

Anti-Money Laundering and Arbitration Act

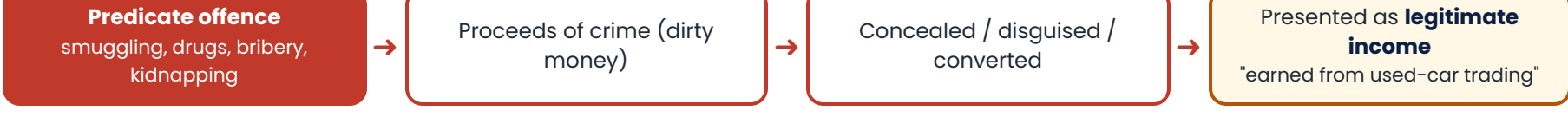
AML ACT 2010 · FINANCIAL INSTITUTION · OFFENCE · PUNISHMENT · ARBITRATION ACT 1940 · IMPLIED TERMS · POWERS

Comprehensive Exam Revision Handout

1 CORE CONCEPT — MONEY LAUNDERING



Money laundering = the illegal process of making money generated by a crime (**predicate offence** — e.g. drug trafficking, terrorist funding, tax evasion) **appear to come from a legitimate source**. "Dirty" money is "laundered" to look clean.



Law in Pakistan

Anti-Money Laundering Act, 2010.

Purpose of AML laws

Deter criminals by making it **harder to hide ill-gotten money**; require financial institutions to **monitor transactions** and **report suspicious activity**.

Global concern

AML & **CFT** (counter financing of terrorism); **FATF** and World Bank work with national authorities and state banks.

2 FINANCIAL INSTITUTION **S. 2(xiv)**



Most AML Act requirements apply to financial institutions — **not limited to banks**. Any person carrying on one or more of:

a) Accepting **deposits** & repayable funds from public

b) **Lending** in any form

c) **Financial leasing**

d) **Money or value transfer**

e) Issuing/managing **means of payment** (cards, cheques, traveller's cheques, money orders, drafts, e-money)

f) **Financial guarantees** & commitments

g) Trading in / dealing with:

money market instruments · foreign exchange · exchange, interest-rate & index instruments · transferable securities · commodity futures · share issues & related services · portfolio management · safekeeping of cash/liquid securities · managing funds for others · **insurance** · money & currency changing · business as **intermediary**

Examples: JazzCash, EasyPaisa (value transfer), Mastercard (cards), Western Union (transfer & currency changing). An **educational institute** is not a financial institution.

3 OFFENCE OF MONEY LAUNDERING **S. 3**



Common condition: the person **knows or has reason to believe** that the property is **proceeds of crime**.

1. Acquisition / conversion / possession

Acquires, converts, possesses, uses or transfers criminal property.
Official buys a house with bribes.

2. Concealment

Conceals/disguises true **nature, origin, location, disposition, movement or ownership**.
Banker hides client's crime proceeds from law enforcement.

3. Holding for others

Holds or possesses property **on behalf of another**.
Employee holds Rs. 10m for employer.

4. Participation

Participates, associates, conspires, attempts, **aids, abets, facilitates or counsels**.
Accountant advises and facilitates concealment.

Evidence **S. 3**

Knowledge, intent or purpose may be **concluded from factual circumstances** per the **Qanun-e-Shahadat Order, 1984**.

No prior conviction needed

Conviction for the **predicate offence** (listed in the AML Act — e.g. corruption, tax evasion, kidnapping) is **not required** to prove money laundering.

4 PUNISHMENT **S. 4**



Penalty	Natural person (incl. guilty director/officer/employee)	Legal person (e.g. company)
Imprisonment	Rigorous , not less than 1 year , up to 10 years	— (cannot be imprisoned)
Fine	Up to Rs. 25 million	Up to Rs. 100 million
Forfeiture	Property involved in money laundering, or property of corresponding value	

5 ARBITRATION ACT, 1940 — KEY DEFINITIONS



Arbitration = resolving **civil** disputes **outside court**, avoiding procedural technicalities — a mode of **Alternate Dispute Resolution**, with **limited rights of review and appeal** of awards.

Arbitration agreement **S. 2(a)**

A **written** agreement to submit **present or future** differences to arbitration, whether or not an arbitrator is named.

