



Consolidation of Money Laundering Regimes by the onset of Fintech Platforms – A Global Perspective

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ABSTRACT

Fintech has greatly increased the breadth of available financial services, making it easier for new forms of funding, payment, and exchange to reach ever-widening swaths of the public. But like other things, it has its advantages as well as disadvantages. Fintech provides for a new platform to money launderers. Legislators around the world have begun laying the groundwork for a more comprehensive legal system in an effort to curb the misuse of the FinTech platform. Growth in FinTech, which results in massive numbers of transactions, is one of the unavoidable issues for the anti-money laundering system. This article provides a comprehensive analysis of **A)** prevalent money laundering techniques, **B)** challenges which Fintech poses with respect to money laundering **C)** The Anti Money Laundering Regime which has been established with regards to the Fintech Sector and **D)** The mitigation of risks or challenges to the AML regime.

Keywords: *Anti Money Laundering Regime, Corruption, FinTech, Money Laundering Regime, Risks and Technology.*

INTRODUCTION

[1.] Money laundering could be defined as the process of transforming criminal proceeds into legal currency. Individual criminals and criminal organizations around the world utilize money laundering to conceal and legitimize illicitly acquired funds.¹ The process of money laundering consist of three phase:²

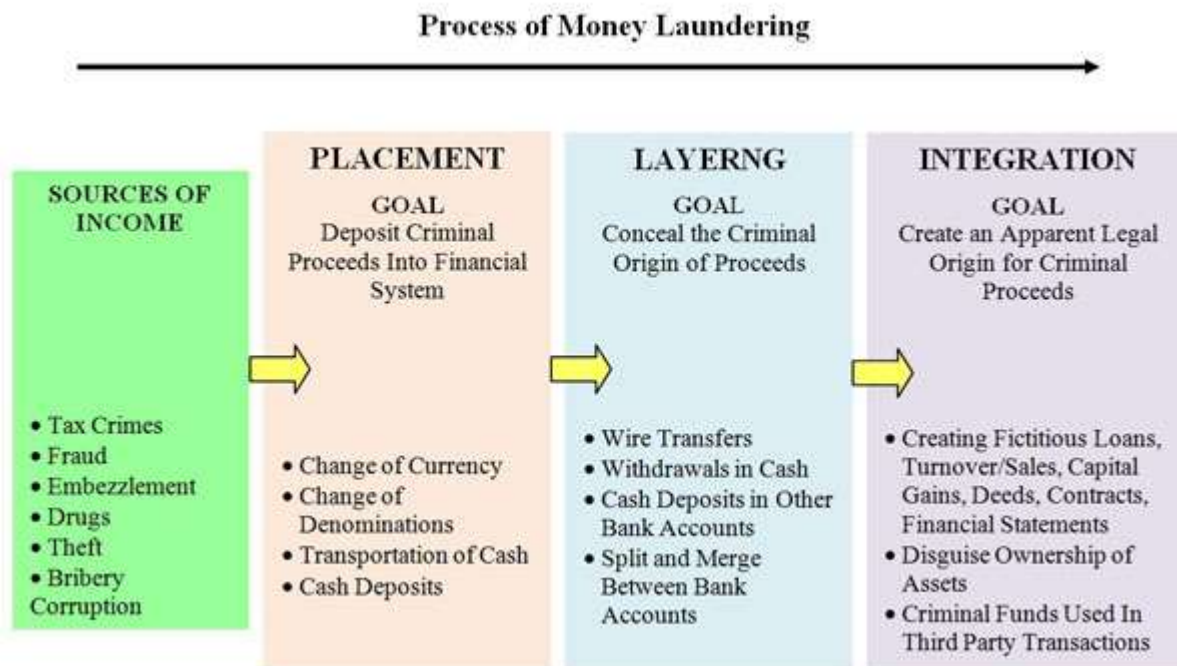


Figure 1: Stages of Money Laundering

A. Placement phase – During the placement stage, the money launderer legally deposits the stolen funds into various locations.

