



# PREVENTING THE USE OF BANKING SYSTEMS FOR THE FURTHERANCE OF CRIMINAL ACTIVITIES

**Yasantha Kodagoda**

LL.M. (Lond.)  
Deputy Solicitor General

Banks provide numerous important financial services to their clients. These services include the providing of secure deposit mechanisms to locate the monies of clients and the providing of secure channels to transfer monies. Understandably, for any Bank acting in good faith, under normal circumstances, the ownership or the legitimacy of the money which the client brings into the bank is not a matter of concern and is therefore not a matter of enquiry. Therefore, banks are not required or expected to go on a voyage of discovery into the legitimacy of the money brought into the bank by the client. It is not part of the general professional ethics of any bank to, prior to accepting instructions from a client, to question the legal right of the client to effect the particular transaction the client requires the bank to perform on his behalf. For example, a client may instruct the bank to retain the money which he brings into the bank on his behalf for a stipulated period of time. Another client may require the bank to transfer to another location an amount of money which lies to his credit in an account which the client maintains at the particular bank. Banks accept such instructions in good faith. Upon accepting the instructions given by the client, it becomes the contractual obligation of the bank to give effect to the instructions given by the client. A bank is not generally required to perform police functions. The bank has a contractual obligation towards the client. The primary duty of the bank is to give effect to the contractual obligations which the bank has undertaken to perform for and on behalf of the client.

However, in view of the very nature of functions that banks perform and the manner in which banks perform their legitimate business transactions, rough elements of society may find banks a heaven to aid themselves in the furtherance of criminal activities. Therefore, States all over the world have imposed numerous obligations on banks with the following objectives :

- (a) Preventing banks and banking systems from being used for the furtherance of criminal activities.
- (b) Enabling the early detection of the commission of crimes.
- (c) Enabling law enforcement agencies to secure the assistance of banks in the investigation of crime.



This article primarily focuses on the phenomena called 'money laundering' and explains the legislative framework found in Sri Lanka for the prevention, detection and investigation of money laundering. It also focuses on statutory obligations cast in particular on banks enabling the State to prevent and detect money laundering and obtain the assistance of banks in the investigation of incidents of money laundering. I selected this area of the law, because the legislative framework relating to the prevention of money laundering and the reporting of financial transactions, seeks to effectively prevent the use of banking systems to further criminal objectives. If the legal regime discussed in this article is properly implemented and if banks fully give effect to their obligations under these laws, not only would it be extremely difficult to commit money laundering, but would virtually exclude the possibility of other crimes being committed with the aid of banking systems.

## **Money Laundering**

Organized crimes such as murder, robbery, arson, drug trafficking, terrorism, bribery and corruption, are committed to achieve specific objectives. Economic benefit is a major objective that motivates criminals to engage in organized crimes. Indeed drug trafficking, bribery, corruption and certain forms of terrorism yield enormous financial profits. Soon after the commission of such crimes, the financial yield of crime is tainted with criminality. Therefore, it is either impossible or difficult to utilize such yield or profit for the use and benefit of perpetrators of such crime or for the planning, organizing, preparation, or abetment of further crimes. Therefore, it becomes necessary to add a legitimate face or sanitize the ill gotten yield. Criminals make use of lax or corrupt financial systems of countries and certain global financial systems, and thereby convert the criminally tainted face of the proceeds of crime into what appears at least on the face of it to be legitimate funds and assets. This conversion which is referred to as 'money laundering' helps criminals to enjoy the proceeds of crime, enables them to continue engaging in the commission of organized crime and has other far reaching consequences to financial systems and economies.

Money laundering has been defined as *'the process by which criminals or criminal organizations seek to disguise the illicit nature of their proceeds by introducing them into the stream of legitimate commerce and finance'*. It has also been defined as *'the conversion or transfer of property, knowing that such property is derived from a criminal offence, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of such actions ; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from a criminal offence ; the acquisition, possession or use of property, knowing at the time of the receipt that such property was derived from a criminal offence or from an act of participation in such offence'*.

