DNFBPs, they also have separate regulators. Nepal Law Commission, Chartered Accountants Association of Nepal, Insurance Board, Office of Company Registrars, Department of Immigration, Department of Customs etc are also in place as regulators of concerned sectors.

These institutions work together to investigate and prosecute financial crimes in Nepal. So by Institutional point of view also, Nepal has implemented by in large the international standards of financial crime control programs.

#### **11.4 Effectiveness of Implementation of Financial Crime Control Programs**

Based on the discussions in previous chapters, we can draw general conclusion in the spotlight of development of different frameworks and the effectiveness of their outcome.

National AML CFT risk assessment report itself has sighted some of the challenges and risk areas in the country showing the weak effectiveness of the standards set in legal and institutional frameworks.

Effectiveness of Nepal's efforts in regards to Financial Crime Control Programs vis a vis International Standards have been tried to measure on the basis of different variables, like No. of STR submitted by Reporting Entities and the same forwarded to LEAs.

Likewise, cases filed in court and number of verdict have also been considered as another parameter for this purpose. So as, efforts for international cooperation is another parameter considered to analyze the effectiveness of the program.

**Table No. 11.2: Trend of STR/SAR Analysis and Dissemination by FIU Nepal**

Particulars	Years					
	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
STR/SAR Received from RE	1053	887	1351	1090	1553	2780
STR/SAR Analysed	815	816	677	790	640	1068
STR/SAR Disseminated to LEAs	391	312	207	338	192	409
Percentage of Dissemination of received STR/SAR	37.13%	35.17%	15.32%	31%	12.36%	14.71%
Source: FIU Nepal						

This implies that that ratio of STR/SAR disseminate to LEAs by FIU is just 14.71% in the year 2021/22 and just 12.36% in FY 2020/21. This figure shows the low number of SAR/STR received from Reporting Entities by FIU.

Keeping in mind the total number of Res(99), the number of STR/SAR seems very low showing the need of enhancement of capacity in relation to identification of unusual/suspicious activities and transactions.

**Table No. 11.3: Total No TTR and STR by FIU Npal (2021/22)**

Particulars	Number/Percentage
STR/SAR Received from REs	2780
TTR Received from REs	2,401,714
TTR to STR Ratio	0.001
Source: FIU Nepal	

The above table suggests that the ration of TTR to STR is just 0.001 and that implies that despite the number of TTR is very high, STR is identified in very low proportion. This may be because of ineffective transaction monitoring tools or the transactions itself being genuine.

**Table No. 11.4: Data on domestic cooperation (2021/22)**

<b>Particulars</b>	<b>Number/Percentage</b>
Information Exchange with LEAs and Regulators	74
Information Exchange from REs	3046
Source: FIU Nepal	

In comparison to the number of LEAs and Reporting Entities, exchange of information is in lower side showing the need of improvement on the matter.

**Table No. 11.5: Data on international cooperation (2021/22)**

<b>Particulars</b>	<b>Number/Percentage</b>
Request received from foreign FIUs	13
Request sent to foreign FIUs	17
Spontaneous Disclosure from foreign FIUs	9
Information Request sent via email	1
Source: FIU Nepal	

This figure shows the international standard of financial crime control programs in regards to international cooperation, seems satisfactory in Nepal.

