

“BALANCING BANK SECRECY AND ANTI – MONEY LAUNDERING REGIMES IN BAHRAIN”

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ABSTRACT:

PURPOSE: The paper intends on studying the present regimes of bank secrecy and money laundering provisions that exist globally vis-à-vis drawing a comparison with the present position in Bahrain. The nation of Bahrain is a minor player amongst the international market players of offshore financial institutions. The paper seeks to observe and point out the key practices that are adopted by the nations following a global standard and the practices followed in Bahrain and to address such issues and legal or policy shortfalls in order to understand the extent of complicate with the internationally set standards. The paper shall provide the reader with a quick understanding about the present regime in such activities.

METHODOLOGY: The paper has been attempted by taking a doctrinal-qualitative analysis approach. The primary sources of research include the various rules and regulations that have been mentioned and a deep understanding and reading has been conducted in order to facilitate the comparison. The paper has also looked into key provisions under the Bahraini Legislation, UN Conventions, IMF recommendations and responses of various international groups and has drawn co-relations with the general set standards and requirements of the major financial bodies and regulators and has also checked if the domestic law is in lines of the set standards and general principles.

RESEARCH IMPLICATIONS: It has been observed as to how banking secrecy achieves the interest of the bank's client through the maintenance of confidentiality of the business and also acts as a boost to the bank's interests by attracting more clients which increases the bank's economic general interest and profit. The absolute adherence to the norms of bank secrecy may nevertheless play a negative role as it would tend to promote and facilitate the commission of money laundering crimes which bears a negative impact on the nation's economy. Accordingly, this paper would intend on discussing the extent of the success of the legislation and the measures at the national and international levels that enable banks to maintain their practices of providing financial/banking secrecy without acting as an aide in the facilitation of the crime of money laundering. This can be achieved through the possibility of lifting financial/banking secrecy norms if such measures are necessary to prevent the act of money laundering.

FINDINGS: The Author has observed as to how the laws have been made compliant to the set standards of the IMF primarily. The domestic legislations in the global leading economies have been observed to be in lines of such standards and has constantly evolved to meet the growing challenges through time.

IMPORTANCE OF STUDY: The importance of research is highlighted by shedding light on the mechanism of reconciliation between maintaining bank secrecy and combating money laundering operations at the national and international levels.

ORIGINALITY: The paper intends to contribute to the research related to the existing conditions of the laws relating to bank secrecy and money laundering challenges while duly focusing on the present scenario in Bahrain. There is no study that is readily available regarding the position in Bahrain specifically despite of a plethora of material that discusses the aspects of banking secrecy and money laundering on a general level. The Paper has also tried in drawing close relationships between the domestic legislation and the various regulations, mandates, conventions and requirements governing the same.

Keywords:

IMF, Money Laundering, Bank Secrecy, FATF, AML/CFT, Bahrain, Financial Secrecy

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INTRODUCTION:

Maintenance of bank secrecy has become a legal requirement with certain banks such as the Swiss Bank or banks in tax haven nations, where there is a prohibition on banks from disclosing any such information, personal and account information of

their clients, to another nation's authorities except when there are 'certain or specific circumstances' where the banks are requested and required to

disclose such information.¹ Money laundering, considered to be one the largest form of organized crime, is an act of ‘processing criminal proceeds to disguise the illegal origin² that not only actively funds international criminal groups but also bears a major impact on the global macroeconomic stability.³ The economic effects of money laundering would primarily include rise in prudential risks, increase in volatility of exchange rates, unpredictable changes in cash demand, severely impact a nation’s Foreign Direct Investment as well.⁴ Money laundering poses a national as well as an international threat as it provides for a much more secure platform for the funding of criminal or terrorist related activities and thus, launderers prefer in investing and moving their funds to nations which have strict bank secrecy norms. Banks adopting norms of maintaining the anonymity and secrecy of their clients, ‘facilitate’ launderers in maintain the confidentiality of their accounts and transactions primarily from the government authorities.

Banking secrecy achieves the interest of the bank’s client by preserving the confidentiality of his business, and at the same time the bank’s interest by enabling it to attract more customers and thus increase profits, as well as encouraging economic activity in general. Nevertheless, the absolute adherence to banking secrecy may play a negative role in facilitating the commission of the crime of money laundering through banks, and this in turn may harm the national economy. Accordingly, this research will discuss the extent of the success of legislation and measures at the

national and international levels in enabling banks to carry out their duty to maintain bank secrecy without being a cover for the crime of money laundering.

This Compatibility can be reached through realizing the possibility of lifting bank secrecy from any customer’s account if it is necessary to prevent any act of money laundering that may be committed, or that could be committed. This requires from the bank, which has substantial evidence that one of its clients take advantage of the obligation of confidentiality bank to commit the crime of money laundering through it, therefore it must inform the competent authorities to combat this crime and thus may avoid getting involved out money laundering and could be followed by the prosecution and legal right.