Money Laundering is a problem that has multifaceted consequences. It not only reflects organized efforts aimed at providing a legitimate face to fruits of crime, but also a financial phenomena that threatens security, compromises stability and transparency of national financial systems and seriously undermines legitimate trade, commerce and economic activity. It thereby



undermines economic prosperity and stable growth of national economies. Money Laundering is not a problem that only affects a selected few sovereign States and their domestic financial institutions. It's a global problem. According to World Bank estimates, annually US \$ 1 trillion is laundered around the world. This indicates the magnitude of the problem. The nature and the extent to which money laundering takes place in Sri Lanka is yet to be empirically assessed. However, investigations into various criminal activities which involve financial transactions, have clearly revealed that money laundering does take place in Sri Lanka.

### **Should ill-gotten money be welcomed ?**

World over it is now clearly understood that, introduction of appropriate anti-money laundering legislation and effective law enforcement are essential to efficaciously control money laundering. One primary thrust of such measures is to trace and keep under surveillance questionable and suspect financial transactions and question sources of funding and financial assets at times of inflow into countries and into financial institutions. Often it is sought to be argued that, such surveillance or questioning, would seek to dissuade inflow of funds, would thereby inhibit economic growth and would adversely affect economic prosperity. It has also been argued by some that, when questions are raised by officials of financial institutions such as banks which carry out their businesses legitimately, you dissuade customers from coming into such legitimate financial institutions and thereby motivate people to seek access to and transact with the informal banking and other financial channels, most of which flout the law of the land. It has therefore been argued that, asking questions from customers or expecting banks to perform police functions would adversely affect the functioning of banks and other financial institutions and the growth of the legitimate financial sector and therefore would affect national economies.

However, it is seen that following are ways in which inflow of monies through money laundering initiatives could adversely affect both national economies and financial institutions.

1. Financial institutions such as banks that accept illegal funds cannot rely on those funds as a stable deposit base. Large amounts of laundered funds are likely to be suddenly wired out to other financial markets or environments as part of the laundering process, threatening the institution's liquidity and solvency. Furthermore, a financial institution's reputation and integrity can be irrevocably harmed through involvement in laundering money.
2. Local merchants and businesses may find that they cannot compete with front companies organized to launder and conceal illicit funds. Many such front companies offer their services and goods at below-market rates and even at a loss. Because their primary objective is laundering money, they do not need to compete in the market-place and make a profit for their owners. This leads to unfair competition and adversely affects legitimate trade and commerce.
3. Money laundering may also distort certain economic sectors and create instability in



their markets. Money launderers may channel funds to sectors or areas where funds are unlikely to be discovered, whether or not investment is needed or real returns are offered. Thereafter, the sudden departure of investments from those sectors may impair the relevant sectors.

4. Currencies and interest rates can be distorted by money launderers' investment practices, as they are based upon factors other than market returns.
5. Money laundering does nothing for the reputation of the host country. The loss of investor confidence that follows revelations of large-scale involvement in such illegal activities can sharply diminish opportunities for economic growth. Once a country's reputation or that of a financial institution is tarnished, it takes years to repair and regain a sound reputation.

Therefore, I would strongly argue that, even if one were to disregard ethical considerations, the inflow of ill-gotten monies into national economies and into financial institutions brings in no benefit at all. In fact, even from a narrow point of view, it is a liability to financial institutions and therefore should not be welcomed. In my view, though policing is certainly not the duty of banks and other financial institutions, assisting the State to prevent and detect money laundering endeavors of criminals is indeed a duty of any bank and is in the interests of banks.

### **The Process of Money Laundering**

In order to appreciate the need for legislation to prevent and outlaw money laundering and to identify a broad framework for such legislation, it is necessary to have a proper idea of what money laundering is, its' numerous manifestations and root causes and factors that facilitate money laundering. The sources from which ill-gotten money is accumulated and why it becomes necessary to launder moneys received through such illegitimate or unlawful sources is possibly obvious and needs no elaboration.

