

THE INVISIBLE BANK: REGULATING THE *HAWALA* SYSTEM IN INDIA, PAKISTAN AND THE UNITED ARAB EMIRATES

Adil Anwar Daudi¹

INTRODUCTION

In the labyrinthine depths of old Delhi, where the lanes are too narrow even for a rickshaw, men drink tea and chat in shabby offices. Nobody seems to be doing any work, until the phone rings. Then, numbers are furiously scribbled, followed by some busy dialing and whispered instruction. Although it's far from obvious in the innocuous setting, these men are moving money – to exporters, drug traffickers, tax evaders, corrupt politicians. And terrorists.²

In October 2001, nearly one month after the September 11, 2001 terrorist attacks, Time Magazine published an article entitled “A Banking System Built for Terrorism” which led with the paragraph quoted above. The “sinister picture” depicted by the Time Magazine author is of a *hawala* transaction, an ancient, and until now, virtually unregulated informal funds transfer (IFT)³ system that has drawn severe criticism for its susceptibility to abuse by terrorists and other criminal elements. Indeed, descriptions of *hawala*, like that illustrated by the Time Magazine author, portray it to be a peculiar financial

1. Doctor of Jurisprudence 2005 (*expected*), Indiana University School of Law – Indianapolis. Bachelor of Arts in Political Science and Economics 2002, University of Michigan – Ann Arbor. The author would like to recognize his parents, Dr. Anwar Daudi and Rafat Daudi, for their sacrifice and commitment to helping all their children reach their highest potential.

2. Meenakshi Ganguly, *A Banking System Built for Terrorism*, TIME MAGAZINE, Oct. 5, 2001, <http://www.time.com/time/world/printout/0,8816,178227,00.htm>.

3. See MOHAMMED EL QORCHI ET AL., INTERNATIONAL MONETARY FUND, *INFORMAL FUNDS TRANSFER SYSTEMS: AN ANALYSIS OF THE INFORMAL HAWALA SYSTEM* 6 (2003). There are four reasons why the term IFT is used to describe *hawala* type transactions:

First, in some jurisdictions, these systems are the dominant means by which financial transfers are conducted and therefore cannot be referred to as “alternative remittance systems.” Second, in some communities, informal funds transfer service providers operate openly – with or without government recognition; thus, this system cannot be referred to as “underground.” Third, the use of these mechanisms is often cross-cultural and multiethnic; thus the term “ethnic banking” is overly restrictive. Fourth, IFT better captures the sense and nature of financial transfers akin to conventional banking that are of primary interest. . . .

system that is both dangerous and beyond ordinary analysis.⁴ References to the *hawala* system have become ambiguous over time and consequently invoke a combination of confusing and sometimes conflicting images.⁵ The *hawala* system is often discussed in an alleged connection with money laundering, terrorist activities, or as a mysterious system for “moving money without money moving at all, and without leaving traces or records.”⁶ Contrary to these portrayals John F. Wilson, a senior economist with the International Monetary Fund (IMF), argues that *hawala* should be understood as an “economic phenomenon,” comparable in mechanics and economic structure to most remittance alternatives, which can only be regulated by reducing the economic incentives to engage in *hawala*.⁷

The September 11 terrorist attacks against the United States shifted media attention to IFT systems like *hawala* and their alleged connection to money laundering and terrorist activities.⁸ This has increased the level of concern about IFT systems' susceptibility to financial abuse from entities like the IMF, the World Bank Group (World Bank), and the Organisation for Economic Co-operation and Development (OECD).⁹ Two years after the attacks, the international community is still attempting to locate and strengthen gaps and weaknesses in legal and financial systems worldwide.¹⁰ The impetus of this global effort to regulate IFT systems, particularly *hawala*, has stemmed from measures recommended by the Financial Action Task Force on Money

4. *Id.*

5. John F. Wilson, *Hawala and Other Informal Payment Systems: An Economic Perspective*, Remarks at Seminar on Current Developments in Monetary Financial Law (May 16, 2002), <http://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/wilson.pdf>. Wilson argues that the *hawala* system should be regulated in light of the economic incentives inherent in the transaction. *Id.*

6. *Id.*

7. Wilson, *supra* note 5, at 12; *see also* International Monetary Fund, *About the IMF*, at <http://www.imf.org/external/about.htm> (n.d.) (last visited Mar. 24, 2005). “The IMF is an international organization of 184 member countries. Since the IMF was established its purposes have remained unchanged but its operations – which involve surveillance, financial assistance, and technical assistance -- have developed to meet the changing needs of its member countries in an evolving world economy.” *Id.*

8. *See* Herbert V. Morais, *The War Against Money Laundering, Terrorism, and the Financing of Terrorism*, L. ASIA J., Dec. 2002, at 1; QORCHI ET AL., *supra* note 3, at 1.

9. Wilson, *supra* note 5, at 11; *see also* The World Bank Group, *About us*, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:50004410~piPK:36602~theSitePK:29708,00.html> (n.d.) (last visited Mar. 24, 2005). The World Bank Group is a member agency of the United Nations and “provides loans, policy advice, technical assistance and knowledge sharing services to low and middle income countries to reduce poverty.” *Id.* Organisation for Economic Co-operation and Development, *About OECD*, at http://www.oecd.org/about/0,2337,en_2649_201185_1_1_1_1_1,00.html (n.d.) (last visited Mar. 24, 2005). “The OECD plays a prominent role in fostering good governance in the public service and in corporate activity . . . By deciphering emerging issues and identifying policies that work, it helps policy-makers adopt strategic orientations.” *Id.*

10. Morais, *supra* note 8, at 1.

Laundering (FATF).¹¹ However, international guidelines designed to bring *hawala* under a regulatory umbrella fail to account for the reasons why *hawala* has survived for so many years and why it is likely to continue to survive despite increased regulation.

This note will detail the mechanics behind the *hawala* informal funds transfer system and evaluate its operation and potential for long-term existence against new international guidelines designed to regulate *hawala* businesses. This note will expand arguments advanced by Wilson and other IMF economists and suggest that, beyond formal financial sector reforms, the political environment in countries seeking to regulate their *hawala* markets should be given equal weight. To this end, this note will analyze and discuss the merits of three different models of domestic regulation of the *hawala* system, in India, Pakistan, and the United Arab Emirates (UAE), which have been modeled after international recommendations and are designed to police *hawala* transactions.