ETHICAL STATEMENT: The author hereby affirms that all the information provided in this paper is affirmative to the present legal position and in no way whatsoever seeks to claim or provide the reader with any false or misleading information. The author has also relied on prior sources from well reputed books and journals which have been duly cited as and where necessary. The author’s opinion wheresoever added has been arrived at only after reading and duly understanding the current legal position.

DATA AVAILABILITY STATEMENT:

The data used for understanding the jurisprudence in the present paper has been taken primarily from the e-book database of Bloomsbury collection and Hein Online along with the official documents available on the Bahraini Government websites, the IMF and UN websites in order to ensure authenticity of the references made to the points of discussion in the paper. The review of the available documents is limited to the position of law under the Bahraini Law against money laundering, the United Nations Conventions, IMF and the other general conventions/rules followed in the international level by International bodies and their members as well as Nations on their own accords.

¹ Shiqing Yu, 'Still Keeping Secrets: Bank Secrecy, Money Laundering, and Anti-Money Laundering in Switzerland and Singapore' (2019) 6 ISLRev 19

² Financial Action Task Force (FATF), 'What is Money Laundering?' <www.fatf-gafi.org/fag/moneylaundering/> accessed 02 November 2020.

³ Deborah Srour Politis, 'Money Laundering, Terrorism Financing and Financial Networks' (2003) Vol.1, Israel Defense Forces Law Review 211.

⁴ Dr. Brigitte Unger and others, Report for the Ministry of Finance, 'The Amounts and the Effects of Money Laundering' (2006) <www.econ.uu.nl/users/unger/publications/Amounts%20and%20Effects%20ML.pdf> accessed 28 October 2020.

UNDERSTANDING THE JURISPRUDENCE AND GROWTH BEHIND THE ADOPTION OF BANK SECRECY AND ANTI-MONEY LAUNDERING PRACTICES:

The premise of maintaining bank secrecy emanates from the principle of 'privacy as a fundamental policy'. Banks acting as custodians of the same would find it difficult to govern and expend their aid if they did not provide for such secrecy guarantee, and thus are seen to respect the confidence that the customers vest in them as a sound business policy.⁵ Individuals always have the desire in maintaining privacy of their finances, corporations feel that in order to have a market and receive profits by adopting certain measures that are beneficial for their businesses, have a desire to protect themselves from other players (competitors) and thus prefer in maintaining confidentiality when it comes to finances, pricing and/or royalties.

It is well observed as to how banking plays a key role in the development and stability of a nation which thus makes it a priority sector and legislatures focus on strengthening the banks while seeking simultaneously to balance the interests of various other stakeholders. There are two reasons as to why nations come out with bank secrecy laws: (a) to encourage savings and investment by foreign and domestic players and (b) the maintenance of the foundational principles of banking which are confidence and reputation and protecting the same from being tainted by impropriety which could jeopardize the integrity of banks from the eyes of the public.⁶ Hence, courts have duly realized and respected the aspects of banking secrecy through a multitude of case laws, and the common holding in most of the cases can be attained from the landmark judgement of *Tournier v. National Provincial and*

*Union Bank of England*⁷ where the court laid down that maintenance of secrecy is the rule and duty and disclosure to authorities under law is the exception.

The emergence of international action against money laundering can be seen from the Vienna Convention⁸, where the parties were required to enforce mechanisms tackle the trafficking of drugs and other related offences. The Vienna Convention also required to adopt practices and enforce measures by enacting legislations and regulations to trace illegal funding and transactions to crime syndicates along with confiscation of property and assets.⁹ The Convention to tackle the interplay between bank secrecy which was seen to be aiding the growth of money laundering mandated that when banks enforced their power of enforcing bank secrecy by denying the production of financial records for purposes of confiscation, such denial on behalf of the banks are to be considered to be illegal and invalid.¹⁰ To address the shortfalls and difficulties in the strict implementation of the mandates enshrined under the Vienna Convention, the G7 nations in 1990 set up the Financial Action Task Force (FATF) with this primary focus to address the criminal conduct through money laundering in the financial sector rather than the previous adoption of addressing criminal activities through drug trafficking merely.¹¹

Based on the principles of international law dealing with jurisdiction of courts or legislators to regulate money laundering, the basic position under law is that one nation is not allowed to legislate for another and is also prevented to arrest or interrogate the suspects

⁷*Tournier v. National Provincial and Union Bank of England* [1924], 1 King's Bench [K.B.] 461 (C.A. 1923)

⁸ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 20 December 1988, UN Doc E/Conf 82/16.

⁹*Ibid* at Art. 5(1).

¹⁰*Ibid* at Art. 5(3)

¹¹ FATF, *The Forty Recommendations*, (1990) <www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%201990.pdf> accessed 25 November 2020.