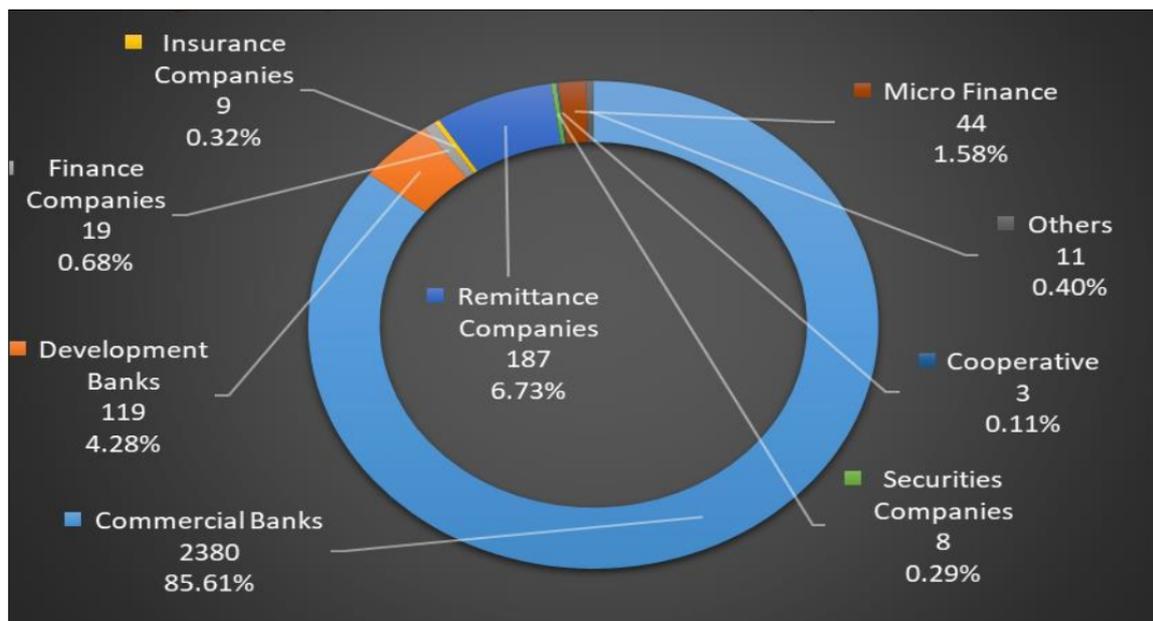
**Figure:11.1: Predicate Offence wise dissemination of STR/SAR by FIU in 2021/22**



Source: FIU Nepal

Predicate offenses wise, only financial service related STR/SAR are raised in large number whereas other sectors too are prone to financial crimes. This shows the weak effectiveness to identify the other types of financial crimes showing the weak effectiveness of financial crime control programs as a whole.

**Figure:11.2: STR/SAR received RE wise by FIU in 2021/22**



Source: FIU Nepal

STR/SAR received from financial sectors are large in numbers compared to other reporting entities, whereas other sectors too are prone to financial crimes. This shows the weak effectiveness in other sectors of the economy compared to financial sectors in regards to financial crime control programs.

The other variable for the test of effectiveness of financial crime control program, this paper has also considered the number of cases prosecuted by LEAs including DMLI.

The Department of Money Laundering Investigation (DoMLI) registered 95 complaints against individuals involved in money laundering in the first eight months of the current fiscal year 2022/23. The records with the DoMLI show that 17 of the total cases were received from the Financial Information Unit of Nepal Rastra Bank while the rest of 69 cases were collected from other agencies. The DoMLI said it has started an investigation over the accused.

During mid-July 2021 and mid-March 2022, the DoMLI filed two cases against Indian citizens accused of amassing Rs 9.5 million hard cash at the Special Court. Similarly, the Department filed cases against eight stakeholders of Nepal Engineering College on charge of embezzling Rs 80 million, the biggest scam that took place during the review period.

Established a decade ago, the DMLI has registered 2,508 cases till date. Of them, only 62 cases were given verdicts while over 1,700 cases are under investigation. This shows the weak effectiveness of the implementation part of financial crime control programs in Nepal.