The discussion is broken into three parts. Part One will focus on *hawala* transactions generally. Part One summarizes the findings of a joint study conducted by the IMF and the World Bank regarding the mechanics behind a typical *hawala* transaction. This section chronicles the history of the *hawala* system by considering several characteristics of *hawala* transactions that help explain the reasons behind its development and why it continues to be an appealing transfer system today. Additionally, this section will outline IMF and World Bank studies that link the *hawala* system to both legitimate and illegitimate activities, which has caused its existence to raise concern in the international community. Part Two will outline the legislation that has emerged to check *hawala* businesses and transactions, primarily by examining the strength of international regulations sponsored by FATF. Finally, Part Three studies the merits of domestic regulatory efforts against *hawala* businesses in India, Pakistan, and the United Arab Emirates (UAE), which have been designed to regulate the *hawala* system and assess the relative success and failure of these legislative efforts.

11. See The Financial Action Task Force On Money Laundering, OECD, *History of the FATF*, at http://www1.oecd.org/fatf/AboutFATF_en.htm#History (n.d.) (last visited Feb. 28, 2005). "In response to mounting concern over money laundering, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Summit that was held in Paris in 1989. . . . The G-7 Heads of State or Government and President of the European Commission convened the Task Force from the G-7 member States, the European Commission, and eight other countries." *Id.*

PART ONE: *HAWALA*A. *Contemporary Mechanics of Hawala*

The modern *hawala* system, which has not derogated from its roots, works by transferring funds outside of “or parallel to ‘traditional’ banking or financial channels.”¹² A typical transaction can be described as follows:

A remittance from a customer (CA) from country A, or a payment arising from some prior obligation, to another customer (CB) in country B. [Where] a *hawaladar* from country A (HA) receives funds in one currency from CA and, in return, gives CA a code for authentication purposes. He then instructs his country B correspondent (HB) to deliver an equivalent amount in the local currency to a designated beneficiary (CB), who needs to disclose the code to receive the funds. HA can be remunerated by charging a fee or through an exchange rate spread. After the remittance, HA has a liability to HB, and the settlement of their positions is made by various means, either financial or goods and services. Their positions can also be transferred to other intermediaries, who can assume and consolidate the initial positions and settle at wholesale or multilateral levels.¹³

Interpol¹⁴ and IMF economists have identified three general principles represented in this typical *hawala* transfer that help to explain the mechanics behind the system and aid in establishing a broad definitional framework from which to draw upon. First, most *hawala* transactions involve simple trust relationships between *hawaldars* allowing transactions to cross international lines.¹⁵ Second, the *hawala* system, at least implicitly, involves more than one currency.¹⁶ Finally, *hawala* transactions involve settlement mechanisms through principles and intermediaries.¹⁷

12. Patrick M. Jost & Harjit Singh Sandhu, *The Hawala Alternative Remittance System and Its Role in Money Laundering*, Interpol General Secretariat, at <http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/hawala/default.asp> (Jan. 2000) (last visited Mar. 24, 2005).

13. MOHAMMED EL-QORCHI, INTERNATIONAL MONETARY FUND, *THE HAWALA SYSTEM: HOW DOES THIS INFORMAL FUNDS TRANSFER SYSTEM WORK, AND SHOULD IT BE REGULATED?* (Dec. 2002), <http://www.gdrc.org/icm/hawala.html>.

14. Interpol, *Vision*, at <http://www.interpol.com/Public/Icipo/default.asp> (n.d.) (last visited Feb. 27, 2005). “Interpol exists to help create a safer world. Its aim is to provide a unique range of essential services for the law enforcement community to optimi[z]e the international effort to combat crime.” *Id.*

15. Wilson, *supra* note 5, at 2.

16. *Id.*

17. *Id.* See also QORCHI ET AL., *supra* note 3, at 14.

1. *Trust and International Hawala Transactions*

In the simple international *hawala* transaction detailed above, the first, and arguably most important, element of a *hawala* transaction is embodied: trust.¹⁸ There are two prongs to the trust relationship in this classic *hawala* transaction that require attention. First, there is a trust relationship between the *hawaladar* in country A (HA) and his or her customer in country A (CA).¹⁹ Second, there is trust relationship between HA and the *hawaladar* in country B (HB).²⁰ Note that in the transaction described above, there is no exchange of receipts between HA and CA.²¹ Moreover, HA's recordkeeping is designed to account for the total money that is owed to HB instead of recording individual remittances he or she has made.²² A violation of either of these trust relationships between *hawaladars* is described as an "economic death sentence" punished by ex-communication and "loss of honour."²³

2. *More Than One Currency*

A *hawala* transaction is likely to involve two currencies with no participant in the transfer purchasing or selling any one currency on the foreign exchange market.²⁴ These transactions are accomplished "on a large scale and on-going basis" through a familial network or other connections among

18. JOST & SANDHU, *supra* note 12 (recognizing the importance of a "trust" relationship in the simplest of *hawala* transactions); see also ROBERT E. LOONEY, CENTER FOR CONTEMPORARY CONFLICT, FOLLOWING THE TERRORIST INFORMAL MONEY TRAIL: THE HAWALA MECHANISM (Nov. 1, 2002), at <http://www.ccc.nps.navy.mil/rsepResources/si/nov02/southAsia.asp> (describing that in *hawala* transactions there is an implicit guarantee on payments because "broken trust would result in community ostracism constituting economic suicide for the *hawaladar*" and that the word "*hawala*" is used synonymously with the word "trust," usually to convey the personal connection between participants and the informal nature of the transactions); Kevin Anderson, *Hawala System Under Scrutiny*, BBC BUSINESS NEWS, Nov. 8th, 2001, at <http://newsbbc.co.uk/1/hi/business/1643995.stm> (describing *hawala* as a system built upon generations of trust between *hawala* brokers); Sonali Gudka, *India Cash Transfer 'Shake-Up'*, BBC BUSINESS NEWS, Jan. 7th, 2002, at <http://new.bbc.co.uk/1/hi/business/1747328.stm> (stating that *Hawala* is a system based on trust where "brokers balance [their] transfers over time."); Laura King, *Paperless Money May Help Bin Laden*, Free Republic Conservative News Forum, Oct. 16, 2001, at <http://www.freerepublic.com/focus/fr/549777/posts> (explaining that reimbursement between *hawaladars* is based on a system of trust among the network of *hawala* brokers, who are often blood relatives).