Legal representative **S. 2(d)**

Represents a deceased's estate; includes a person who **intermeddles** with the estate.

Reference **S. 2(e)**

Reference **to arbitration**.

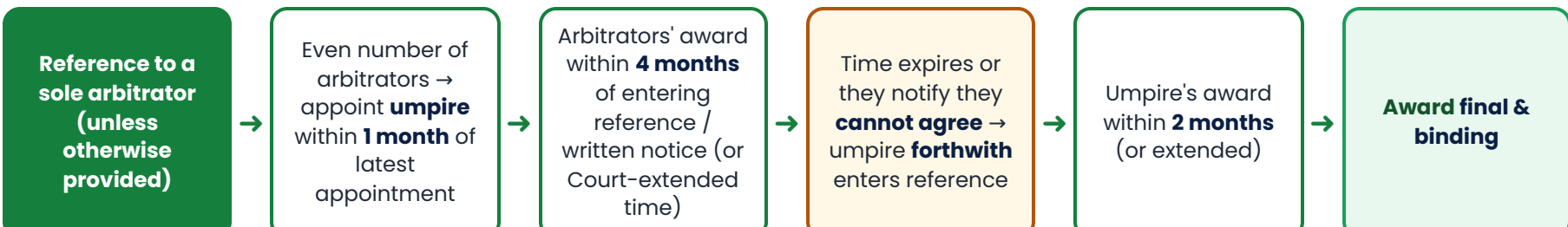
Umpire

Third party appointed by **the arbitrators** to settle differences **between arbitrators**.

6 IMPLIED PROVISIONS & ROADMAP **S. 3, First Schedule**



Unless a different intention is expressed, every arbitration agreement is deemed to include:



Parties' obligations

Submit to examination **on oath/affirmation**; produce all books, deeds, papers, accounts and documents required; do all things the arbitrators/umpire require.

Costs

Costs of reference and award at the **discretion of arbitrators/umpire** — who pays, how, and amount (may tax/settle costs).

7 OTHER RULES & POWERS OF ARBITRATORS



Appointment by third party **S. 4**

Parties may agree that arbitrator(s) be appointed by a person designated by **name or office**.
Chairperson of the city's Chamber of Commerce.

Authority irrevocable **S. 5**

Authority of an appointed arbitrator/umpire is **not revocable except with leave of the Court** (unless agreement says otherwise).

Parties to a suit **S. 21**

All interested parties may agree to refer a **matter** in a pending suit and apply **in writing** to the Court **before judgment** for an order of reference.

⚡ Powers of arbitrators/umpire **S. 13 (unless agreement says otherwise)**

1. **Administer oath** to parties and witnesses

2. **State a special case** on a question of law for the Court's opinion (or state the award as such)

3. Make the award **conditional or in the alternative**

4. **Correct clerical mistakes** / accidental slips or omissions

5. Administer **interrogatories** to parties as necessary

8 APPLICATION & EXAM TRAPS



! Money laundering can be proved **without conviction** for the predicate offence.

! Default reference is to **ONE** arbitrator.

! Imprisonment range is **1 to 10 years** (rigorous) — a **company cannot be imprisoned**.

! Umpire: appointed within **1 month**; award in **2 months**. Arbitrators' award in **4 months**.

! Fine: individual **Rs. 25m**; legal person **Rs. 100m**; guilty director still faces **Rs. 25m + prison**.

! Arbitrator's authority can be revoked **only with leave of Court**.

! "Financial institution" is **banks only** → **includes** wallets, card issuers, insurers, money changers.

! Arbitration agreement must be **written**; out-of-court settlement in a suit → apply **before judgment**.

9 QUICK REVISION BOX



1–10 yrs

Rigorous imprisonment for ML

Rs. 25m / 100m

Max fine: person / legal person

1 · 4 · 2

Months: umpire appointment · arbitrators' award · umpire's award

5

Powers of arbitrators (S. 13)

• **AML Act 2010:** S. 2(xiv) Financial institution · S. 3 Offence & evidence · S. 4 Punishment

• **Arbitration Act 1940:** S. 2 Definitions · S. 3 Implied terms · S. 4 Third-party appointment · S. 5 Irrevocable · S. 13 Powers · S. 21 Reference in suit