

India – Committed to combating money laundering

India, which joined the FATF in June 2010 as its 34th member, has undertaken a number of efforts to improve its anti-money laundering (AML) regime. Within the context of the Asia/Pacific Group on Money Laundering (APG)¹ meeting in July 2011, the Indian Finance Minister Pranab Mukherjee was quoted as underlining his country's commitment to countering money laundering and the financing of terrorism. Mr. Mukherjee said a number of measures to improve the AML/CTF regime had been put in place, in tune with the FATF standards, as reported in *The Hindu* on 23 July 2011.² India has recently tripled the manpower of the Directorate of Enforcement, which spearheads the money laundering investigations in the country. India has also established a Financial Intelligence Unit, which includes a system of reporting suspicious financial transactions, Mukherjee recalled.³ The country does however continue to face a number of challenges. These are set out here and put in the context of the current AML regime and other efforts undertaken in support of the existing structure.

A mountain to climb – corruption, money laundering and terrorism

India, which is often praised for being one of the oldest and largest democracies of the world, has, since early 2011, suffered major criticism in the international and local media in relation to widespread corruption, which has impregnated all levels of society, government and business. According to Transparency International's Global Corruption Barometer 2010, India is listed third highest in the Asia Pacific region after Cambodia and Afghanistan.

As a result of the corruption scandals, money laundering has become a political issue in India, with the opposition accusing the government of not doing enough to bring back illegal funds, which had been transferred abroad.⁴ According to other media sources, some US\$450 billion of illegal funds or untaxed earnings derived from India have been deposited in foreign banks.⁵ Sources quoted in the Indian *Economic Times* suggest that, according to unofficial estimates, the amount could be as much as US\$1.4 trillion. Mauritius is reportedly one of India's largest foreign investors.⁶ This is alarming given that the funds being invested in India from Mauritius are largely thought to be laundered funds. According to an article published in the *Economic Times*,⁷ India plans comprehensive reforms both in direct and indirect tax regulations. Of particular interest is the that the new tax regime plans to include all passive income earned by residents from substantial shareholdings retained in companies incorporated in low tax jurisdictions in order to curb money laundering activities. The same article underlined that the new regime is unlikely to be introduced soon due to the rift between the federal government and the opposition-ruled states. India has, however, suffered a number of serious terrorist attacks, most recently in July 2011 in India's commercial capital Mumbai, reminding the nation of the terrorist threat it faces and the importance of AML and CTF measures.

The FATF's *Mutual Evaluation Report of India*, published in June 2010, noted that the main sources of money laundering in India result from a series of illegal activities committed within and outside the country,

mainly drug trafficking, fraud, counterfeiting of Indian currency, transnational organized crime, human trafficking and corruption. India's money laundering threat also comes from its bordering regions and therefore should also be viewed in this context. According to a statement published by the FATF in June 2011, Sri Lanka is listed among jurisdictions with significant AML/CTF deficiencies. These countries have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies.⁸ Furthermore, Nepal and Pakistan were also listed by the FATF as countries whose improvement of AML/CTF compliance is an on-going process.⁹

Methods of ML in India

According to FATF's *Mutual Evaluation Report of India*, the most common money laundering methods used in domestic crimes are the opening of multiple bank accounts, intermingling criminal proceeds with assets of legal origin, purchasing bank checks against cash and routing through complex legal structures. For transnational organized crimes, the report notes that the criminal origin of funds is disguised by using offshore corporations and trade-based money laundering techniques.

The Hindu newspaper reported that one of the main areas discussed at the 14th annual meeting of the Asia/Pacific Group on Money Laundering, in July 2011 deliberated on funding for terrorism and the use of telemarketing networks for perpetrating transnational crime, besides money laundering.¹⁰

¹ an autonomous and collaborative international organisation, with a membership of 40 countries and other international and regional observers. <http://www.apgml.org/>

² <http://www.thehindu.com/news/national/article2285886.ece>

³ http://articles.economictimes.indiatimes.com/2011-07-19/india/29790686_1_money-laundering-act-financial-action-task-force-laundering-and-terror-funding

⁴ <http://www.business-standard.com/india/news/us-offers-assistance-in-dealing-money-laundering/136736/on>

⁵ <http://www.economist.com/node/18338852>

⁶ According to Dr. Christoph Hein, Asia Pacific Correspondent at Germany's leading newspaper Frankfurter Allgemeine Zeitung: <http://www.faz.net/artikel/C30974/keine-fragen-keine-namen-keine-quittung-30347540.html>

⁷ http://articles.economictimes.indiatimes.com/2011-06-20/news/29679834_1_indirect-tax-tax-regime-tax-evasion

⁸ http://www.fatf-gafi.org/document/54/0,3746,en_32250379_32236992_48263734_1_1_1_1,00.html - srilanka

⁹ http://www.fatf-gafi.org/document/29/0,3746,en_32250379_32236992_48263965_1_1_1_1,00.html

¹⁰ <http://www.thehindu.com/news/national/article2285886.ece>

India's AML regime

As noted in the *Mutual Evaluation Report of India*, published by the FATF in June 2010, India's AML/CTF regime is relatively young. Since 2005, the Prevention of Money Laundering Act (PMLA) has been enforced and was most recently amended in 2009. The Unlawful Activities (Prevention) Act, (UAPA) which criminalizes terrorist financing, has been enforced since 1967. It was most recently updated in 2008 to bring the legislation more in line with the requirements of the UN Convention for the Suppression of the Financing of Terrorism.