19. See JOST & SANDHU, *supra* note 12.

20. *Id.*

21. *Id.* (indicating that a typical *hawala* transaction does not necessitate the *hawaladar* broker to give receipts to customers).

22. *Id.*

23. Sam Vaknin, *To Stop Bin Laden, Follow the Money*, THE NEW IDLER WEB PERIODICAL, at <http://www.the-idler.com/IDLER-01/10-22.html> (n.d.) (last visited Feb. 2, 2005).

24. Wilson, *supra* note 5, at 4 (indicating that the whole *hawala* transaction "likely involves two currencies, but no-one has bought or sold any foreign exchange").

hawaladars.²⁵ Independent studies by IMF and Interpol have identified several possible ways in which these networks can be formed that indicate the implicit foreign currency exchange process that is present in each *hawala* transaction.²⁶ The first possibility is that HA and HB are business partners where “for them transferring money is a part of another business in which they are engaged but still part of their normal business dealings with one another.”²⁷ Another possibility is that HB may owe a debt to HA, and due to difficulties in moving money out of HB’s home country, HB can repay his or her debt to HA by paying HA’s *hawala* customers.²⁸ A final possibility is that HA has a surplus of currency in HB’s country, and HB is helping HA to dispose of it.²⁹ Note that in the final two scenarios there is neither an exchange of currency nor does HB need to recover any money; HB is either repaying an existing debt to HA, or handling money that HA has entrusted to HB.³⁰

3. Settlement Procedures

The claim that *hawala* “sends money without sending money” is deceptive.³¹ These types of claims often stem from recognizing that the settlement aspects of informal *hawala* transactions are obscure.³² Despite this acknowledgment, IMF and World Bank economists studying the *hawala* system have defined various settlement designs behind a typical *hawala* transaction that help illustrate the mechanics behind *hawala*. These settlement arrangements range from: (1) reverse transactions; to (2) bilateral settlement arrangements.³³

The most obvious form of settlement for *hawala* accounts is “reverse *hawala*” or a “remittance and payment going in the opposite direction through the same two *hawaladars*.”³⁴ The likelihood of account balancing through “reverse *hawala*” is small because of the “low probability that *hawala* remittances from country B to country A would pass through the same

25. *Id.* (recognizing that some network of family or connections among *hawaladars* is required to make such a system work); see also Vaknin, *supra* note 23 (stating that *hawaladars* are often members of the same family, village, clan or ethnic group).

26. JOST & SANDHU, *supra* note 12.

27. *Id.* See also Wilson, *supra* note 5, at 4 (discussing small scale *hawaladars* who are concentrated in shops and business like travel agencies, laundries, food stores and sometimes even money exchanges which are reported to conduct “backroom” *hawala* businesses); Looney, *supra* note 18 (describing *hawala* businesses as operating “in a range of settings – from curb side stalls in South Asia to back rooms and secret locations in Europe and North America”).

28. JOST & SANDHU, *supra* note 12 (describing the various possible relationships between two individual’s engaged in *hawala*).

29. *Id.*

30. *Id.*

31. QORCHI ET AL., *supra* note 3, at 14.

32. *Id.*

33. *Id.* at 15.

34. *Id.* at 14.

hawaladars.³⁵ Also, because aggregate remittance flows are unbalanced, with some countries acting as natural net sources of remittances and others carrying large outflows of private transfers, it would seem “mathematically difficult for a significant fraction of *hawala* activity to be ‘settled’ through simple or bilateral reverse transactions.”³⁶

The more likely debt settlement procedure is one involving bilateral financial settlement using third country accounts.³⁷ Under this rubric, HA can settle obligations to HB through a deposit in an account maintained by HB, which is located in a country that readily accepts convertible currency transactions.³⁸ In this model, no actual foreign exchange transaction has taken place between HA and HB as the underlying exchange rate is implicit in the relationship between the *hawala* remittance and the settlement account.³⁹

B. Roots of the Hawala System

1. Hawala and Formal Transfer Systems

Informal funds transfer (IFT) systems have been in use in numerous regions around the world for many years.⁴⁰ The *hawala* system is a type of IFT system that exists under many names and in many countries of the world.⁴¹ The *hawala* system is one of the earliest banking systems in history, predating even “traditional” or “western” banking.⁴² *Hawala* developed in South Asia and was used primarily for trade financing.⁴³ The dangers of traveling with gold and

35. *Id.*

36. *Id.*

37. *Id.* at 15.

38. *Id.*

39. *Id.*

40. EL-QORCHI, *supra* note 13. Mohammed El Qorchi a senior economist with the IMF, has chronicled the history of the *hawala* system and indicates in this article that IFT systems are used in many regions around the world for transferring funds, both domestically and internationally. See also JOST & SANDHU, *supra* note 12 (discussing *hawala*'s status as a major remittance system used around the world). For a discussion on other IFT systems in Asia and South America, see Morais, *supra* note 8, at 1.

41. EL-QORCHI, *supra* note 13; see also *Report on Money Laundering Typologies*, FATF, Doc. FATF-XIV 3 (Feb. 14, 2003) (describing different variations of the *hawala* system including *hundi*, *fei-chen* and the black-market peso exchange).

42. JOST & SANDHU, *supra* note 12 (discussing *hawala*'s origins in India before the introduction of western banking practices). For a discussion on early Islamic Banking and the initial development of promissory notes, assignments and transfer of debts via bills of exchange by Muslim merchants, see Vaknin, *supra* note 23.