⁵ Effros, R., Chapter 17 International Law of Bank Secrecy. In *Current Legal Issues Affecting Central Banks, Volume V*, (1998) USA: INTERNATIONAL MONETARY FUND. Available From: IMF eLibrary <<https://doi.org/10.5089/9781557756954.071>>, accessed 06 November 2020.

⁶*Ibid*.

without the consent of that country.¹² However, this general rule of international law, like all other rules is subjected to certain, which are primarily based enforcing their jurisdictions to look into such matters on grounds of (a) objective territorial principle, where nations can punish crimes committed within their territory and such legal injury if faced within the local jurisdiction of the nation punishing the suspect, (b) through subjective territorial principle, nations can punish persons for crimes and offences committed within their territory and which injures a person beyond the nation's domestic territory, (c) by using the effects doctrine, nations can punish for crimes that bear an adverse effect within their territory even when the crime was committed beyond the jurisdiction of the nation, and (d) using the nationality principle nations can punish their nationals for any such crime irrespective of their location.

BANKING SECRECY LAWS IN BAHRAIN:

Bahrain currently as of 2020 is ranked as 81 out of 133 nations on the Financial Secrecy Index with a secrecy score of 62%.¹³ The Kingdom currently holds a small scale in the global platform amongst offshore financial institutions.¹⁴ The Kingdom, due to its strategic location and position in the global trading system of oil and gas is considered as an "island of hospitality" to various businesses and financial bodies for trading partners in the Persian Gulf.¹⁵ Bahrain also is one of the biggest global hubs for Islamic finance and was also declared as the world's fastest growing financial sectors in

2008 by the City of London Corporation's Financial Centers Index.

The Kingdom does not levy any form of tax (corporate, personal or on capital gains) apart from a value-added tax¹⁶, thus acting as a tax haven nation. Bahrain also has entered into multiple treaties on tax with various developing countries. The history of banking secrecy norms in Bahrain can be traced way back to the 1970s, when the Bahrain Monetary Authority had been set up in 1973 and the opening of the economy in 1975 to banks that could be registered as 'offshore financial institutions'. Various International banks, pursuant to this move began establishing their branches in Bahrain, where benefits such as exemption to foreign-exchange control, requirement of cash reserve, tax free interest to deposits and banking income taxes were exempted as well, making it a suitable and preferable nation for one to invest in, and has witnessed various European and Middle Eastern clientele.

The Kingdom has also faced a few downfalls and shortcomings that had hit the banking industry with a hefty blow. One of the most notable challenges that was faced was in 1991 when the Bank of Credit and Commerce International got caught in charges of corruption¹⁷ and the International Oil market also faced its share of difficulties in the 1990s. The banking industry in Bahrain had been successful in providing its services to a lucrative niche in the Islamic banking institutions. Due to its predominant position amongst various other players in the banking industry, the Kingdom had been chosen to be a part of various bodies such as the Accounting and Auditing Organization for Islamic Financial Institutions, the Dow Jones Islamic Market Index, International Islamic Financial Market, The General Council for Islamic Banks, Islamic International Rating Agency.¹⁸ With the internal disturbances due to

¹² Effros, R., Chapter 17 International Law of Bank Secrecy. In *Current Legal Issues Affecting Central Banks, Volume V*, (1998) USA: INTERNATIONAL MONETARY FUND. Available From: IMF eLibrary <<https://doi.org/10.5089/9781557756954.071>>, accessed 06 November 2020.

¹³ Narrative Report of Bahrain, Financial Secrecy Index 2020, Tax Justice Network, available at: <https://fsi.taxjustice.net/PDF/Bahrain.pdf> accessed 13 November 2020.

¹⁴ Id.

¹⁵ Id.

¹⁶ Decree-Law No. 48 of the year 2018, introduced from January 1st 2019.

¹⁷ Truell P, *False Profits The Inside story of BCCI, The World's Most Corrupt Financial Empire*, 1992.

¹⁸ Id., at 26.

political protests and the impact of declining oil prices in the 2000s and 2010s, the Kingdom's financial sector activity slowly depreciated. The only ground that was able to help the banks grow and hold their international position was the fact that they had continued in providing bank secrecy to its customers. This was again short lived as in 2014, the OECD Global Forum declared that Bahrain was the only jurisdiction that held out against the OECD-led new global standards on exchange of information (the same had resulted in Singapore and Switzerland is changing their banking practices) and after hefty persuasion in 2017, the Kingdom signed up to the Common Reporting standards in order to share tax information.¹⁹

The Bahraini legislator has adopted this idea and was able to find the required balance between the necessity of adhering to banking secrecy for the success of banking work, and the necessity of securing the requirements of the Central Bank of Law. however, Article 116 of the Central Bank of Bahrain and Financial Institutions Law promulgated by Law No. (64) of 2006 stipulated that confidential information refers to data and information on any of the licensee's clients. Article 117 also stipulates that the licensees are prohibited from disclosing any confidential information unless this is:

1. Pursuant to the express consent of the person to whom the confidential information relates.
2. In implementation of the provisions of the law or international agreements to which the Kingdom is a party.
3. In implementation of a judicial order issued by a competent court.
4. In implementation of an order issued by the Central Bank.

