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# Anti-Money Laundering

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## Hawala, Underground Banking and Informal Value Transfer Systems

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### Introduction

While anti-money laundering and counter-terrorist financing policy tends to focus on the role of regulated financial firms like banks, these systems are largely unsuited to money laundering methods that exist outside of the regulated sector. Informal value transfer systems (“IVTS”) (in many names, shapes and forms, including underground banking and *hawala*) both predate and continue to elude anti-money laundering and counter-terrorist financing policy built around the formal economy. The vulnerability of these systems to abuse by criminal networks and terrorists is a feature of some enforcement and disruption by law enforcement. This chapter explores the drivers of alternative remittance systems and examines routes to enforcement.

### The History of Informal Value Transfer Systems and the Drivers for Their Use

An IVTS describes any system, mechanism, or network of people that receives money for the purpose of making the funds or an equivalent value payable to a third party in another geographic location, whether or not in the same form. The transfers generally take place outside of the formal banking system through non-bank financial institutions or other commercial entities whose primary business activity may not be the transmission of money. Transactions via an IVTS occasionally interconnect with formal banking systems (e.g. through the use of bank accounts held by the IVTS operator).<sup>1</sup>

Common terms used to describe IVTS actors and mechanisms include “underground banking”, “alternative remittance systems”, “ethnic banking”, “unregulated banking”<sup>2</sup> and “shadow banking”. The primary purpose for such systems in many locations is to move legitimately earned funds from one geographic area to another.<sup>3</sup> The magnitude of unofficial remittances is vast and estimated to surpass multiple hundreds of billions of dollars per year.<sup>4</sup> While the majority of transfers are legitimate, IVTS are open to exploitation by criminals, organised crime groups (“OCGs”) and terrorists. The opacity of these systems, and the anonymity they afford their users, makes them attractive to bad actors both looking to disguise the criminal origin of illicit funds or obscure their destination, making them useful for both money laundering and terrorist financing.

IVTS, including so-called alternative remittance and underground banking systems, pre-date western banking systems and date as far back as 5800 BC. The systems were established originally on the Indian subcontinent in Asia as a means of settling accounts within communities. Their use as global networks for financial transactions has spread as expatriates from the original countries settled abroad. Today,

IVTS operations are found in most countries.<sup>5</sup> Examples of IVTS include:<sup>6</sup>

- *Hawala* (Middle East, Afghanistan, Pakistan, India, East and Southern Africa, Americas).
- *Hundi* (India).
- *Fei-chien* (“flying money”) (China).
- *Phoe kuan* (Thailand).
- The Black Market Peso Exchange (South America), though black market currency exchanges are relevant to other countries such as Nigeria and Iran.
- Afghan transit trade (Afghan, Pakistan).

The attractions of IVTS are many, including some that are helpful to those wanting to launder money or finance terrorism.<sup>7</sup> IVTS are highly developed, sophisticated, and generally very efficient. They are often used by various immigrant groups as a low-cost alternative to modern banking or money service businesses. IVTS are largely used for legitimate purposes and the majority of transactions are believed to be benign and involve the remittance of wages by migrants and refugees.<sup>8</sup> Some of the key factors that have driven the development of these systems, and continue to make underground banking attractive, include:<sup>9</sup>

- Cost-effectiveness – IVTS providers typically charge less than the equivalent bank charge, depending on the location of transfer, and customers will typically obtain better exchange rates through these providers, due to their low overheads. The average *hawala* commission between international cities is 2 to 5% of the value transferred.<sup>10</sup> *Hawala* can be considered the impoverished person’s banking system.<sup>11</sup>
- Efficiency – The vast network of IVTS connections means that funds are usually transferred within a day, compared to a period of several days or longer using an international wire transfer.
- Cultural preference and trust – As many of these systems pre-date modern banking, underground banking may be preferable in certain jurisdictions as users feel more comfortable working with a financial system that they trust. There may also be concerns about local corruption in the banking system.<sup>12</sup>
- Accessibility – IVTS provide access to financial services for individuals who may not be able to use traditional banking systems, for example, due to immigration status, lack of documentation or limited financial access in particular jurisdictions.