43. JOST & SANDHU, *supra* note 12. Consider the following narrative of an early *hawala* transaction where:

In 1424 by the Christian calendar, Rashid Ibn Umar al-Muza contemplated the dangerous journey he was about to begin. His trading caravan had met with great success (Allah be praised) and now, in Begram in the Kushan Empire, camels laden with art, furs and spices, Rashid was ready to set off. In his satchel he carries his caravan's profit as marks on a sheepskin. Rashid repatriated his

other forms of payment on routes plagued with thieves and bandits necessitated its development.⁴⁴ The term *hawala* means “transfer” or “wire” in Arabic and is distinguished from the “*hawala* system,” which “refers to an informal channel for transferring funds from one location to another through service providers – known as *hawaldars* – regardless of the nature of the transaction and the countries involved.”⁴⁵ The spirit of a *hawala* transfer is informality. The remittance occurs from one party to another without the use of a formal financial institution like a bank or money exchange.⁴⁶

Media and even academic comments on informal transfer systems like *hawala* note that “[they] can be used to send money without sending money.”⁴⁷

These portrayals suggest that *hawala* transfers are something different from more institutionalized means of making international payments.⁴⁸ In comparing contemporary conventional remittance channels, such as banks and exchange houses, including facilities like Western Union⁴⁹ and MoneyGram,⁵⁰ it is apparent that the mechanics of such transactions are strikingly similar to the *hawala* system.⁵¹ Under both the *hawala* system, and formal remittance

earnings by *Hawala*, an ancient form of money transfer. For added safety, only Rashid knew the secret greeting that would validate his sheepskin. Rashid repatriated his earnings by *Hawala*

From Peshawar to Miami – Hawala, *The Money Express*, NEWPORT NEWS (Newport Financial Group S.A.), Nov. 15, 2001, at 1, http://www.newpac.com/Resources/Issue1_Nov-15-01.pdf.

44. JOST & SANDHU, *supra* note 12; *see also* Vaknin, *supra* note 23 (describing *hawala* as a system older than the West). For a discussion on *hawala* as a traditional method of moving money in South Asia in order to protect early merchants against robbery on the silk road, see BEATE REZAT, HAMBURG INSTITUTE OF INTERNATIONAL ECONOMICS, *HAWALA*, at http://www.hwwa.de/Projekte/luD_Schwerpunkte/IDSPs/Asia_Gateway/Hawala.htm (n.d.) (last visited Feb. 2, 2005).

45. EL-QORCHI, *supra* note 13; *see also* Looney, *supra* note 18 (defining *hawala* as a transfer or remittance from one party to another); REZAT, *supra* note 44 (defining *hawala* as an “unofficial alternative remittance and money exchange system enabling the transfer of funds without their actual physical move.”); Senator Evan Bayh, Prepared Statement at the Hearing Before the Subcommittee on International Trade and Finance on *Hawala* and Underground Terrorist Financing Mechanisms (Nov. 14, 2001) (on file with author) [hereinafter Congressional Hearing] (describing *hawala* to consist of “system brokers that provid[e] paperless banking transactions and enables individuals to transfer large sums of cash from one country to another without the funds ever crossing borders or being recorded.”); *Report on Money Laundering Typologies*, FATF, Doc. FATF-XIV 3 (Feb. 14, 2003) (distinguishing between the Arabic term “*hawala*” and the “*hawala* information transfer system”).

46. Looney, *supra* note 18. The *Hawala* system in conventional definitions is simply a transfer or remittance from one party to another, “without the use of a formal financial institution such as a bank or money exchange, and is in this sense an ‘informal’ transaction.” Wilson, *supra* note 5, at 2.

47. *Id.* at 1.

48. *Id.*

49. MANUEL OROZCO, MULTILATERAL INVESTMENT FUND OF THE INTER-AMERICAN DEVELOPMENT BANK, WORKING PAPER ON WORKER REMITTANCES IN AN INTERNATIONAL SCOPE 6 (March 2003). Western Union has the largest worldwide presence in the money transfer industry with one-quarter of the global market. *Id.*

50. *Id.* “Companies like MoneyGram and Thomas Cook also operate globally, though with a lesser presence than Western Union.” *Id.*

51. Wilson, *supra* note 5, at 5.

channels, “payments are made out of balances at the receiving end, with settlements to follow or, in cases where there are no exchange control issues, institutional accounts can be debited/credited congruently.”⁵² Indeed, Wilson is accurate in his suggestion that from an economic and accounting perspective there are very few dissimilar models of remittances systems around the world with the main difference being their respective relationship to institutional or informal financial channels.⁵³

2. *Why Hawala?*

The *hawala* system’s apparent likeness to more common remittance systems begs the question – why would individuals continue to use the less formal *hawala* system in lieu of more institutionalized financial remittance systems? A joint study by the IMF and World Bank, in addition to an independent examination conducted by Interpol, advance several motivations behind the modern day use of the *hawala* system, including the: (1) cost effectiveness;⁵⁴ (2) speed;⁵⁵ and (3) versatility of each transaction.⁵⁶

One of the primary reasons behind why *hawala* competes effectively with other remittance mechanisms is due to its cost effectiveness.⁵⁷ *Hawaladars* are remunerated by charging a fee for each transaction and are often able to keep their expenses lower than payments made through the formal banking sector.⁵⁸ The lower expenses maintained by *hawaldars* can be explained by examining the infrastructure required by *hawala* dealers to carry out business activities, which is less complicated compared to that of banks involved in international payment transactions or even international money changers.⁵⁹ Indeed, *hawaladars* are capable of operating from “their homes or little shops, or can be accommodated within already existing businesses[.]” which is unique as compared to formal banks where more consideration is given to the “commercial and tax aspects of accounting principles or formal accounting procedures.”⁶⁰ Additionally, *hawaladars* are able to “exploit naturally

52. *Id.*

53. *Id.*

54. JOST & SANDHU, *supra* note 12 (describing that the primary reason why anyone would bother with *hawala* is cost effectiveness); *see also* Wilson, *supra* note 5, at 3 (describing *hawala*-type transactions as sometimes benefiting from a better exchange rate and much cheaper than transfers through established, licensed financial institutions); QORCHI ET AL., *supra* note 3, at 7.

55. JOST & SANDHU, *supra* note 12; *see also* Wilson, *supra* note 5, at 3; QORCHI ET AL., *supra* note 3, at 7.

56. QORCHI ET AL., *supra* note 3, at 7.

57. JOST & SANDHU, *supra* note 12.

58. QORCHI ET AL., *supra* note 3, at 7.

59. *Id.* at 8.