The Bahraini legislator has realized the important role that banking secrecy plays in the encouragement and development of banking

work, in light of which the Kingdom of Bahrain has adhered to the principles of banking secrecy in addition to imposing penalties on the Central Bank through the Bahrain's Law No 64 /2006 under Article 171 which provides for imprisonment or a fine not exceeding ten thousand dinars, or one of these two penalties. Bahrain has presented a distinct model for the complete sacrifice of bank secrecy in order to prevent money laundering operations, by explicitly stating that when applying the provisions of the Money Laundering Law, no institution may protest before an investigative judge or a court with jurisdiction over the principle of information. For the provisions of any other law (Article 7 Decree of the Law on Prohibition of Money Laundering) as well as Articles 117-118 of the Central Bank of Bahrain and Financial Institutions Law. The Central Bank of Bahrain and Financial Institutions Law promulgated by Law No. (64) 2000 stipulated that banks must verify the names and identities of all clients and keep documents that prove their identity. This is a basic step for the disclosure of the assets and the disclosure of these assets It is considered illegal money.

Hence with constant international persuasion and practices to tackle the rise of money laundering and other associated financial offenses, the Kingdom has seen a reduction in the bank secrecy norms that are reflected in the Financial Secrecy Index.²⁰ One such notable observation is that Bahrain has taken a few measures that maybe seen as adequate steps to curtail banking secrecy and in the same time does not require corporate financial information to be disclosed and is also seen to merely taking minimum measures to facilitate the international anti-money laundering initiatives.

ANTI-MONEY LAUNDERING LAWS IN BAHRAIN:

The money laundering crime is considered an ancillary crime that initially presumes the commission of a primary crime, which is the one

¹⁹Bahrain expands its capacity to fight international tax avoidance and evasion, OECD, June 29 2017, available at: <http://www.oecd.org/tax/bahrain-expands-its-capacity-to-fight-international-tax-avoidance-and-evasion.htm>

²⁰*Id.*, at 26.

that resulted in illegal money (dirty money). It is assumed that the second crime is dirty laundering crime, that is, the existence of funds obtained from the commission of criminal activities, and these funds are often the proceeds of organized crimes, the proceeds of drug trafficking, persons, prostitution, corruption and other serious crimes.

The Bahraini legislator has defined the criminal behavior in the crime of money laundering in Article 2 of Decree-Law No. (4) of 2001 regarding the prohibition and combating of money laundering, including four paragraphs of it that he mentioned, stating that: The following is intended to show that the source of funds is legitimate:

1. Conducting any process related to the proceeds of a crime with knowledge or belief or what leads to the belief that it is obtained from a criminal activity or from an act considered complicity in it.
2. Concealment of the nature of the proceeds of a crime, its source, location, method of disposing of it, its movement or ownership, or any right related to it with knowledge or belief, or what leads to the belief that it is obtained from a criminal activity or from an act considered complicity in it.
3. Acquiring, receiving or transferring the proceeds of a crime with knowledge or belief or what leads to the belief that it is obtained from a criminal activity or from an act considered complicity in it
4. Retaining the proceeds of a crime or possessing it with knowledge or belief or what leads to the belief that it is obtained from criminal activity or from any act considered complicity in it.

The criminal consequence of money laundering is to change the image of money obtained from illegal means so that it appears on the surface that it has been obtained within a framework of legitimacy, and by passing it through the economic cycle to give it a status of legitimacy. The existence of a causal relationship

in the crime of money laundering is linked to the criminal behavior that was focused on illegal money obtained from a crime stipulated in the law, and which is attributed to the perpetrator, with what was issued by a criminal outcome, which is camouflaging the nature of the illegal source of money in its multiple forms, which is changing its nature or its truth or preventing its discovery in any way by legalizing illegal funds.

Money laundering is a deliberate crime is also considered an intentional crime that must be carried out by the availability of general criminal intent of perpetrator with his two elements of knowledge and will, and this is what is clear in the text of the article and what was stipulated in the second article previously mentioned in its text. What is meant by the element of knowledge of the money laundering activity is knowledge of the facts, not knowledge of the law, those facts on which the legal structure of the crime is based, and with full knowledge that the funds subject of the crime are the proceeds of another crime. The Bahraini legislator has stipulated the inclusion of penalties for the perpetrator of the money laundering crime, as it stipulates in Paragraph (3-1) that: *Anyone who commits, legalizes, or participates in the commission of a money laundering crime, and the punishment is imprisonment for a period of no less than five years and a fine of no less than one hundred thousand dinars in any of the following cases: -*

1. If the perpetrator committed the crime through an organized gang.
2. If the perpetrator commits the crime by abusing his powers or influence through an institution.
3. If the perpetrator commits the crime with the intention of showing that the money obtained from a criminal activity is from a legitimate source.