B. Layering Phase - Beginning the Layering Stage During the layering stage, also called stratification, a series of subsequent financial transactions are carried out, making it extremely challenging to reconstruct the flow of money and "detach" the illicit revenues from their source.

C. Integration Phase - The Integration Stage Illicitly acquired wealth is given the veneer of legitimacy by being reintroduced into the real economy in seemingly legitimate forms during the Integration Stage Once this is accomplished, the launderer can utilize the money for any transaction, including making use of all payment methods available within the financial system.

[2.] In the recent years, FinTech platforms have expanded across the globe. They are essentially platforms which use technology to provide financial services.³ However, like most other financial institutions, apart from performing essential financial services, it has become a breeding ground for the offence of money

¹ Levi, M. and Reuter, P., 2006. Money laundering. Crime and justice, 34(1), pp.289-375.

² Anti-Money Laundering/Combating Financial Terrorism, <https://www.imf.org/external/np/leg/amlcft/eng/aml1.html>

³ Kern Alexander, International Money Laundering Regime, 4 Journal of Money Laundering Control 5, 56 (2001), <https://www.emerald.com/insight/content/doi/10.1108/eb027276/full/html>

laundering⁴. What encourages money launderers is the fact that the transactions remain anonymous and are dealt with intangible assets which are easily transferred online and thus, identification becomes more cumbersome.⁵

CHALLENGES FINTECH POSES TO THE CURRENT ANTI-MONEY LAUNDERING MECHANISM

[3.] The numerous rise in global trade and the money dealings entailed therein, have hardened monetary protocols for banks and other credit institutions. This operational difficulty has stemmed “**Cyber Laundering**”,⁶ wherein digital cash on fintech platforms is used to engineer systemic whitewashing.⁷

The following constitute malpractices facilitated by fintech platforms to accelerate money-laundering processes:⁸

A. Money Muling: To get unlawful monies into the financial system, money launderers may use third parties to use fintech services on their behalf. These so-called "money mules" can be defenseless people in society, such the elderly or the crippled, or they might have been forced or bribed to engage in the illicit activity.⁹

B. Digital Currencies: Networks for money laundering have embraced cryptocurrency and are now providing their services to other criminals. They include products and services like buying or selling cryptocurrencies, making illegal assets lawful, and paying out criminals' remaining funds into their accounts.¹⁰ Dark Web marketplaces provide details on how criminals might use cryptocurrencies to cash out, for as by trading Bitcoin for gift cards.¹¹

C. New Payment Method [NPM]: NPM products like prepaid card services through anonymity of identity and fund load transaction, is able to meticulously engineer money laundering regimes across fiscal frameworks.¹²

⁴ FATF, Money Laundering and Terrorist Financing Vulnerabilities of Commercial Websites and Internet Payment Systems, June 18, 2008, <http://www.fatf-gafi.org/topics/methodsandtrends/documents/moneylaunderingterroristfinancingvulnerabilitiesofcommercialwebsitesandinternetpaymentsystems.html>

⁵ Miren Aparacio, Big Data: Mitigating Financial Crime Risk, The World Bank Global Practice, 53-79 (2017) <https://www.jstor.org/stable/resrep03719.9>

⁶ Deloitte, Working definition of the Financial Stability Board, “Financial Stability Implications from FinTech – Supervisory and Regulatory Issues that Merit Authorities Attention“, p.7, June 27, 2017.

⁷ Douglas W. Arner et. al., *Fintech And Regtech: Innovation While Preserving Financial Stability*, 18 Georgetown Journal of International Affairs 3, 47-58 (2012), <https://shibbolethsp.jstor.org/start?entityID=https%3A%2F%2Fidp.siu.edu.in%2Fopenathens&dest=https://www.jstor.org/stable/26395923&site=jstor>

⁸ FATF (2021), *Opportunities and Challenges of New Technologies for AML/CFT*, FATF, Paris, France, <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/opportunities-challenges-newtechnologies-aml-cft.html>

⁹ JIM SIVON, *FINTECH AND THE EXISTING LEGAL FRAMEWORK FOR ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING*, 1-4 (2015), http://www.bsnlawfinn.com/newsletter/OPI506_S