Traditionally, the way banks and other formal financial institutions work have been seen as the primary channel through which money laundering activities are carried out. Indeed, those involved in money laundering do make use of banks and other formal and licit financial institutions and mechanisms to launder ill-gotten money. These institutions are a primary conduit through which laundering is effected. Various other institutional and transactional organizations such as insurance companies, investment management institutions, shares and security trading forums, forex trading mechanisms, real estate property development projects, and a host of other activities in the financial markets are effectively used by money launderers to launder ill-gotten money. Further, corrupt systems of governance, public officials who are susceptible and vulnerable to bribery and corruption and sheer ignorance of those at managerial positions in both the public and private sector are factors that facilitate money laundering.

Another important system used by launderers is the alternate or informal forms of financial



transactions prevailing in certain countries. The *hawala* system is one such mechanism. Such informal systems are targeted by launderers, primarily because of the total absence or lack of state controlled regulation and absence of monitoring, supervision and surveillance of such systems. Hence, it becomes a fertile ground to launder proceeds of crime.

The process of money laundering takes place in basically three phases. Firstly, the **'placement'** phase, wherein ill-gotten money is initially put into or inserted into a financial system. Then the **'layering'** phase, wherein the original criminal identity of the money is sought to be separated from the money and legitimacy invoked through generally a series of transactions. Finally, the **'integration'** phase, wherein a legitimate explanation is provided or attracted by the launderer to the monies at their command and the proceeds openly used as per their wishes.

Laundered money can be put into many uses. After laundering, money could be openly used for luxurious living. It can be used for legitimate trade and commerce thus providing a legitimate and acceptable form of living for perpetrators of organized crime. More importantly, laundered money could be used for the commission, abetment and facilitation of further crime including terrorism. It could be used for complex financial activities such as manipulation of securities markets. The far reaching and drastic consequences arising out of such activities needs no emphasis. Laundered money could also be used to further advance corrupt practices and laundering mechanisms. It could be used to fund election and other campaigns of politicians and others seeking important positions in the public arena and in the private sector.

### **Anti – Money Laundering Legislation**

From the late 1980's policy makers of our country were conscious of the significance of the problem pertaining to money laundering and realized the need to prevent and arrest money laundering. Consultations took place at various levels. Initial fears that anti-money laundering initiatives would dissuade foreign investment from coming into the country gradually withered away. However, there was concern that, strict anti-money laundering legislation and enforcement of such law, would impose unnecessary burdens on formal financial institutions such as banks, and that such enforcement measures may persuade transacting parties to seek alternate avenues to channel or transmit and deposit funds. The senior management of banks and other formal financial institutions had certain well founded concerns that enforcement of strict measures aimed at outlawing money laundering would give rise to counter productive consequences and would have an adverse impact on economic growth. They were also concerned about the additional responsibilities such legislation would impose on financial institutions. Therefore, it became necessary to develop a legislative scheme wherein the objective of outlawing of money laundering was achieved without endangering or hampering the growth of legitimate trade, commerce and other licit financial activity.

By the mid 1990s, a broad framework of the intended legislation aimed at outlawing money laundering emerged. Additionally, moves were afoot to enact a new law dealing with offences involving poisons, narcotics and dangerous drugs. There was a separate chapter in that bill which



dealt with outlawing laundering of proceeds from the commission of crimes relating to narcotics. Further, bribery and corruption legislation that is already part of our body of substantive law, contains provisions that seek to enable the forfeiture of property acquired from bribery and acts of corruption. Further, the Mutual Assistance in Criminal Matters Act of 2002 provides for a comprehensive regime to offer and obtain assistance from other jurisdictions with regard to search, seizure, tracing of proceeds of crime, and enforcement of court orders.

## **Prevention of Money Laundering Act**

In January 2006, the Parliament enacted the Prevention of Money Laundering Act, No. 5 of 2006. We will now look at some of the salient features of this law.