In addition to the confiscation of movable and immovable funds in the event that the crime of money laundering is caught without prejudice to the rights of others in good faith, and in the cases in which the money laundering crime is

committed by a legal person and without prejudice to the responsibility of the natural person, the legal person shall be punished with the fine prescribed in this law along with the confiscation of the funds subject of the crime.

The Bahraini legislator has also regulated the obligations of financial institutions such as banks and other competent authorities to notify the executing unit of suspicious financial transactions with regard to their inclusion in a money laundering crime, and in order to achieve its mission, the unit creates a database of what information it has available to it. The means to provide information to the judicial authorities and other bodies competent to implement the anti-money laundering law.

The Kingdom of Bahrain has also created an Economic Crimes Combat Unit, and among its tasks is the use of economic analysts and financial experts in order to reach perpetrators of money laundering crimes and other criminals who have begun to enter the world of crime and commit crimes that harm the Kingdom's economy. The crime of money laundering is also considered among the crimes under which criminals may be exchanged and extradited in accordance with the provisions of applicable laws and international agreements ratified by the state, and the principle of reciprocity.

COMPLIANCE OF BAHRAINI LAWS WITH FATF RECOMMENDATIONS:

The FATF Recommendations made are to be adopted by nations to tackle money laundering by adopting AML/CFT measures. In 2018, when the FATF conducted its reporting about the laws in Bahrain²¹, the following were the key observations made:

- a. The Kingdom is to implement stronger AML/CFT norms.

- b. The Kingdom has adopted various domestic measures and activities of coordination, cooperation regarding information exchange and the operation of various authorities are strong and proactive.
- c. The Kingdom has also taken multiple intelligence activities (intelligence raids) to tackle and penalize parties involving in money laundering or assisting in terrorist financing.
- d. The financial institutions have seen a robust mechanism in mitigating financial offences.
- e. The Kingdom has adopted strong controls in order to prevent criminals from the beneficial ownership, control and holding of management functions in financial institutions.
- f. International cooperation between the Kingdom and international counterparts is based on mutual collaborations when it comes to tackling laundering and terrorism related activities.

It has already been observed above as to how the laws in Bahrain such as the criminalization of money laundering through Art. 2 of the Decree No.4 (2001) and even through Decree No.25 (2013) and even the Kingdom's Penal code that contains provisions relating to extortion (Art. 390), counterfeiting of money (Art.262) and has even followed the requirement under the UN Convention against Transnational Organized Crime where the Kingdom is bound to capture those involved in offences relating to racketeering (despite of not having a domestic legislation that deals with the same). The laws in the Kingdom have been considered to be in lines of the practices as mandated by the FATF.

The financial secrecy norms in Bahrain is in no way impeding the due implementation of the AML/CFT requirements as the institutions under law can share the information within the domestic and international groups to share information for reporting purposes, either under domestic legal

²¹ FATF-MENAFATF (2018), Anti-money laundering and counter-terrorist financing measures - Bahrain, Fourth Round Mutual Evaluation Report, FATF, Paris <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-bahrain-2018.html>

obligation or under international treaty obligations. The secrecy of accounts held under the banks in Bahrain does not clash with the FATF or domestic legal requirements. Under Art.7 of Decree Law No.7 (2001), financial institutions are to provide authorities and the courts with all such information that has been asked and cannot plead secrecy. Further under Art. 117 of the Central Bank of Bahrain Law, any confidential information is prevented from being disclosed by any licensee unless such disclosure is done in compliance with the requirements under domestic or international laws/agreements where the Kingdom is a party. Art. 9 of the Decree Law No.4 (2001) does provide that the banks or financial institutions are to exchange information of general nature where the accounts are presumed to be associated with money laundering or terrorist funding activities, and such information is to be shared between competent authorities of both nations; and if the sharing is to be done domestically between financial institutions, then the CBB Law provides for the requirement of the approval and instructions given by the Central bank for the facilitation of the same (as under Article 116 and 117 of the CBB Law).