Another factor that continues to drive demand for IVTS is conflict, due to the increased restrictions it places on the use of and access to traditional banking, in addition to creating a sharp increase in displaced persons reliant on alternative remittance services.<sup>13</sup>

However, the existence of an unregulated transfer corridor also provides an opportunity for bad actors to use IVTS to facilitate transnational crime:<sup>14</sup>

- A person concerned that they are about to be subject to international sanctions, or who is subject to international sanctions, may want to obscure the ownership of funds by transferring them to a nominee, potentially in a different jurisdiction.
- An OCG may want to move funds out of a country, either to enjoy the proceeds of their crime, or to purchase drugs with a view to import/export.
- To purchase arms for the benefit of a terrorist organisation.
- To purchase narcotics.
- A person may be based in a jurisdiction with currency/capital controls that may restrict the transfer of funds out of the country or where there are controls regarding the reporting of currency. The person may wish to secretly move the money outside of the jurisdiction for a variety of reasons, e.g.:
  - due to concerns about the devaluation of local currency;
  - to evade taxes; or
  - due to concerns about political instability and the possibility of their assets being seized. This could be because the person in question is a member of the opposition political party and concerned about a politically motivated prosecution, because they are a corrupt foreign public official, or because they are in an OCG protected by political patronage.

As people engaging in regular and irregular migration make up one of the largest consumer bases of IVTS, the vast system of connections within these networks has led to the facilitation of irregular migration and migrant smuggling. Those operating IVTS play a key role as they are known locally to be well-connected businesspeople who have contacts at the intended destination and transit countries of these migrants that can be relied upon, and the opaque transfer corridors within IVTS can then be used to conceal the proceeds of any resulting smuggling activities.<sup>15</sup>

IVTS can also facilitate capital flight. Capital flight is the large-scale exodus of capital from a nation due to events such as political or economic instability, currency devaluation<sup>16</sup> or the imposition of currency/capital controls. Capital flight may be lawful, as is the case when foreign investors repatriate capital back to their country of origin, or unlawful, which occurs in economies with currency/capital controls that restrict the transfer of assets out of the country. Capital flight can impose a severe burden on poorer nations, since the lack of capital impedes economic growth<sup>17</sup> and may lead to lower living standards.<sup>18</sup>

Changes in economic policy, such as the introduction of import restrictions, tightening of capital controls and banning of cryptocurrency transactions, have been shown to increase the use of IVTS.<sup>19</sup> In Bangladesh, for example, a 1% deviation between the formal and informal exchange rate has been shown to shift 3.6% of remittances from the formal to the informal financial sector.<sup>20</sup>

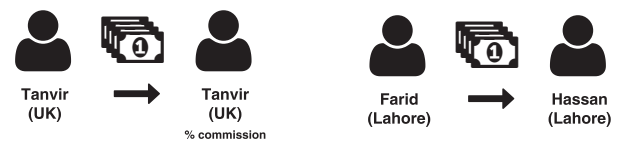
### A Primer on Hawala

*Hawala* essentially involves money transfer without money movement. The term “*hawala*” is from an Arabic root meaning “change” or “transform”.<sup>21</sup> *Hawala* is a form of IVTS, and a method that has been used across the world for centuries.<sup>22</sup> *Hawala* banking involves one party receiving money into a pool of funds in one jurisdiction and then making an equivalent payment from a pool of funds held in another jurisdiction. This means that the money that has been made available in one

jurisdiction has not moved and there is no straight-line direct transfer from the one jurisdiction to another (making it difficult for authorities to detect). Crucially, this method ensures that there is a movement of *value*. Funds are therefore made available to a person without the necessity of using the traditional global banking system.

For example: Tanvir is living in London, England. He entered the country on a tourist visa, which he has overstayed, and is currently making a living moving furniture. Tanvir wishes to transfer USD 500 back to his brother Hassan in Lahore, Pakistan. Tanvir may consider using the banking system, but his immigration status may be problematic, there may be higher charges to conduct a legitimate banking transaction, and it may take several days – which makes the *hawala* system an attractive alternative to Tanvir.