60. JOST & SANDHU, *supra* note 12 (explaining that *hawala* businesses “operate out of rented storefronts as opposed to bank buildings, which have expensive vault and alarm systems, and may share space with other businesses, further reducing operational expenses”).

occurring fluctuations in the demand for different currencies" allowing them to offer their customers rates that are better than those offered by banks.⁶¹

Furthermore, advancements in communication and technology, like fax machines and email, have "greatly benefited" the relative speed in which a *hawala* transfer can take place.⁶² As such, a typical *hawala* transfer can take, on average, between six to twelve hours and no longer than one or two days, depending on the destination of the payment and the reliability of communication.⁶³ The speedy *hawala* system can be contrasted with more sluggish international wire transfer systems or courier services that formal financial institutions employ.⁶⁴ Indeed, unlike the informal system used by *hawaldars*, formal international wire transfer systems that involve banks can take over a week and are hampered by delays due to "holidays, weekends and time differences."⁶⁵

Furthermore, the versatility of *hawala* transactions makes them an appealing system for remittances in nations where formal banks lack the capacity to provide international or domestic remittance services.⁶⁶ *Hawala* transactions are suited for adapting to "wars, civil unrest, conflicts and economic crisis."⁶⁷ In Afghanistan, for example, where the formal banking

61. See JOST & SANDHU, *supra* note 12 (describing a *hawaldar* operating in the United States who is involved in legitimate remittances and could make a profit off an exchange rate margin as small as 2%, making him much more competitive than a bank); see also Looney, *supra* note 18 (describing that for the "blue collared worker with a monthly stipend of \$100, the unofficial *hawala* system is a far cheaper way to send money back home than the official banking system" where *hawala* provides a more favorable market exchange rate than the official one).

62. QORCHI ET AL., *supra* note 3, at 7. "Payment orders can now be sent by facsimile, telephone, or email . . . [and] as the system is based on trust, modern telecommunication is not a requisite. Historically, numerous *hawala* transactions could be carried out by word of mouth, and reimbursements were based on personal notes, rather than formal documents." *Id.*

63. QORCHI ET AL., *supra* note 3, at 7. These authors note that "transfers between countries where the recipient is in a location with a different time zone or where communications are less reliable require [twenty-four] hours. Slightly more time may be required for payments in more rural regions or villages where the *hawaladar* does not have a local office or representative." *Id.* See also EL-QORCHI, *supra* note 13 (describing that in the *hawala* system "funds are often delivered door to door within 24 hours by a correspondent who has quick access to villages even in remote areas"); JOST & SANDHU, *supra* note 12.

64. *Id.* About a week is required to send "a bank draft from North America to South Asia via a courier service. Surface mail is not an option where the contents are valuable, and can it can also take several weeks to arrive." *Id.*

65. *Id.*

66. QORCHI ET AL., *supra* note 3, at 9. "The six licensed banks in Afghanistan do not provide any commercial banking services . . . unless they physically move money around the country, most organizations operating in Afghanistan use the informal financial sector to conduct banking business." *Id.*

67. *Id.* at 9. The informal *hawala* system has existed in conflict-torn regions such as Afghanistan, Iraq, Kosovo and Somalia.

In Guinea, for example, the scarcity of foreign currency in the official market, associated with exchange controls and the expansion of the parallel market for the Guinean franc, boosted a *hawala*-type system in a parallel market in the

system is not operational, many organizations are forced to resort to IFT systems because commercial banks lack the capacity to service their needs.⁶⁸ The weakness of local currencies and the rise in the gap between official and parallel markets encourages individuals to rely on IFT systems for funds remittance.⁶⁹

C. Legitimate vs. Illegitimate Uses

In the preceding discussion, no distinction was made between *hawala* transactions where the source of the money is legitimate (white *hawala*) and where the source and intent of the transactions is illegitimate (black *hawala*).⁷⁰ Both Interpol and the IMF suggest that such a distinction is important for regulating *hawala* businesses and enforcing smuggling, money laundering, and terrorist financing legislation.⁷¹ While the legitimacy of informal *hawala* transactions are subject to national legal frameworks, “white *hawala*” transactions consist mainly of migrant worker remittances, humanitarian relief aid, and personal investments and expenditures.⁷² “Black *hawala*” transactions, in contrast, are “almost always associated with a serious offense that is illegal in most jurisdictions” like smuggling, money laundering and terrorist financing.⁷³

1. Migrant Workers Remittances – White Hawala

Global trends suggest that at “around 200 million people migrate annually.”⁷⁴ International worker migration represents three percent of the global population of six billion.⁷⁵ Migration flows are likely greater than these

1990’s, which enabled people to transfer funds to Europe or the United States within hours. The Nigeria emigrants are reportedly using the informal system to remit funds to their home country.

Id.

68. *Id.* at 9.

69. *Id.*

70. JOST & SANDHU, *supra* note 12. Under Indian and Pakistani terminology, the term “white *hawala* is used to refer to legitimate transactions.” *Id.* On the other hand, “black *hawala* refers to illegitimate transactions, specifically money laundering.” *Id.*

71. *Id.*

72. *Id.* See also QORCHI ET AL., *supra* note 3, at 12.

73. JOST & SANDHU, *supra* note 12; see also QORCHI ET AL., *supra* note 3, at 12. This joint study by the IMF and World Bank chronicled the legitimate versus illegitimate uses of the *hawala* system. The study indicated that the legitimate uses of the *hawala* system consist of: (1) humanitarian, emergency, and relief aid in conflict torn countries; and (2) personal investments and expenditures. Illegitimate uses of the *hawala* system stem from: (1) customs, excise, and income tax evasion; (2) smuggling; (3) money laundering activities; and (4) terrorist financing.

74. OROZCO, *supra* note 49, at 1. Additionally, migration flows are “not unidirectional . . . Greeks migrate to Germany and the United States, while Albanians migrate to Greece. South Africans move to Australia and England, while Malawians, Mozambiqueans, and Zimbabweans work in South African mines and the service industry.” *Id.*

75. *Id.* at 4. “International migration gains greater relevance in light of the significant volume of remittances worldwide.” *Id.* at 5.

estimates with both skilled and unskilled workers emigrating and global demand for foreign labor increasing.⁷⁶ Given the existence of these large migrant-labor communities, the use of the less expensive and more accessible informal *hawala* system is often the only or most convenient option for the remittance of earnings of these migrant laborers to their families.⁷⁷ The cheap and swift *hawala* service is in operation “twenty-four hours a day, every day of the year in regions where no banks or financial institutions exist” and, therefore, proves superior to any Western banking operation available to migrant and expert workers.⁷⁸

2. Humanitarian, Emergency, and Relief Aid – White Hawala

The *hawala* system is suited for and often is the only option in countries engaged in war or the rebuilding after war.⁷⁹ Consequently, the majority of aid organizations operating in these regions turn to the informal financial sector for international or domestic remittance services for humanitarian, emergency, and relief projects.⁸⁰ For many humanitarian organizations the “cost and logistical capacity required for the physical transfer of cash is too high” and to fulfill program goals the informal *hawala* system may be the only option.⁸¹

3. Personal Investments and Expenditures – White Hawala

The *hawala* system can often be used to transfer funds for legitimate personal investments and expenditures.⁸² For some individuals the *hawala* system is simply the most convenient option for expenditures like “travel,

76. *Id.* at 1.