INTERNATIONAL CONVENTIONS, MANDATES, AGREEMENTS AND PRACTICES ON COMBATING MONEY LAUNDERING:

In order to facilitate the protection of national economic interests and maintaining amicable relationships between trans-national entities, States have formulated various conventions, regulations, mandates and bilateral treaties to curb down the extent of money laundering. The most important documents regulating anti-money laundering through domestic and international co-operation are as under:

a. **Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering,**

1988.²² The committee report intends in establishing and requiring that the nations that are being regulated by the same are to adopt ethical principles (these principles are nonlegal in nature) and encourages the global banking systems do not encourage nor facilitate money laundering.

b. **UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.**²³ The convention (also known as the Vienna Convention 1988), ratified by over 100 States lays down minimum standards for nations to follow in order to curb by criminalizing drug trafficking and international laundering of such proceeds, providing mutual assistance in reducing and eradicating such laundering by criminal syndicates. The most notable provision as provided under this convention is that fact that it overrides the practice of bank secrecy.²⁴

c. **EC Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering, 1991.**²⁵ The EU directive supplements the Vienna Convention 1988 to the extent of criminalizing the acts provided under the Convention and having a more binding nature on the parties that are signatories to the same.

The United Nations has since 1988 taken measures to addressing and curbing money laundering by establishing rules and regulations through mandates and conventions. The Global Program against Money Laundering of 1997 (GPML), a program adopted by the United Nations assists member nations in adopting

²² Basle Committee on Banking Supervision, *Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering* (December 1988).

²³ UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, U.N. Docs. E/Conf. 82/15 and E/Conf. 82/14 (December 19, 1988).

²⁴*Id.* Art. 5(3).

²⁵ Council Directive 91/308 of 10 June 1991 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, 1991 Official Journal of the European Communities [O.J.] (L 166) 77.

measures by implementing legislations against money laundering.²⁶ The GPML intends on supporting the development of anti-money laundering policies, monitoring and analyzing issues and responses by the adoption of various UN initiatives. The initiatives undertaken by the UN and its allied bodies are:

- a. **United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, 1988:** The Convention led to the establishment of the Anti-Money Laundering Unit (AMLU) of the UN Office on Drug and Crime, which also heads the GPML, focusing on implementation of inclusive actions against drug trafficking by even incorporating measures to curb money laundering through international collaboration.
- b. **United Nations Convention against Corruption, 2005:** Discusses the combating of corruption through activities such as corruption offences, bribery, illegal trading, misappropriation of domestic and international funding as well as money laundering.
- c. **International Money Laundering Information Network:** Set up in 1998 is an online mechanism/system that assists governments to fight against money laundering.
- d. **Global Program against Money Laundering:** The Program seeks to assist Governments (Member States of the UN) in making and implementing various provisions based on the economic and legislative capability, to combat money laundering issues. The area of importance and focus is in assistance to the governments in developing useful Anti-Money Laundering/Combating the

Financing of Terrorism (AML/CFT) legal and regulatory systems.

- e. **International Monetary Fund:** Ever since its inception the IMF has been facing issues on curbing money laundering and financing of terrorist groups to ensure the stability of the financial institutions globally.²⁷ The IMF strongly propounds that the only method to curb such activities is by breaking the ties to all such sources that facilitate these groups. This has been seen through regular mandates set by the IMF to even reduce the extent of bank secrecy maintained by various financial institutions. Money laundering being a constant concern has resulted in the IMF setting up the Financial Action Task Force (FATF) that has formulated 49 recommendations after analyzing the competency of the Nations to adopt such measures and also looks into the assessment, technicalities and policy development and implementation. The IMF and the World Bank have together addressed and have coordinated the fight with the FATF against laundering.²⁸
- f. **World Bank:** Impact of money laundering poses a huge threat to the global economy. The World Bank along with assisting and coordinating with the FATF has initiated multiple programs and recommendations in assisting nations in the fight against money laundering. Furthermore, the World Bank has also worked in collaboration with the Basel Committee, IAIS, IOSCO, Wolfberg Group in the implementation of policy pertaining to Anti-Money Laundering practices.²⁹

²⁷ IMF, The IMF, and the Fight Against Money Laundering and Financing of Terrorism, Fact Sheet, Washington D.C: IMF, April 2007.

²⁸ IMF, The IMF, and the Fight Against Money Laundering and Financing of Terrorism, Fact Sheet, Washington D.C: IMF, April 2007.

²⁹ The World Bank, The World Bank in the Global Fight against Money Laundering and Terrorist Financing, USA: World Bank, 2003, pp.5-10.

²⁶Adnan, Sheikh & Shahid, Waseem. (2019). Money Laundering As an International Financial Crime: Laws and Measures Taken by Pakistan and Their Flaws. SSRN Electronic Journal. 10.2139/ssrn.3312795.

g. **Financial Action Task Force on Money**

Laundering: The FATF is a 37-member inter-governmental body established in 1989 through a G7 body. The Primary responsibility of the FATF is to develop standards for tackling AML/CFT and works close to bodies such as the IMF, World Bank, United Nations as well as FATF-style regional bodies (FSRBs).³⁰ The recommendations of the FATF are based on universally applicable frameworks of the criminal justice and the financial systems, principles of transparency and arrangements of international cooperation. The FATF regulations had been amended in 2014 to meet with the growing standards.