### **Offence of Money Laundering :**

The Prevention of Money Laundering Act has made 'Money Laundering' an offence (crime). It provides that, *"any person who engages in any transaction in relation to any property which is derived or realized directly or indirectly from any unlawful activity or from proceeds of any unlawful activity, or receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realized, directly or indirectly, from any unlawful activity, or from the proceeds of any unlawful activity, knowing or having reason to believe that such property is derived or realized, directly or indirectly from any unlawful activity or from the proceeds of any unlawful activity, shall be guilty of the offence of money laundering"* [Section 3(1)].

To get a clearer view of the new offence that has been created, the offences as it has been defined needs to be dissected into its constituent elements and considered. The offence of Money Laundering when dissected into its constituent elements appears in the following way.

Any person who

engages directly or indirectly in any transaction in relation to  
any property  
which is derived or realized directly or indirectly  
from any unlawful activity or  
from proceeds of any unlawful activity,

or

receives, possesses, conceals, disposes of, or brings into  
Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property  
which is derived or realized directly or indirectly  
from any unlawful activity or  
from the proceeds of any unlawful activity,



knowing or having reason to believe that such property is derived or realized, directly or indirectly from any unlawful activity or the proceeds of any unlawful activity,

*shall be guilty of the offence of **money laundering**.*

Thus, it would be seen that, basically the offence relates to committing an act such as transacting, receiving, possessing, concealing or investing property derived directly or otherwise from an 'unlawful activity', whilst knowing or having reason to believe that the said property had been derived from such unlawful activity.

**Predicate offences :**

In order to obtain a clear idea as to the nature of the property in issue, it is necessary to identify the definition given to the term 'unlawful activity'. From the earlier general introduction to money laundering, you would have guessed that such unlawful activity would include offences such as drug trafficking, arms trafficking, terrorism, robbery, etc. In the new law, the term 'unlawful activity' has been defined as, any act which constitutes an offence under any of the following laws.

- (i) Poisons, Opium & Dangerous Drugs Ordinance
- (ii) Law or Regulations relating to the prevention and suppression of terrorism
- (iii) Bribery Act
- (iv) Firearms Ordinance, Explosives Ordinance, & Offensive Weapons Act
- (v) Exchange Control Act
- (vi) Laws relating to transnational organized crime
- (vii) Laws relating to cyber crime
- (viii) Laws relating to offences against children
- (ix) Laws relating to offences against trafficking of persons
- (x) Any other offence punishable with death or imprisonment of seven years or more, whether committed within or outside Sri Lanka

It is the property derived directly or indirectly through the commission of these offences, that become the subject matter of the offence of 'money laundering'. These offences are referred to as 'predicate offences'. As you may appreciate, in practice, it may be a difficult task to establish that certain specified property has been derived directly or indirectly from the commission of a predicate offence. Therefore, for the convenience of establishing the nature of the property in issue, the law has laid down a rebuttable presumption. It provides that, if money or property in issue cannot or could not have been part of the known income or money or property of a person, or to which the known income has been converted by such person, it shall be deemed that such movable or immovable property acquired by such person has been derived or realized directly or indirectly from an unlawful activity or proceeds thereof.





What the offence of 'money laundering' seeks to prohibit is the 'transacting' in or 'handling' in some form or the other the proceeds of these predicate offences. If the prohibition contained in the offence of money laundering is uniformly and fully enforced, it would effectively prevent property derived from the afore-stated predicate offences from being laundered. That means, those concerned in the commission of predicate offences would not be able to transact with or handle the proceeds or fruits of their crime. That is how the objective of prevention of crime is achieved. If a prospective thief verily believes that, he will not be in a position to transact with or handle and thereby make use of the fruits of his intended crime, he would not seek to commit the offence of theft. Thus, the objective of prevention is sought to be achieved.