¹⁰ Tatiana Tropina, *Battling ML in Age of Electronic Banking*, 15 Max Planck Institute of Financial Affairs 1, 69-84 (2014), https://www.researchgate.net/publication/271609518_Fighting_money_laundering_in_the_age_of_online_banking_virtual_currencies_and_internet_gambling

¹¹ Europol (2021), *European Union Serious and Organised Crime Threat Assessment 2021 - A corrupting influence: the infiltration and undermining of Europe’s economy and society by organised crime*, accessible at <https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organisedcrime-threat-assessment>

¹² FATF Report (October, 2010), *ML Using New Payment Methods*, (www.fatf-gafi.org/dataoecd/30/47/37627240.pdf)

CRITICAL ANALYSIS OF CURRENT ANTI MONEY LAUNDERING REGIME WITH RESPECT TO THE FINTECH**SECTOR****A. Indian Context**

[4.] There is no single regulatory authority in India for fintech companies. The regulatory agencies in charge of overseeing fintech goods and services generally include the Reserve Bank of India (RBI), the Securities Exchange Board of India (SEBI)¹³, the Ministry of Electronics and Information Technology (MEITY), the Ministry of Corporate Affairs, and the Insurance Regulatory and Development Authority of India (IRDAI)¹⁴. In general, the regulatory bodies with jurisdiction over fintech products and services are the Reserve Bank of India (RBI), the Securities Exchange Board of India (SEBI), the Ministry of Electronics and Information Technology (MEITY), the Ministry of Corporate Affairs, and the Insurance Regulatory and Development Authority of India (IRDAI).

[5.] However, the RBI currently regulates the majority of fintech businesses that deal with account aggregation, peer-to-peer (P2P) lending, cryptocurrencies, payments, and so on.¹⁵ India regulates the marketing and sales of insurance products.¹⁶ The statutory body in India that controls insurance products is called IRDAI.¹⁷

B. International Context

[6.] A significant financial scandal concerning the online payment corporation Wirecard has been ongoing in Germany since June 2020 as a result of the discovery of a shortfall of 1.9 billion euros that was allegedly supposed to be deposited as trust funds in two banks in the Philippines but was never there. While the former CEO of Wirecard has vanished after leaving the country, the current CEO has been detained in Germany on suspicion of fraud.

Wirecard Case

[7.] A major financial scandal involving the online payment company Wirecard has plagued Germany since June 2020, as a result of the discovery of a 1.9 billion euro shortfall that was allegedly supposed to be stored as trust money in two banks in the Philippines but was never there. Wirecard's former CEO is being held in Germany on fraud-related charges, while the former CEO fled the country and vanished.

¹³ Anand, A. 2011. "Combating Terrorist Financing: Is Canada's Legal Regime Effective?" University of Toronto Law Journal 61 (1): 59–71. doi:10.3138/utlj.61.1.059. [Crossref], [Google Scholar]

¹⁴ Neil Bhatiya, New Financial Technology, Centre for New American Security, 50-55 (2020), <https://www.jstor.org/stable/resrep24224.6>

¹⁵ Praveen Kumar, Money Laundering in India: Concepts, Effects and Legislation, RET Academy for International Journals of Multidisciplinary Research (RAIJMR) [online] Available at: http://www.raijmr.com/ijrths/wp-content/uploads/2017/11/IJRHS_2015_vol03_issue_07_11.pdf

¹⁶ Wu Yen-Te, Fintech Innovation & Anti Money-Laundering Compliance, 12 National Taiwan University Law Review 2, 201-258 (2017), https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/ntulr12&id=202&men_tab=srchresults

¹⁷ Kumar, A. and Kharole, H. (2020). Impact of Money Laundering Cases on Indian Economy and Business. 5 International Journal of Innovative Science and Research Technology 5, 47-23 (2021), <https://www.ijisrt.com/assets/upload/files/IJSRT20MAY119.pdf>

[8.] Anti-Money Laundering in EU Regime

There is a well-coordinated network of sources for anti-money laundering legislation at the international, European Union, and national levels. The EU's regulations on the prevention and suppression of money laundering and terrorist financing have evolved over time in order to establish a uniform regulatory framework among Member States. The Fifth Anti-Money Laundering Directive, also known as Directive 2018/843 of the European Parliament and Council of May 30, 2018, is an update to Directive 2015/849. The fourth Anti-Money Laundering Directive.