CURBING THE MISUSE OF BENEFITS OF BANK SECRECY – APPROACH TAKEN BY THE INTERNATIONAL COMMUNITY AGAINST SWITZERLAND AND SINGAPORE:

Two of the most Notable examples of nations adopting stringent and strong bank secrecy norms are Switzerland and Singapore. Bank secrecy in Switzerland can be traced all the way up till the beginning of the 1930s. The main reason that can be attributed two such strong norms in Switzerland is the fact that Switzerland has enjoyed political, social, economic, and monetary stability for decades together along with having sufficient provisions that deal with tax evasion. The Singaporean government has adopted similar provisions regarding bank secrecy that can be found in its common law - the Banking Act of 1985 - Which has seen to facilitate a strong 'private wealth management industry' rich has attracted tremendous amounts of foreign investment.

Benefits face by the customers of banks in Switzerland and Singapore what short lived Due

to multiple international requests which soon became into international obligations imposed on both these nations. The principles of bank secrecy and confidentiality have been important in the banking industry of Singapore and Switzerland, but nations and people have begun observing and realizing that the practices followed by such banks to maintain secrecy would be subjected to limitations in the growing economies.

The beginning of restricting the benefits of bank secrecy can be traced do the 2000 OECD report that dealt with Practices that are proposed to be followed by international bodies for improving and developing cooperation for the exchange of information between financial institutions for taxation purposes.³¹ This was followed by initiatives taken by the G20 that radically changed the taxing industry around the world, does leading to oh huge downfall in the Swiss banks.³²

Furthermore in 2014, Singapore and Switzerland agreed through a treaty to share data and tax information with other 45 nations globally as well,³³ which was seen to be quite a groundbreaking situation that is said to have marked the beginning of the end of bank **secrecy.**³⁴

BLOCKCHAIN, BANK SECRECY AND MONEY LAUNDERING:

Financial institutions in USA have adopted the distributed ledger technology in their banking services and also have strong norms of implementation of anti-money laundering regimes. USA has taken measures in regulating

³¹ OECD, 'Improving Access to Bank Information for Tax Purposes' (2000) <www.oecd.org/ctp/exchange-of-tax-information/2497487.pdf> accessed 28 October 2020.

³² OECD, 'The Era of Bank Secrecy is Over - The G20/OECD Process is Delivering Results 26 October 2011' (2011) <www.oecd.org/ctp/exchange-of-tax-information/38996146.pdf> accessed 28 October 2020.

³³ Arno Maierbrugger, 'Singapore, Switzerland Agree To Share Tax Information' (2014) Investvine <<http://investvine.com/singapore-switzerland-agree-to-share-tax-infomration/>> accessed 29 October 2020.

³⁴ Vanessa Houlder and John Burton, 'Singapore acts on bank secrecy laws' (2009) Financial Times <www.ft.com/content/a93ef804-0a77-11de-95ed-0000779fd2ac> accessed 29 October 2020.

³⁰ IMF, The IMF, and the Fight Against Money Laundering and Financing of Terrorism, Fact Sheet, Washington D.C: IMF, April 2018.

the usage of various virtual currencies and/or crypto-currencies. The FATF has as well defined what ‘virtual currency’ is, by stating that it is a “a digital representation of value” that “does not have legal tender status ... in any jurisdiction” and has three functions which are : (a) it being a medium of exchange, (a) a unit of account or (c) stores value.³⁵ Blockchain has is an “anonymous, but not private” platform³⁶ , where such anonymity comes from the fact that any person that has a transaction the ‘ledger’ can be identified by a blockchain address which also serves the purpose of being a account from which funds or monies can be sent or received, and such creation of an account would exist without the party providing any personal identifiable detail or information. Blockchains can’t be said to be private transactions as all transactions that occur on the platform get stored in the ledger which can be accessed by the public on the same blockchain platform.

The adoption of conducting transactions on blockchains acts as an alternative to banks as parties here may not need to involve the banks for obtaining and transferring crypto-currencies as the platform adequately facilitates such exchange.³⁷ There has not been legal action or regulation adopted to regulate the global standards of cryptocurrency trading and anti- money

laundering laws.³⁸ The only notable action that has been taken is by a global regulator is the FATF, where there is due recognition provided that cryptocurrency financial service providers are to be subjected to the same obligations as their non-crypto counterparts.³⁹

Cryptocurrency markets are lurked by a potentially vulnerable and a wide range of criminal activities which include various financially related crimes. These threats usually do not materialize on the blockchain itself, but does subsist in the surrounding ecosystem of the users of wallets that support consumer access to DLT. The rapid growth of technology and the ease of new forms of currency creation make it a challenged for the law enforcement and financial institutions subjected to Anti-Money Laundering requirements to stay progressively ahead of new criminal misuses. In addition, the anonymity, liquidity, and borderless nature of cryptocurrencies makes a challenge to curb such illegal activities as it tends to attract potential money launderers.