Who may commit the offence of Money Laundering :

From the structure of the offence, it would be seen that, the following two groups of persons could commit the offence of money laundering.

- (i) Persons who commit or have been concerned in the commission of predicate offences, and thereby come into possession or control of property derived directly or indirectly from the commission of such predicate offences.
- (ii) Persons who transact with or receive, possess or come into control of property derived directly or indirectly from the commission of predicate offences, knowing or having reason to believe the true nature of such property.

This second group of persons may not be culpable for the commission of a predicate offence. However, their handling of the relevant property in any manner whatsoever become illegal, if such persons had either known or had reason to believe that the property in issue had been derived directly or indirectly from the commission of a predicate offence or proceeds thereof. To this group would belong persons employed at financial institutions which are used by criminals to launder ill-gotten monies.

#### **Penal Sanctions :**

The new law provides for the imposition of penal sanctions in respect of persons found guilty by the High Court for the commission of the offence of 'money laundering'.

They are ;

- (i) to a fine not less than the value of the property in respect of which the offence was committed and not more than three times that value, OR
- (ii) to rigorous imprisonment for a period of not less than five years and not more than twenty years, OR
- (iii) to both such fine and imprisonment.

Further, the assets of the person convicted including the assets derived directly or indirectly from the commission of the offence of money laundering shall be liable to be forfeited.





When the offence of Money Laundering is committed by a body corporate, every director and officer of such body corporate shall be deemed to be guilty of such offence. If such offence is committed by a firm, every partner of that firm, and if the offence is committed by an unincorporated body, every officer of that body responsible for its management and control, shall be deemed to be guilty. However, if such person proves that, the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence, such person shall not be deemed to be guilty.

Attempt to commit the offence of money laundering, abetment, and conspiracy to commit the offence of money laundering, are also punishable under the intended law [Section 3(2)].

The law also imposes an obligation to provide information. Any person who has information obtained by him through the engagement of his vocation, that any property has been derived or realized from any illegal activity, shall (notwithstanding the existence of secrecy provisions in various laws) disclose such information to the Financial Intelligence Unit. Failure to provide information (without reasonable grounds for non - disclosure) shall be an offence. [Section 5]

Further, any person who knowing that an investigation into Money Laundering has commenced or is about to commence, divulges such information (other than for the purpose of carrying out a duty under the Act) to any person knowing that such disclosure would prejudice the investigation, or disclose the identity of the person who is being investigated, or knowingly falsifies, conceals or destroys any material relevant to the investigation commits an offence. [Sections 6 & 21]

#### **Applicability of the law :**

The scope of the applicability of the intended law and thereby the scope of the prohibition contained in the offence of 'money laundering' is stated in the new Act. According to the relevant section, the Act shall be applicable in the following circumstances.

- (a) If a person commits an offence under the Act while in Sri Lanka.
- (b) If the 'covered entity' which is used for the commission of an offence under the Act is situated, incorporated or registered in Sri Lanka.
- (c) If the act which constitutes the offence under this Act is committed in Sri Lanka.

#### **Covered entities :**

Thus, it would be seen that the new law presupposes that, certain institutions or persons (which the law refers to as 'covered entities') may be used for the commission of the offence of 'money laundering'. The Act defines such 'covered entities' as being any person carrying on the following businesses or activities :