Although the report praises India for its increased focus on money laundering and its serious commitment to combating terrorism, the report criticizes the lack of convictions for money laundering or terrorist activities and the lack of effective, dissuasive or proportionate sanctions for AML/CTF deficiencies. In this regard the report highlights that casinos are the only 'Designated Non-Financial Businesses and Professions' (DNFBP), which are included under the PMLA.

The Mutual Evaluation report makes a series of recommendations in order to improve India's AML/CTF regime:

- Address technical shortcomings in the criminalization of both money laundering and terrorist financing and in the domestic framework of confiscation and provisional measures
- Broaden the customer due diligence obligations with clear and specific measures to enhance the current requirements regarding beneficial ownership
- Improve the reliability of identification documents, the use of pooled accounts, PEPs, and non-face-to-face business
- Ensure that India Post,¹¹ which recently became subject to the PMLA, effectively implements the AML/CTF requirements

- Enhance the effectiveness of the financial sector supervisory regime and ensure that India Post¹¹ is adequately supervised
- Ensure that the component supervisory authorities make changes to their sanctioning regimes to allow for effective, proportionate and dissuasive sanctions for failures to comply with AML/CTF requirements
- Extend PML requirements to the full range of DNFBPs, and ensure that they are effectively regulated and supervised.

Already since the publication of this report, India seems to have continued to work on improving its money laundering regime.

In July 2011 the *Indo Asian News Service*¹² reported that India's Supreme Court had set up a Special Investigation Team (SIT) to investigate incidents of money laundering, specifically tax evasion. The committee is headed by former Supreme Court judge, B.P. Jeevan Reddy.¹³

Also in May 2011, the Indian newspaper *Business Standard* reported that the U.S. had offered assistance to India to support the country's efforts in combating money laundering and terrorism.¹⁴ The two countries agreed to continue the cooperation between Indian and U.S. customs agencies and to explore new areas of mutual interest to protect the security of the global supply chain.

The threat of Terrorism

Experts claim that India faces serious threats from dozens of extremist groups. According to an article published in the *The Times Of India*, on 12 August 2008, as many as 800 terrorist cells operate in India. According to an extensive report published about *Terrorist Groups in India* by the Council of Foreign Relations, it is difficult to ascertain the exact number of groups orchestrating attacks in India due to splintering movements.¹⁵ The South Asia Terrorism Portal, a project of the Institute for Conflict Management, an independent, New Delhi-based think tank lists the vast number of terrorist groups orga-

nized throughout India.¹⁶ India has suffered a number of large terrorist attacks the most recent one on 13 July 2011 in Mumbai, a city which has been the most preferred target for most terrorist organizations, primarily the separatist forces from Pakistan. According to an entry on *Wikipedia*, Mumbai is the richest city in India and has the highest GDP of any city in South, West or Central Asia.¹⁷ The *Economist* reported on 13 July 2011, that Indian intelligence fears young Muslims in the country are growing more radical and there are those who converted to radicalism while working as migrant laborers in the countries of the Gulf region. Regarding the 2011 attacks, some suspect that Indian Mujahideen, might have links to Pakistani jihadists such as Lashkar-e-Tayyaba.¹⁸

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Conclusion

Given the size of the Indian economy and its geostrategic positioning, it has an important role to play in combating money laundering and terrorist financing. It seems to be rising to the challenge and committed to its mandate in working with experienced partners to master the considerable task it faces. **A**

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¹¹<http://www.indiapost.gov.in/NSDefault.htm> & http://en.wikipedia.org/wiki/Indian_Postal_Service

¹²<http://in.news.yahoo.com/apex-court-appoints-probe-team-money-laundering-142950379.html>

¹³Other members include the deputy governor of the Reserve Bank of India, director of the Indian Intelligence Bureau the Enforcement Directorate and the Central Bureau of Investigation, Chairman and joint secretary of the Central Board of Direct Taxes, director generals of the Narcotic Control Bureau and Revenue Intelligence, director of the FIU.

¹⁴<http://www.business-standard.com/india/news/us-offers-assistance-in-dealing-money-laundering/136736/o>

¹⁵<http://www.cfr.org/india/terror-groups-india/p12773>

¹⁶<http://www.satp.org/satporgtp/countries/india/terroristoutfits/index.html>

¹⁷<http://en.wikipedia.org/wiki/Mumbai>

¹⁸<http://www.economist.com/blogs/banyan/2011/07/bombs-mumbai>