RECOMMENDATIONS:

The financial market in Bahrain though quite strong, still faces a few shortcomings when it comes to aspects of bank secrecy and anti-money laundering provisions. Hence the following can be suggested as measures that can be adopted to tackle such issues that were even identified by the FATF:

³⁵ As defined by the Financial Asset Task Force (“FATF”), the term “cryptocurrency” refers to any “math-based, decentralised convertible virtual currency that ... incorporates principles of cryptography to implement a distributed, decentralised, secure information economy”. FATF, Virtual Currencies Key Definitions and Potential AML/ CFT Risks (June 27, 2015), <http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf> (hereinafter “FATF 2015 Guidance”), accessed 28 November 2020.

³⁶ Adam Ludwin, ‘How Anonymous is Bitcoin?’ Coin Center (Jan. 20, 2015), <https://coincenter.org/entry/how-anonymous-bitcoin> accessed 25 October 2020.

³⁷ Holman D, Stettner B, ‘Anti-Money Laundering Regulation of Cryptocurrency: U.S. and Global Approaches’, (2018), Allen & Overy, LLP, <https://www.allenoverly.com/global/-/media/sharepoint/publications/publications/en-gb/documents/aml18_allenoverly.pdf?la=en-gb&hash=6D8F26DB73634846A427983AD2F217A7>, accessed on 04 November 2020.

³⁸ Steven Mnuchin, Sec’y, U.S. Dep’t of Treasury, Panel Discussion at the World Economic Forum: The Remaking of Global Finance (Jan. 25, 2018) (stating that his primary goal is “to make sure that [digital currencies are] not used for illicit activities” and, to do this, he has suggested “the world have the same regulations”.); Emmanuel Macron, President of France, Special Address at the World Economic Forum (Jan. 24, 2018) (calling for “a global contract for global investment”).

³⁹ Holman D, Stettner B, ‘Anti-Money Laundering Regulation of Cryptocurrency: U.S. and Global Approaches’, (2018), Allen & Overy, LLP, <https://www.allenoverly.com/global/-/media/sharepoint/publications/publications/en-gb/documents/aml18_allenoverly.pdf?la=en-gb&hash=6D8F26DB73634846A427983AD2F217A7>, accessed on 04 November 2020.

1. There has to be proper guidelines that determine as to till what extent can financial institutions provide secrecy benefits.
2. The laws have to consider the outreaching consequences of AML/CFT provisions by imposing stronger penalties on banks and financial institutions as well so that they take between diligence mechanisms.
3. The Legislators must understand the potential threat of cryptocurrency transactions and must safeguard the financial institutions from threats due to the rapid growth of cryptocurrency.
4. The CBB has to promulgate laws that enable blockchain transactions and services while imposing strong penalties for any form of criminal or fraudulent activity that is associated to the same. To ensure that the banks are adequately equipped to venture strongly into the FinTech markets involving blockchains, the legislators can adopt the measures taken by the various enactments and practices in USA.
5. Banks are to develop uniform and strong banking secrecy norms that protect their interest while not disturbing or impeding the international obligations.

CONCLUSION:

Hence it can be seen as to how bank secrecy plays an intrinsic role in the shaping of money laundering and the need of the hour is to tackle such issues in ways that are financially feasible. Various nations, groups, committees, international bodies have adopted practices, have come out with guidelines and regulations that tends to curb down the extent of the misuse of the banking secrecy provisions that are quintessential for banks, but have a negative impact when it comes to facilitating money laundering. It is thus seen as to how nations and bodies have constantly amended their approach to resolve such issue and have taken measures as well that has prevented the spread of such illegal and economically harmful acts. The rising sector of the cyber space and FinTech through trading of virtual currencies poses significant challenges to legislators to adopt

measures to completely tackle the potentially rapid growth of money laundering and funding to terror syndicates globally.

The need to consider combating operations money laundering justifications, which calls for the imposition of the exception to the application of bank secrecy, and so that it is giving priority to the face of crime money laundering in the event of conflict with banking secrecy, and so that it is lifted banking secrecy in this case according to the controls also ensure that the customer right, including:

1. That the lifting of bank secrecy takes place by a decision of a competent judicial authority specialized in controlling money laundering operations.
2. That there are serious and real indications that there is a suspicion of money laundering through the bank that justifies raising Bank secrecy on the suspicious account.
3. The lifting of bank secrecy should be limited in terms of time, so that this secrecy is raised for a specified period during which the matter is investigated to ensure that there is an actual money laundering process.
4. That the lifting of bank secrecy should be sufficient to confront the money laundering crime, whether in terms of the information on which the confidentiality is lifted, or in terms of the persons whose accounts and businesses are declassified.

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