77. See QORCHI ET AL., *supra* note 3, at 7.

78. REZAT, *supra* note 44; see also QORCHI ET AL., *supra* note 3, at 12 (describing *hawala* networks as having “wide coverage, serving far-flung locations, including remote villages in Pakistan and Bangladesh, whereas banks may not handle such a small transaction or reach those remote areas within a reasonable time”).

79. QORCHI ET AL., *supra* note 3, at 12; see also SAMUEL MUNZELE MAIMBO, THE WORLD BANK, THE MONEY EXCHANGE DEALERS OF KABUL: A STUDY OF THE HAWALA SYSTEM IN AFGHANISTAN 1 (2003). In Afghanistan, for example, after more than 20 years of conflict, there has been a complete disruption of formal banking and in the absence of any real banking system a large and vibrant informal market has developed. *Id.*

80. QORCHI ET AL., *supra* note 3, at 12; see also POLICY AND ADVOCACY UNIT, CARE USA, AFGHANISTAN: OPTIONS FOR HUMANITARIAN ACCESS 3 (Oct. 2001), <http://www.careusa.org/newsroom/specialreports/afghanistan/ahaccess.pdf>. “USAID, the single largest donor to the Afghan aid effort, has expressed interest in monetizing some food aid by selling it to Afghan traders.” *Id.* In previous years, “cash has been transferred to communities via the ‘hawala’ system, giving [refugees] the ability to purchase wheat and other necessities through local traders.” *Id.*

81. QORCHI ET AL., *supra* note 3, at 12. “Humanitarian aid organization staff members carry cash when flying into the country for operational duties, but the amounts involved are usually small and meant for overhead expenses, not program needs.” *Id.*

82. *Id.*

medical care, or college tuition fees.”⁸³ Consider the example of a Dubai-based, Indian-chartered accountant who reported that when he learned his father was being admitted for emergency bypass surgery in India, the “first thing that came to my mind was *hawala* [T]he money reached my mother before I did.”⁸⁴ The accountant commented, “who had the time to go to banks and fill out forms? I just went and gave the money and it was delivered to my mom at the door-step within a day.”⁸⁵

4. *Smuggling – Black Hawala*

While the birth of the *hawala* system may date back centuries, “the growth of the present *hawala* network has its roots in trading and smuggling operations in South Asia in the 1960’s and 1970’s.”⁸⁶ In an effort to “avoid gold import restrictions, traders and smugglers used boats to ship gold from places like the Gulf Cooperation Council (GCC) countries to South Asia.”⁸⁷ To remit funds back to their countries of origin or purchase more gold, traders and smugglers used the growing population of South Asian nationals working in the GCC countries.⁸⁸ For instance, *hawaladars* in Dubai, in order to settle their liabilities, would finance gold exports to their counterparts and clients in South Asia.⁸⁹

5. *Money Laundering Activities – Black Hawala*

Hawala and other IFT systems are vulnerable to abuse at each phase of the money laundering process.⁹⁰ Interpol has defined money laundering to embody three phases: (1) placement; (2) layering and; (3) integration.⁹¹ The

83. *Id.*

84. Namita M. Anand, *Tainted . . . But on the Move*, BUSINESS LINE, Mar. 25, 2002, at <http://www.blonnet.com/life/2002/03/25/stories/2002032500070100.htm>. “For a maid in Singapore the choice between *hawala* and the formal banking channels is clear . . . as there are no banks in her village and her parents are not literate, sending money through *hawala* is simpler, and the *hawala* operator gives her a better rate.” *Id.*

85. *Id.*

86. Anderson, *supra* note 18; see also QORCHI ET AL., *supra* note 3, at 12 (describing that recent literature attributes the growth of the present *hawala* network, in part, to gold trading and smuggling operations).

87. QORCHI ET AL., *supra* note 3, at 12.

88. *Id.*

89. *Id.*

The remitting workers received better rates because the *hawaladars* charged higher fees from smugglers who made substantial profits from the gold trade. Thus, the smuggling activities benefited from, and enhanced, the existing system of funds transfers used by expatriates in the Middle East, Southeast Asia, the United Kingdom, and even in North America.

Id. See also Anderson, *supra* note 18.

90. JOST & SANDHU, *supra* note 12; see also QORCHI ET AL., *supra* note 3, at 13.

91. JOST & SANDHU, *supra* note 12.

methods used to launder the proceeds of criminal and illegal activities become more complex as time progresses and IFT systems, like *hawala*, are increasingly being used to launder money.⁹² The IMF and World Bank have identified several features of IFT systems that can contribute to the placement, layering, and integration of funds. However, both the formal banking sector and the IFT systems are vulnerable to abuse.⁹³

The *hawala* system can provide an effective means of placement of money laundering activities.⁹⁴ *Hawaladars* often operate businesses outside their *hawala* operations and make periodic bank deposits that can be justified as proceeds from business outside of *hawala* transactions.⁹⁵

Hawala also serves as an appropriate medium to facilitate layering in the money laundering process as *hawala* transfers leave a "sparse" and often "confusing paper trail."⁹⁶ From the criminal prospective, laundering money through the formal financial system has the disadvantage of leaving behind documents "that can be traced during an investigation."⁹⁷ IFT systems, like *hawala*, can minimize detection because the transactions, which are built upon trust, require little or no documentation.⁹⁸ Moreover, even when *hawaladars* maintain records, law enforcement officials cannot readily access them.⁹⁹

In the final phase of money laundering, integration, *hawala* techniques are also susceptible to abuse.¹⁰⁰ *Hawaladars* are capable of transforming money into almost any form, making it possible to establish the appearance of legitimacy.¹⁰¹ The *hawala* system can be used for money laundering, because the "proceeds can be moved away from the place where a crime was committed

In [the] placement [phase] money derived from criminal activities is introduced into the financial system. . . . In the layering stage, the money launderer manipulates the illicit funds to make them appear as though they were derived from a legitimate source. . . . In the final stage of money laundering, integration, the launderer invests in other assets, uses the funds to enjoy his ill-gotten gains or to continue to invest in additional illegal activities.

