# Cross Border Money  Laundering : Issues and Challenges

# What is money-laundering?

- Conversion or transfer of property, knowing that such property is derived from any offence or offences or for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who involved in the commission of such an offence or offences to evade the consequences of his action. (Article 6, UN Convention on Transnational Organized Crime)
- Previously, predicate offenses to money laundering was limited to drug trafficking. Later it was expanded to cover all crimes.

# Development of Global Money Laundering Regime

- The word ‘Money laundering’ was reported in newspapers on the Watergate scandal in the United States in 1973.
- Concerns on money laundering grew during 1980s due to cross border drug trafficking issues.
- Due to globalization leading to fast flows of frauds to offshore accounts, the menace of money-laundering increased over the years to cover offenses of corruption, prostitution ,terrorist financing etc.

# Transnational Impact of Money Laundering

- In 2009, criminal proceeds amounted to 3.6% of global GDP (around 60.17 trillion USD), with 2.7% (or USD 1.6 trillion) being laundered (UNODC Report).
- IMF has cited unpredictable changes in money demand, prudential risks to the soundness of banking systems, contamination of legal financial transactions, and increased volatility of international capital flows and exchange rates due to unanticipated cross-border asset transfers, bubble markets in real estate sectors.

# Conventions on Money-Laundering

Conventions on Money Laundering:

1. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances (Vienna Convention) 1988.
2. International Convention for the Suppression of the Financing of Terrorism 1999
3. International convention Against Transnational Organized Crime 2000
4. UN Convention on Corruption 2003

Conventions focused on:

- Criminalising the offense of money-laundering from predicate offenses and terrorist financing
- Confiscation of proceeds from illegal activities
- Setting up of Financial Intelligence Units.
- International and Intra-national Cooperation and Exchange between law enforcement agencies
- Supervisory regime to identify suspicious financial transactions and customer due diligence.
- Adherence to international guidelines

# Money Laundering around the World- Regional Conventions

- European Union Conventions:

1. **Convention on laundering, search , seizure and confiscation of the proceeds from crime 1990.**
2. **Convention on laundering, search , seizure and confiscation of the proceeds from crime and on the financing of terrorism 2005.**

- **EU Directives**
- Focuses on monitoring banks, terrorist financing, confiscation of crime related proceedings.

**Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (OECD Convention)**:

- Measures dealing with money laundering derived from bribery of foreign public officials
- Examination of the effectiveness of anti-money laundering (AML) regimes as it applies to international bribery

# International Body- FATF

- 40 Recommendations (1990) + 9 Recommendations (2003)
- Aims to (i) Setting international anti-money laundering and combating financing of terrorism (AML/CFT) standards, (ii) Monitoring compliance with AML/CFT standards (iii) Promoting worldwide application of FATF standards, (iv) Encouraging compliance of non-FATF members with FATF standards

# Money Laundering Process

## Placement

Commission of Predicate Offenses- Generation of Proceeds

Bank: Proceeds from the crimes integrates into the financial system

## Layering

Money is withdrawn from banks and sent by Wire transfers to Offshore bank accounts

From Offshore bank accounts the money is given off as a loan to companies in lieu of false invoices

## Integration

Loan used for :

Purchase of Luxury Assets / Financial Investments/ Commerical and Industrial Investments

# Emerging Methods of Money Laundering-Cryptocurrency

- **Cryptocurrency** (FATF definition): "Digital representation of value..which does not have legal tender status…..in any jurisdiction".
- It serves as:

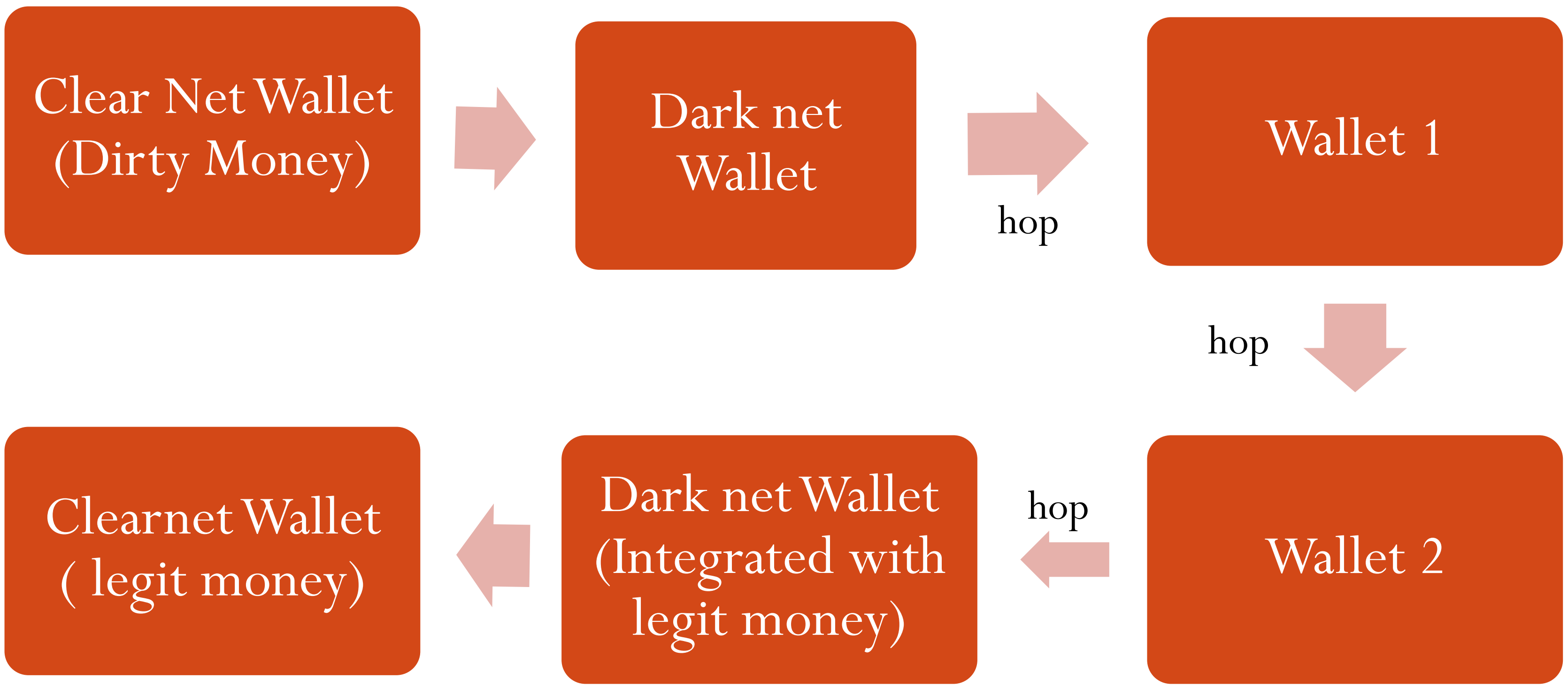
1) Medium of exchange
2) Unit of account
3) Store of value

# Advantages of Cryptocurrency in Laundering

- Poor or no regulation of exchanges
- Anonymity of source
- Easy transmission to offshore/ dark net accounts

# Methods of Laundering

- Tumblers:



- Unregulated Exhanges- Not compliant with AML regulations – no identity checks. Ordinarily exchanged with alternate coins, sometimes in with Fiat money- transient in nature.
- Peer to peer network
- Cryptocurrency ATMs- 5457 ATMs worldwide (September 2019) ; Bidirectional exchanges- Crypto $\rightleftarrows$ Fiat
- Pre-paid Cards
- Gambling/ gaming sites

# Regulation of Cryptocurency/ Bitcoins

FATF 'Travel rule' (June 2019 ) Regulation-

- Blockchain technology maintains public record of each transactions. Hence cryptocurrency related exchanges must collect and share customer identity for each transaction.
- Member countries must comply with FATF guidelines within a year.

# Cryptocurrency Status-India

- 2013 : RBI advised entities not to deal in cryptocurrency. Tax authorities raided cryptocurrency related businesses for violation of PMLA laws and tax evasion.
- 2017: RBI prohibited use of cryptocurrency by regulated agencies. Cryptocurrency however was not defined. No ban of use of prepaid tokens for exchange of specified goods and services on e-commerce platforms.
- 2018: Inter disciplinary Committee constituted.
- April, 2018- Circular banning dealing in cryptocurrency by regulated agencies. 3 months window given
- Writ petitions filed seeking ban/ regulation of cryptocurrency market . Writ filed challenging RBI circular 2018.
- 2019: Supreme Court directed Government to frame policy. Cases still pending in Supreme Court.

Thank You