- (a) Banking
- (b) Lending



- (c) Financial leasing
- (d) Transfer of money or value
- (e) Money and currency changing services
- (f) Issuing and managing means of payment
- (g) Issuing financial guarantees and commitments
- (h) Trading for its own account or for the account of customers in money market instruments
- (i) Participating in securities issues and the provision of financial services related to such issues
- (j) Individual and collective portfolio management
- (k) Investing, administering or managing funds or money on behalf of others
- (l) Safekeeping and administration of cash or liquid securities
- (m) Safe custody services
- (n) Underwriting and placement of insurance
- (o) Trustee administration or investment management of superannuation scheme
- (p) Casinos, gambling houses or lottery
- (q) Real estate agents
- (r) Dealers in precious metals and dealers in precious and semi-precious stones
- (s) Lawyers, Notaries, other independent legal professionals and accountants, when they prepare for or carry out transactions for their client relating to the following activities :
  - (i) Buying and selling of real estate
  - (ii) Managing of client money, securities or other assets
  - (iii) Management of bank, savings or securities accounts
  - (iv) Organization of contributions for the creation, operation or management of companies
  - (v) Creation, operation or management of legal persons or arrangements, and buying and selling of business entities
- (t) A Trust or company service provider not otherwise covered by this definition, which business provide any of the following services to third parties :
  - (i) Formation or management of legal persons
  - (ii) Acting as a director or secretary of a company, a partner of a Partnership, or a similar position in relation to a legal person
  - (iii) Providing a registered office, business address, accommodation, correspondence or administrative address for a company, partnership or other legal person
  - (iv) Acting as a trustee of an express trust
  - (v) Acting as a nominee shareholder for another person
  - (u) Offshore entities as defined in the various laws &
  - (v) Any other business as may be prescribed by the Minister

It is therefore seen that, the law has been drafted on the premise that, certain institutions such as banks, various financial institutions and certain professionals such as Lawyers and Accountants may be targeted and used by Money Launderers to commit the offence of money laundering. When such an institution or professional is situated, incorporated or registered in Sri Lanka, the conduct in issue falls within the purview of the intended Act.



### **Freezing Orders :**

In order to facilitate the conduct of investigations into possible instances of money laundering, and with the view to preventing laundered money from being siphoned out of the country or concealed, the law provides for a police officer holding a rank not below that of an Assistant Superintendent of Police to make order prohibiting any transaction in relation to any account, property or investment, which may have been used, is being used or may be used in relation to money laundering. Such order referred to as a 'Freezing Order' may be made in instances where there are reasonable grounds to believe that, any person is involved in any activity relating to money laundering. During the first two years of the operation of this new law, we have witnessed a few instances of such orders being issued on Banks. Acting in contravention of such 'freezing order' is deemed to be an offence. Following the issue of such order and not later than seven days from the making of such order, the authorized officer has to obtain a confirmation of such order from the High Court. Any transaction carried out in contravention of such 'freezing order' shall be null and void. The High Court may upon consideration that such a freezing order may unduly damage the legitimate business or other interests of any person affected by such order, and that certain essential transactions may have been prohibited by such order, make order permitting such transactions to be effected subject to the supervision and under the direction of a person authorized on that behalf by court. When a 'freezing order' is made, the High Court may appoint a 'Receiver' to take possession of and otherwise deal with the property in relation to which the 'freezing order' has been made.

### **Forfeiture :**

The Prevention of Money Laundering Act seeks to provide for the Forfeiture to the State, of any property of a person convicted of the offence of money laundering, including such property as may be in the possession of any other person, and derived or realized directly or indirectly from such offence. The court making such order of confiscation, may appoint a Receiver to be in charge of such property forfeited.

### **Investigation :**

In order to facilitate an investigation into offence of money laundering, the new law seeks to authorize an investigator to, upon application to a Magistrate, obtain an order, enabling such investigator to receive any document relevant to such investigation from any person including information relating to any identified transaction from any covered entity.

## **Financing of Terrorism**

Investigations into acts of terrorism have clearly revealed how terrorists use banking systems to facilitate terrorist funding and to channel collected funds to local activists engaged in the commission of terrorist activities. Particularly in the Sri Lankan context, it is seen how activists of the Liberation Tigers of Tamil Eelam (LTTE) operating overseas (even in countries where the LTTE



has been proscribed) collect funds from the Tamil diasporas living overseas, and make use of banks of such countries to initially retain the collected funds and to thereafter use banking channels to transfer collected funds to those involved in procuring warfare equipment. Furthermore, banking channels are used to send money to Sri Lanka to be used by terrorists. With the view of combating terrorist financing, in 2005 the Parliament enacted the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.