Id.

92. QORCHI ET AL., *supra* note 3, at 13. Current money laundering methods are diverse and can employ both official banking and informal channels, including exchange bureaus, check-cashing services, insurers, brokers, and non-financial traders. *Id.* See also Ilias Bantekas, *The International Law of Terrorist Financing*, 97 AM. J. INT'L L. 315 (Apr. 2003) (describing that *hawala* networks are used primarily by Muslims to send money to relatives, however, authorities believe they also serve as vehicles to launder money, traffic in drugs and arms, and finance terrorists).

93. QORCHI ET AL., *supra* note 3, at 13. "[N]either system [formal or informal] necessarily involves the physical transfer of funds from one jurisdiction to another. Instead, they depend on a series of accounting debits and credits between the accounts of a network of individuals, companies, accountants, lawyers, and intermediaries." *Id.*

94. JOST & SANDHU, *supra* note 12.

95. *Id.*

96. *Id.* See also QORCHI ET AL., *supra* note 3, at 13.

97. QORCHI ET AL., *supra* note 3, at 13.

98. *Id.*

99. *Id.*

100. JOST & SANDHU, *supra* note 12.

101. QORCHI ET AL., *supra* note 3, at 13.

to destinations where the transaction can either appear legitimate or from where it can be later brought back to the country through a variety of legitimate routes for the integration process.”¹⁰²

6. *Terrorist Financing – Black Hawala*

Concerns have been raised about using *hawala* as an instrument to fund terrorists.¹⁰³ The lack of requirements for identification or inquiries into the source is an important facet of *hawala* transactions. It allows dealers to “facilitate a multiplicity of transfers, which conceal the ultimate origin of the funds through their network in different jurisdictions.”¹⁰⁴ For example, international attention was directed at the *hawala* system when investigators traced an anonymous fund transfer by Al-Qaeda operatives involved in the September 11 terrorist attacks. The fund transfer trail led investigators to a money transfer from a Boston transfer facility to a suspected Al-Qaeda functionary in a exchange house in the United Arab Emirates.¹⁰⁵

7. *Macro-Economic Implications of Informal Fund Transfer Systems*

While the direct impact on the policy options of IFT systems is not readily apparent, IMF studies suggest that the impact on a country’s domestic “monetary and exchange rate policy choice[s] can be significant.”¹⁰⁶ *Hawala* transactions are not reflected in a country’s official statistics as the remittance of funds from one country to another and therefore, are not officially recorded.¹⁰⁷ Consequently, (1) the data available to policymakers does not offer an accurate picture of the “economic and monetary situation of [the] country;” and (2) *hawala* transactions have fiscal implications for both remitting and receiving countries.¹⁰⁸

A *hawala* transaction is intrinsically related to changes in international assets and liabilities in a nation and is, conceptually, part of a country’s balance of payment accounts.¹⁰⁹ Therefore, as national authorities are unable to maintain records of informal financial transfers, these informal transactions reduce “the amount of statistical information available to policymakers on the level of economic activity in the country.”¹¹⁰

102. *Id.*

103. *Id.*

104. *Id.*

105. K. Raveenran, *U.A.E. Takes Unprecedented Action on Hawala*, THE DAILY STAR, Oct. 25, 2003, at 5, available at <http://goldismoney.info/forums/archive/index.php/t-4556.html>.

106. QORCHI ET AL., *supra* note 3, at 18.

107. *Id.* at 26. “The remittances of funds from one country to another is not recorded as an increase in the recipient’s country’s foreign assets or in the remitting country’s liabilities.” *Id.* at 18.

108. *Id.*

109. *Id.*

110. *Id.* at 27.

Moreover, IFT systems have “fiscal implications” affecting “both remitting and recipient countries.”¹¹¹ First, as one of the characteristics of *hawala* indicate, it operates in a largely informal and unregulated environment, thus revenue collection structures for these transactions do not exist.¹¹² Additionally, as the business settlement accounts between *hawala* operators are not documented a government “may incur losses in its customs and excise duty revenue.”¹¹³

PART TWO: INTERNATIONAL EFFORTS TO REGULATE *HAWALA*

A. Introduction

International legislation in the area of IFT systems has concentrated on curbing the tendency for systems like *hawala* to be used for illegitimate purposes like smuggling, money laundering and terrorist financing.¹¹⁴ The organization that has emerged as the cornerstone of the international effort to encourage countries to regulate IFT systems like the *hawala* system is the Financial Action Task Force armed with its legislative initiative titled The Forty Recommendations (The Recommendations).¹¹⁵

1. Financial Action Task Force

The Financial Action Task Force (FATF) was created in July 1989 by the governments of the seven major industrial nations (G-7).¹¹⁶ FATF has been

111. *Id.*

112. *Id.* *Hawala* operations are typically not taxed by the government as they are unrecorded transactions. *Id.*

113. *Id.*

114. FATF Secretariat, OECD, *Report on Money Laundering Typologies*, Doc. FAFT-XI (Feb. 3, 2000), available at http://www1.oecd.org/fatf/FATDocs_en.htm.

115. FATF Secretariat, OECD, *The Forty Recommendation* (June 20, 2003), http://www1.oecd.org/fatf/pdf/40Recs-2003_en.pdf [hereinafter *Forty Recommendations*].