Tanvir is referred to a person in London, Yusuf, who can arrange the transfer to Hassan. Tanvir gives the USD 500 to Yusuf. Yusuf contacts another individual in Lahore, Farid, and arranges to have the equivalent of USD 500 – less a 5% commission for Yusuf – delivered to Hassan the following day, given the time difference. Yusuf gives details to Tanvir as to how Hassan can collect the money in Lahore. Yusuf makes a single entry in a notebook in relation to the sum paid and the relevant commission, but does not make a note of Tanvir’s identity. The next day, Hassan meets Farid at Farid’s office and receives the equivalent of USD 475 in Pakistani Rupees from Farid, at an exchange rate pre-agreed by Yusuf with Tanvir.



In this example, certain money laundering issues arise. Tanvir is committing the criminal offence of illegally working, as he is not permitted to do so due to his immigration status, and therefore the money that he earns through that work may be treated as the proceeds of crime, and he is also potentially committing a substantive money laundering offence.<sup>23</sup> Yusuf is, at least, committing a criminal offence by operating an unregistered money service business and potentially also a substantive money laundering offence.<sup>24</sup>

### Regulatory Focus on IVTS

The regulatory focus on IVTS began over 20 years ago. In the aftermath of the 9/11 attacks, there was greater focus on *hawala* and IVTS. In October 2001, in an interview with a Pakistani newspaper, Osama bin Laden stated that Al Qaeda had three finance systems organised by backers who are as “*aware of the cracks inside the Western financial system as they are aware of lines on their hands*”. Bin Laden also stated that “[*these are the very flaws of the Western fiscal system, which are becoming a noose for it*”.<sup>25</sup> Bin Laden had used *hawala* to transfer funds and the financial crime risks from *hawala* quickly became a focus.

Action was swiftly taken to bring alternative remittance services into the scope of the regulatory regime for anti-money laundering and counter-terrorist financing. In October 2001, the Financial Action Task Force, whose role is to set global policy to tackle money laundering and terrorist financing, made special recommendations on terrorist financing, which included a recommendation that alternative remittance services be subject to registration/licensing, that they be subject to the same regulatory framework that applies to banks, and that, if persons or entities carry out this service illegally, they would

be subject to administrative, civil or criminal sanctions.<sup>26</sup> This effectively required countries to put in place laws stipulating that a money services business, or a person running an IVTS or *hawala* service, would have to be registered or licensed, and would have to adhere to various anti-money laundering and counter-terrorist financing requirements, such as conducting customer due diligence checks, keeping records, and reporting suspicious transactions to law enforcement. Failure to do so would have consequences, including criminal ramifications.

In October 2001, the US enacted the USA Patriot Act, which reinforces the responsibility of *hawala* dealers to register their activities, report suspicious transactions, and be subject to on-site inspections.<sup>27</sup> The UK followed in November 2001, with a new regulatory regime for *bureaux de changes* and other “money service businesses” coming into force, which captured *hawala* style systems, bringing them into the regulatory framework and requiring them to be registered and undertake customer due diligence checks, as well as to keep records and report suspicions.<sup>28</sup>

A person or entity administering an IVTS will therefore often be acting as an unlicensed money service business. The person or entity administering the IVTS could also commit a substantive money laundering or terrorist financing offence in certain circumstances.

## Recent Research

Research by the United Nations Office on Drugs and Crime<sup>29</sup> (“UNODC”) indicates that, although vulnerable to organised crime, *hawala* is overwhelmingly used for legitimate purposes, including personal and business transactions and for the sending of remittances by migrants and refugees to family members. Cultural preferences, convenience, low-threshold accessibility, low processing fees, reliability, and faster value transfer services are some of the reasons for using *hawala*, and customers using the service come from all walks of life.