**Table No. 11.6: Cases forwarded by DMLI**

<b>Details</b>	<b>As of 2020/21</b>	<b>Upto Now (2021/22)</b>
Total No. of Cases Received	250	2413
Initial Investigation Officer Assigned (Cases)	101	
Investigation Officer Assigned (cases)	13	
Cases prosecuted	14	75
Total Defendant	50	
Total Penalty Claimed	Rs. 723,744,004.00	
Disseminated to LEAs	102	
Pending Cases	42	
Source: DMLI Report, 2022		

**Table No. 11.7: Status of the cases filed in Court (as of 2022)**

<b>Details</b>	<b>Number/Amount</b>	<b>Remarks</b>
Total Cases Filed	14	
Verdict by court	3	
Completely Convicted	0	
Partially Convicted Stagnated	2	
Clean Cheat Provided	1	
Double Penalty (Bigo) by Verdict	Rs. 146,046,716	
Penalty by Verdict	Rs. 2,850,034,43272	

Source: DMLI Report, 2022

## 11.5 Conclusion

In conclusion, the effectiveness of financial crime control programs in Nepal can be measured by their ability to prevent and detect financial crimes, prosecute offenders, and improve the overall integrity and stability of the financial system. While there have been some successes, there are also a very wide areas for improvement.

One of the notable successes of Nepal's financial crime control programs is the increased awareness and understanding of financial crimes among relevant agencies, such as the Nepal Rastra Bank (NRB), the Financial Information Unit (FIU), and the Commission for Investigation of Abuse of Authority (CIAA). These agencies have implemented various measures, such as the National Anti-Money Laundering Strategy (NAMLS) and the National Payment System Strategy (NPSS), to prevent and detect financial crimes.

Additionally, there have been some successful prosecutions of high-profile financial crimes in Nepal. For example, in 2019, the CIAA arrested several officials of the Nepal Oil Corporation on charges of corruption and embezzlement of funds.

However, there are many more major challenges and areas for improvement. One significant challenge is the lack of resources and capacity of some agencies, such as the CIAA and the Office of the Auditor General (OAG). These agencies face challenges in conducting investigations, audits, and prosecutions due to limited resources and inadequate training.

Besides, the implementation status of Global Standards of Financial Crime Control Programs in reporting entities other than financial sectors is very deplorable as sighted by ME report. Efforts carried out by DNFBS is also very weak and ineffective (ME Report).

Another challenge is the need for greater collaboration and coordination between relevant agencies to prevent and combat financial crimes. There is a need for better information-sharing mechanisms and coordinated efforts to prevent financial crimes in Nepal.

In conclusion, while there have been some successes, the effectiveness of financial crime control programs in Nepal is still limited by various challenges and areas for improvement.

To improve effectiveness, there is a need for continued investment in resources and capacity building, as well as better coordination and collaboration between relevant agencies.

## **11.6 Recommendations**

Though legal framework are a bit satisfactory, despite serious gaps identified in mutual evaluation by APG, implementation part of legal provision is not effective. In line with this fact, Nepal should pay high attention in effective implementation of the provision of the laws.

Some of the laws are required to amend at the earliest. To tackle with the improved techniques and tools of financial crimes world wide, legal provision are also expected for their timely update. ALPA and other related laws are recommended for making them contextual.

Political commitment pays high importance in the financial crime compliance programs. Unless political leaders are not committed, no country can achieve the goal of controlling financial crimes. Due to the lack of political commitment, independent style constitutional bodies are also ineffective in their functions thus by resulting low level of effectiveness in control financial crimes including bribery, fraud and corruptions. This lack of political commitment has multiplier effects even in the effectiveness of law enforcement agencies. Recent cases of abuse of authority by one of the commissioner of CIAA is a burning example of bad consequences that arose due to the lack of political commitment. So political commitment related problem has become the grass rooted problem in Nepal that should be addressed with utmost priority.

Technological advancement is another requirement in Nepal whether it be in immigration point or be it in law enforcement agencies. Due to the increased technological application by criminals, government and other stakeholders are also required to be equally capable to be vigilante on their crimes. However, due to the limited technical infrastructure, Nepal is lacking effective control over financial crimes that are being convicted with developed typologies rapidly in modern are.

The other most important weak point of Nepal is the lack of financial and technical literacy that is paving ways for the financial criminals. Country is recommended to enrich the financial access as well as the technical outreach widely. And it should also focus on financial literacy so that financial crimes can be reduced tremendously.

Money laundering crime is directly related to organized crime. Hence, Nepal has done significant improvement in the theoretical part, however the implementation part is very weak. Day by day the data of money laundering cases have been increasing.