### **Financial Transactions Reporting Act**

Parallel to the Prevention of Money Laundering Act, another law named the Financial Transactions Reporting Act No. 6 of 2006 was also enacted in 2006. This new act sought to establish a new law enforcement agency named the **Financial Intelligence Unit** for the purpose of gathering and analyzing information pertaining to possibly instances of money laundering and investigating money laundering and terrorist financing activities. The Financial Transactions Reporting Act No. 6 of 2006, has made provision for the Financial Intelligence Unit to exercise sufficient statutory powers in order to monitor suspect financial transactions and to conduct investigations into instances of Money Laundering. However, investigations into instances of money laundering may be conducted by the routine police as well.

The Financial Transactions Reporting Act has imposed certain obligations and prohibitions on institutions engaged in carrying out (a) finance business [such as banks, finance companies, lease providers, currency changing services, etc.] and (b) designated non-finance businesses [as defined by the law such as insurers, funds & portfolio managers, safe-custody service providers, Lawyers (when attending to certain matters)]:

- (i) aimed at enforcing the rule 'know your customer'
- (ii) preventing bank accounts, deposits, and other finance depositories and financial services and financial products being provided by such institutions, being used for money laundering,
- (iii) facilitating investigations, &
- (iv) monitoring suspect financial transactions.

The primary obligations of such institutions and individuals are as follows.

- Not to maintain accounts or facilitate transactions wherein the holder cannot be identified or can be identified only by a number. [Sec. 2(1)]
- Not to maintain anonymous accounts. [Sec. 2(1)]
- Not to permit an account to be maintained under the name of a fictitious person or false name. [Sec. 2(1)]
- If the identity cannot be satisfactorily ascertained, to report to the FIU and not proceed with certain transactions. [Sec. 2(2) + Sec. 3]
- Take meaningful measures to identify the customer and to verify data. [Sec. 2(2)]



- To comply with stipulations pertaining to the maintenance of Records (6 years). [Sec. 4(1)]
- Appointment of a Compliance Officer who shall be responsible for ensuring compliance under the law. [Sec. 14]
- To comply with due diligence on business relationships with customers. [Sec. 5]
- Report to FIU transactions exceeding a prescribed amount and certain other transactions (possible suspect transactions) as prescribed by Regulations. [Sec. 6]
- Provide a Report to FIU relating to property / funds connected with any unlawful activity & Terrorism. [Sec. 7(1) + 8]
- Not to disclose the reporting to FIU. [Sec. 9(1)]
- Not to disclose that any suspicion has arisen in relation to any transaction. [Sec. 9(1)]
- Not to disclose the identity of the person who has handled such suspicious transaction, or the person who attended to functions under the Act or contents of a suspicious transactions report. [Sec. 10(1)]

Non-compliance or violation of these obligations is recognized by the new law as constituting an offence, and therefore carry certain sanctions.

They are :

- Penalty not exceeding Rs. 1 Mn. [Sec. 19(1)]
- Double the penalty for continuing non-compliance. [Sec. 19(1)]

Personal liability has been imposed on Directors of institutions required to give effect to the obligations. [Sec. 19(5)] In instances where an institution is found to have defaulted, certain additional measures may be taken by the respective supervisory or regulatory authorities. [Sec. 19(4)] Further, the FIU may direct the adoption of measures to ensure compliance. [Sec. 19(6)]

The Central Bank of Sri Lanka has been gazetted as the Financial Intelligence Unit (FIU). The FIU is now functioning. For the purpose of section 6, Rs. 1,000,000/= has been stipulated as the threshold for reporting. Therefore, all cash and electronic transactions of not less than Rs. 1,000,000/= have to be necessarily reported by banks to the FIU, quite independent of whether or not the particular transaction has aroused any suspicion.

If Banks fully give effect to their obligations under the Financial Transactions Reporting Act, it will to say the least make money laundering and terrorist financing endeavors extremely difficult.