The brokers who engage in *hawala* are known as “*hawaladars*”. *Hawaladars* will often undertake *hawala* alongside other businesses, such as import/export companies, clothing stores, money exchange companies, gold and jewellery shops, carpet stores and cell phone shops.<sup>30</sup> *Hawaladars* do not necessarily advertise their services.<sup>31</sup>

As part of this research, UNODC interviewed 113 *hawaladars*. Some interesting findings from this research include:

- 43% of *hawaladars* declared they had a licence to operate. In jurisdictions where it is a requirement, 25% operated without a licence and 31% preferred not to respond.
- The majority of customers using the services of the *hawaladars* sent funds to countries located in the Near and Middle East/South-West Asia subregion, followed by Western and Central Europe and South-Eastern Europe subregions.
- A *hawala* transaction does not always proceed directly from country A to country B. Depending on the source and destination, sometimes a transaction is carried out through one or more intermediary *hawaladars* located in at least one other country. *Hawaladars* reported that there are multiple *hawala* hubs located in several regions of the world where such intermediary *hawaladars* operate.
- Transactions handled by the interviewed *hawaladars* ranged from USD 50 to USD 200,000.
- In terms of records of transactions, most *hawaladars* reported that they keep a paper ledger book as well as an electronic digital record of *hawala* transactions and other services provided.
- Several of the *hawaladars* reported that they do not ask the purpose of transactions from their customers.

- Some *hawaladars* reported that they could not refuse a transaction from customers connected with OCGs due to the risk of negative consequences for themselves and their businesses.

The money laundering and terrorist financing risks are apparent from the comments of the *hawaladars*.

## The Future of Enforcement

*Hawala*, and other IVTS, are here to stay for the reasons identified earlier in this chapter – they fill a need for a large number of people, the majority of whom use the service for legitimate purposes. The need for IVTS will not disappear, and whilst such informal banking systems exist, hidden from regulators and law enforcement, they will remain vulnerable to OCGs and terrorists.

Restrictive policies in this space, however, have the potential to backfire, with the implementation of stricter anti-money laundering regulations in mainstream financial institutions having been shown to make underground banking increasingly attractive to criminals and criminal networks.<sup>32</sup> This poses the question, how then can these systems be effectively regulated without also encouraging their use? Some disruption can be achieved by educating firms in the regulated sector to focus on how funds have been transferred into the relevant jurisdiction as part of their source of funds checks. Banks may also discover suspicious activity suggestive of an account holder running a *hawala* business.

Law enforcement agencies face challenges in investigating crimes linked to *hawala* and IVTS because of the closed nature of the business, incomplete records, international transfers and, in some cases, the familial, clan or tribal ties of the actors. This is not a matter of just following the money, it is a matter of following the value. Lack of cultural knowledge within enforcement agencies around the origins and operation of IVTS has been suggested as a possible area for improvement. Upgrading the contextualised understanding of IVTS, particularly as these systems continue to evolve and adapt, may go a long way in guiding more effective enforcement.<sup>33</sup>

To the extent that the relevant authorities focus on enforcement action regarding IVTS, it is likely to be when IVTS are discovered via the investigation of other criminality that leads to, for example, the discovery of an underground banker or *hawaladar* at the centre of an OCG or terrorist organisation’s activities. By their very nature, the transactions are underground and there is generally very little in the way of a paper trail.<sup>34</sup> In terms of identifying a *hawaladar* in an OCG investigation, anecdotal evidence suggests that following the money in these cases means having cash couriers under surveillance.<sup>35</sup> Additionally, there has been a focus on the links between people smuggling and IVTS/*hawala*, which has been identified by both the UNODC in its research<sup>36</sup> and by recent enforcement action in the UK against a *hawaladar* who operated as a banker for criminals smuggling migrants into the UK.<sup>37</sup> In this case, the underlying evidence included logs from an instant messaging app, business ledgers, statements from asylum seekers and footage from an undercover television investigation, which proved the offender took money from people who were seeking access to the UK, and paid it on to the smugglers once they had arrived.

Notwithstanding the resources required to identify IVTS, given their probable increase in the short term – driven by economic, geopolitical and regulatory changes – and the already vast scale at which these systems operate, there is certainly political appetite for increased enforcement action. IVTS has evolved considerably since the introduction of the post-9/11 regime. The ability of enforcement methods to adapt in pace with shifts in the IVTS themselves remains to be seen, and will likely be key to successful enforcement in this area.

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## Disclaimer

*“Any views expressed in this publication are strictly those of the authors and should not be attributed in any way to White & Case LLP.”*

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