There are many factors for its increment. Underground banking rampantly prevailed in Nepal and because of that reason, problems are deeper and large in quantity. Open border to the India, lack of qualified human resource and being deficient in highly advanced technologies are some barriers to control financial crimes in Nepal.

Hence, the probable areas of Money Laundering in different sectors of Nepal should be properly identified and action plan should be designed and implemented accordingly to create awareness about Money Laundering and its impact in the society. Since ML is also a trans-boarder crime, the open border areas should be equipped with technologically sound human resources and kept under surveillance to control the criminal activities in those areas.

Similarly, ML offense must be considered as an extraditable crime in each country in order to tackle down this cross-border crime with international efforts. Implementation of a world-wide basis of a consistent set of policies should be another key to investigate and prosecute this offence. DMLI should be incorporated as an independent and separate agency instead of a body under PM Office or the Ministry of Finance so as to making it independent and effective investigator.

The National Risk Assessment Report on ML/TF can be taken as a roadmap to combat ML and improving national financial health. Overall, laws must be strictly implemented and institutions established to effectively combat ML//FT. The CIAA, DMLI and DRI as well as the Police and other concerned institutions must be very strong and effective in their

investigation of illegal activities with zero unwarranted government interference in these organizations.

Basically based on best practices from other countries and organizations and also based on the discussions above, following points can be raised to enhance the effectiveness of financial crime control programs, as recommendations to Nepal-

- Strengthen the legal and regulatory framework: Nepal should review and update its laws and regulations related to financial crimes to ensure that they are comprehensive, up-to-date, and in line with international standards. This includes anti-money laundering, counter-terrorist financing, and anti-corruption laws.
- Enhance the capacity of relevant agencies: Nepal should invest in the training and development of staff in relevant agencies, such as the Financial Information Unit (FIU), the Commission for Investigation of Abuse of Authority (CIAA), and the Office of the Auditor General (OAG), to ensure they have the necessary skills and resources to prevent and combat financial crimes.
- Strengthen information-sharing mechanisms: Nepal should establish a centralized platform for sharing financial intelligence between relevant agencies, such as the FIU, Nepal Rastra Bank (NRB), and Nepal Police, to improve coordination and prevent financial crimes.
- Encourage public-private partnerships: Nepal should encourage partnerships between public and private sector entities to prevent and combat financial crimes. This includes initiatives like public-private sector dialogue, joint awareness-raising campaigns, and industry-specific guidance on anti-money laundering and counter-terrorist financing.
- Conduct risk assessments: Nepal should conduct regular risk assessments of the financial system to identify and mitigate risks of financial crimes. This includes assessments of sectors, products, and services that may be vulnerable to money laundering, corruption, and other financial crimes.
- Strengthen international cooperation: Nepal should enhance its cooperation with international organizations and other countries to prevent and combat cross-border

financial crimes. This includes sharing of financial intelligence, training and capacity building, and joint investigations and prosecutions.

By implementing these recommendations, Nepal can enhance the effectiveness of its financial crime control programs and improve the integrity and stability of its financial system.

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## Appendice-1

### Predicate Offenses in Nepal

In Nepal, predicate offenses refer to the underlying criminal activities that generate proceeds that are subsequently laundered. The Assets (Money) Laundering Prevention Act 2008 (ALPA) and its subsequent amendments provide a list of predicate offenses that are considered to be money laundering offenses in Nepal.

ALPA Provisions: ALPA has explicit provision on predicate offenses as under-

#### ‘Chapter-2 Provisions Relating to Offenses

3. 4. Assets not to Be Laundered : (1) Nobody shall launder or cause to launder assets.  
(2) Any one committing acts pursuant to Sub-Section (1) shall be deemed to have committed offense as per this Act.