COMBATING OR MITIGATING THE CHALLENGES THAT FINTECH POSES TO THE ANTI-MONEY LAUNDERING REGIME

[9.] FinTech has become an integral part of our financial system and has been highly accepted worldwide. However, the world of Fintech opens the door to greater possibilities in the commission of money laundering¹⁸. It has revolutionized the transfer of money and related assets unimaginably, in a manner that could not have been foreseen. Thus, in light of these new developments, the regulatory framework and the anti-money laundering regime must accordingly incorporate changes to effectively prevent this menace¹⁹.

To mitigate the risks of money laundering emanating from the world of FinTech, the following measures may be undertaken:

1. Developing specific compliances for Fintech companies and related bodies:

Having regard to the distinct way Fintech operates, there is a requirement for specific compliances which shall be imposed upon the companies and organizations which deal with it²⁰.

a. Customer Due Diligence/ Know Your Customer norms²¹

The FinTech industry has a wide customer base and hence, it becomes necessary to ensure that this huge pool of consumers does not include money launderers. Thus, it is necessary to keep an updated database of the consumers for the effective identification of potential offenders. In addition to this, *sanctions screening tools* can be utilized to realize if the customers have sanctions imposed on them and accordingly reject them.

b. Adopting effective *Transaction monitoring system* to detect fraudulent or suspicious transactions. Furthermore, *Suspicious Activity Reports (SARs)* shall be prepared.²²

¹⁸ FATF, Money Laundering and Terrorist Financing Vulnerabilities of Commercial Websites and Internet Payment Systems, June 18, 2008, <http://www.fatf-gafi.org/topics/methodsandtrends/documents/moneylaunderingterroristfinancingvulnerabilitiesofcommercialwebsitesandinternetpaymentsystems.html>

¹⁹ Zachary Robock, "The Risk of Money Laundering Through Crowdfunding: A Funding Portal's Guide to Compliance and Crime Fighting," Michigan Business Entrepreneurial Law Review, Vol. 4, No. 1 (2014), <http://repository.law.umich.edu/mbelr/vol4/iss1/4/>

²⁰ "NASD Provides Guidance to Member Firms Concerning Anti-Money Laundering Compliance Programs Required by Federal Law," Notice to Members, FINRA, 2002, <http://www.finra.org/industry/notices/02-21>.

²¹ Ana Rebello, Fintech Compliance with AML Regulations, Dow Jones – Risk & Compliance, <https://www.dowjones.com/professional/risk/glossary/anti-money-laundering/fintech-regulations/>

²² George Walker, Fintech Law - A New Beginning and a New Future, 1 The International Lawyer 50, (2017), <https://www.jstor.org/stable/26415633>

- c. Establishing *Anti Money Laundering (AML) Departments* within such organizations and recruiting or hiring employees with specialized knowledge or skillsets to ensure that the compliances are being followed.²³
2. Tackling Technology with technology: Technological developments like *Machine learning and Artificial Intelligence* can be utilized to detect consumers with suspicious activity and manage the complex data received through the KYC regime.²⁴ This can act as a safeguard to the improper use of FinTech by consumers.

CONCLUSION

Fintech platforms boom since 2010's has certainly marked a remarkable departure in the banking and finance sector. However, it's fuelling of ML regimes is certainly an issue of great concern. Fintech malpractices have been able to locate lacunae in every stage of money laundering, which is why the platforms have been so easily abused. Its commendable how fintech regulators have been promptly able to address rising concerns of ML. The cognizance taken by the fintech platforms by way of stringent fintech compliance, customer acquisition analysis, due diligence systems, etc. have enabled the mitigation of soaring ML malpractices.

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