Assets Supposed to Have Laundered : Assets shall be supposed to have laundered in case anyone, directly or indirectly, earns from tax evasion or terrorist activities or invests in such activities or acquires, holds, possesses or utilizes assets by committing any or all offences stipulated as follows and in case assets acquired, held or accumulated from investment of such assets is possessed, held or used, utilized or consumed or committed any other act so as to present such assets as legally acquired or earned assets or conceals sources of origin of such assets or assists any one to transform, conceal or transfer such assets with an objective of avoiding legal actions to the person having such assets:- (a) (b) (c) (d) (e) (f) (g) (h) Offences under the prevailing arms and ammunitions laws, Offences under the prevailing foreign exchange regulation laws, Offences of murder, theft, cheating, forgery documents, counterfeiting, kidnap or abduction under the concerned prevailing laws, Offences under the prevailing drug control laws, Offences under the prevailing national park and wild animals conservation laws, Offences under the prevailing human trafficking and transportation control laws, Offences under the prevailing cooperatives laws, Offences under the prevailing forest laws, 3(i) (j) (k) (l) Offences under the prevailing corruption control laws, Offences

under the prevailing bank and financial institution laws, Offences under the prevailing banking offence and punishment laws, Offences under the prevailing ancient monuments conversation laws, Clarification (m) Other offences under any other law that Government of Nepal prescribes by publishing a notice in the Nepal Gazette.

For the purpose of this Section, in case any one has committed any act supposed to be an offence under the following conventions or provided or collected any money by any means for murdering or physically disabling any person knowingly or with grounds that such money is being used for committing such offence, he/she shall be supposed to have invested in terrorist activities:-

(1) Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963,(2) (3) (4) (5) (6) (7) Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970, Montréal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971, Convention on the Prevention and Punishment of Crime Against Internationally Protected Persons Including Diplomatic Agents, 1973, International convention Against the Taking of Hostages, 1979, SAARC Regional Convention on Suppression of Terrorism, 1987, Any Convention against Terrorist Activities to which Nepal is a party. 45. Not to Attempt, Support or Provoke : No one should attempt, support or provoke others to commit offences stipulated in this chapter.

### ***Predicate Offence and STR***

Reporting of STR/SAR should provide a reference to the 'Predicate offence' listed in the ALPA 2008, Section 2(Y). As per the Annexure under Section 2(Y) "Predicate offence" means -

(1) Any below mentioned offence under the prevailing laws:

- a) Participation in an organized criminal group and racketeering,
- b) Disruptive (terrorist) act and terrorism,
- c) Trafficking in human being and migrant smuggling in any form,
- d) Any kinds of sexual exploitation including the children,
- e) Illicit trafficking in narcotic drugs and psychotropic substances,

- f) Illicit trafficking in arms and ammunition,
- g) Illicit trafficking in stolen and other goods,
- h) Corruption and bribery
- i) Fraud,
- j) Forgery,
- k) Counterfeiting of coin and currency,
- l) Counterfeiting and piracy of products, or imitation, illegal copy or theft of products,
- m) Environmental crime,
- n) Murder, grievous bodily injury,
- o) Kidnapping, illegal restraint or hostage-taking,
- p) Theft or robbery,
- q) Smuggling (including custom, excise and revenue),
- r) Tax (including direct and indirect),
- s) Extortion,
- t) Piracy,
- u) Insider Dealing and Market Manipulation in securities and commodities,
- v) Ancient monument conservation,
- w) Forest, National park and wild animals,
- x) Money, banking, finance, foreign exchange, negotiable instruments, insurance, cooperatives,
- y) Black marketing, consumer protection, competition, supply,
- z) Election,
- aa) Communication, broadcasting, advertising,
- bb) Transportation, education, health, medicine, foreign employment,
- cc) Firm, partnership, company, association,
- dd) Real estate and property,
- ee) Lottery, gambling, donation,
- ff) Citizenship, immigration and passport.
- (2) Offence of terrorist financing pursuant to section 4,
- (3) Any other offence as designated by the Government of Nepal by publishing a notice in the Nepal Gazette, or

- (4) An offense under a law of a foreign State, in relation to act or omission under paragraph (1), (2) or (3), which had they occurred in Nepal, would have constituted an offense.