116. Jonathan Schaffer ed., *The Financial Action Task Force on Money Laundering*, ELEC. J. OF U.S. DEPT. OF STATE Vol. 6 No. 2, May 2001, at <http://usinfo.state.gov/journals/ites/0501/ijee/fatffacts.htm>. The G-7 is currently comprised of the heads of state of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. *Id.* See also WILLIAM C. GILMORE, *DIRTY MONEY: THE EVOLUTION OF MONEY LAUNDERING COUNTERMEASURES* 79 (1999). At their 1989 Paris Summit, the governments of the seven major industrial nations (G-7) joined by the president of the commission of the European Communities, created FATF to address issues of “drug production, consumption and trafficking” and the “laundering of its proceeds.” *Id.* FATF is now comprised of twenty-nine nations and two jurisdictions, the membership of the FATF includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, China, Iceland, Ireland, Italy, Japan, Luxemburg, Mexico, The Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, The United Kingdom, and the United States, as well as two regional organizations: The European Commission and the Gulf Co-Operation Council. Financial Action Task Force, *Members and Observers*, at <http://www1.oecd.org/>

hailed as the “single most important international body in terms of the formulation of anti-money laundering policy.”¹¹⁷ In furtherance of its mission, in 1990, FATF issued a forty-point list of recommendations on money laundering countermeasures.¹¹⁸ These recommendations constitute an initiative to combat the misuse of financial systems by persons laundering money. They proscribe a range of actions focusing on “improvements in national legal regimes, enhancement of the role of the financial system, and strengthening international cooperation.”¹¹⁹

FATF places far-reaching responsibilities on financial institutions.¹²⁰ The Recommendations encourage the “banking sector to adopt a common position in order to ensure that banks are not used to hide or launder funds acquired through criminal activities.”¹²¹ Also, The Recommendations urge financial institutions to make reasonable efforts to: (1) determine the true identity of customers and have procedures for verifying new customers;¹²² (2) ensure that business is conducted in conformity with ethical standards, that laws and regulations are adhered to and that a service is not provided where there is good reason to suppose that transactions are associated with laundering activities;¹²³ (3) co-operate fully with national law enforcement agencies including, where there are reasonable grounds for suspecting money laundering, taking appropriate measures consistent with the law;¹²⁴ and (4) implement staff training for procedures for customer identification and for retaining internal records of transactions.¹²⁵

Additionally, in October 2001, FATF expanded its mission beyond money laundering to focus energy and expertise on a worldwide effort to combat terrorist financing.¹²⁶ FATF issued Eight Special Recommendations¹²⁷

[fatf/Members_en.htm#OBSERVERS](#) (last updated Jan. 31, 2005) (last visited Mar. 25, 2005).

117. GILMORE, *supra* note 116, at 79.

118. See *Forty Recommendations*, *supra* note 115.

119. Ronald K. Noble & Court E. Golumbic, *A New Anti-Crime Framework for the World: Merging the Objective and Subjective Models for Fighting Money Laundering*, 30 N.Y.U. J. INT’L L. & POL. 79, 118 (1997); see also *Forty Recommendations*, *supra* note 115.

120. See GILMORE, *supra* note 116, at 86. The common theme concerning recommendations is the view “that financial institutions are the key element in the detection of illicit transactions given their unique function in a country’s payments system and in the collection and transfer of financial assets.” *Id.*

121. *Id.* Recommendations Nine to Twenty-Nine outline a “strategy to engage the financial system in the effort to combat laundering while . . . seeking to ensure the retention of the conditions necessary for its efficient operation.” *Id.* at 86.

122. *Forty Recommendations*, *supra* note 115, at 2. See also GILMORE, *supra* note 116, at 86 (discussing “know your customer” provisions of the FATF Recommendations); Noble & Golumbic, *supra* note 119, at 119 (stating that Forty Recommendations “advise that financial institutions should refuse to maintain anonymous accounts or accounts with obviously fictitious names”).

123. *Forty Recommendations*, *supra* note 115, at 5.

124. *Id.* at 8.

125. *Id.* at 6.

126. FATF, OECD, *The Eight Special Recommendations on Terrorist Financing*, at http://www.fatf-gafi.org/AboutFATF_en.htm#Eight%20Special%20Recommendations (Oct. 31, 2001) [hereinafter *Special Recommendations*].

on international standards for combating terrorist financing and called upon nations to adopt and implement them.¹²⁸ Relevant among these recommendations is Special Recommendation VI, dealing with the abuse of alternative remittance systems.¹²⁹ This recommendation is based on the presumption that IFT systems, like *hawala*, have shown themselves to be “vulnerable to misuse for money laundering and terrorist financing purposes.”¹³⁰ The objective of Special Recommendation VI is to “increase the transparency of payment flows by ensuring that jurisdictions impose consistent anti-money laundering and counter-terrorist financing measures on all forms of money/value transfer systems, particularly those traditionally operating outside the conventional banking sector and not subject to FATF Recommendations.”¹³¹ To this end, the special recommendation calls upon:

Each country [to] take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.¹³²

Special Recommendation VI consists of three key elements. First, the recommendation calls for jurisdictions to require “licensing or registration of persons (natural or legal) that provide money/value transfer services, including through informal systems.”¹³³ Secondly, the recommendation suggests that

127. *Id.* The Eight Special Recommendations include:

(I) Ratification and Implementation of UN Instruments; (II) Criminali[z]ing the Financing of Terrorism and Associated Money Laundering; (III) Freezing and Confiscating Terrorist Assets; (IV) Reporting Suspicious Transactions related to Terrorism; (V) International Co-operation; (VI) Alternative Remittance; (VII) Wire Transfers; (VIII) Non-Profit Organi[z]ations.

Id.

128. *Id.*

129. *Id.* ¶ VI.

130. FATF, OECD, *Interpretive Note to Special Recommendation VI: Alternative Remittance*, at http://www1.oecd.org/fatf/TFInterpnotes_en.htm#Special%20Recommendation%20VI (last updated Feb. 2, 2005) (last visited Feb. 27, 2005) [hereinafter *Interpretive Note*].

131. *Id.*

132. *Special Recommendations*, *supra* note 126, ¶VI.

133. *Interpretive Note*, *supra* note 130. According to the Special Recommendation VI, “licensing means a requirement to obtain permission from a designated competent authority in order to operate a money/value transfer service legally.” *Id.* To this end:

Jurisdictions should designate an authority to grant licenses and/or carry out registration and ensure that the requirement is observed. There should be an authority responsible for ensuring compliance by money/value transfer services with the FATF Recommendations (including the Eight Special Recommendations). There should also be effective systems in place for

jurisdictions “ensure that money/value transmission services, including informal systems . . . are subject to applicable FATF Forty Recommendations and the Eight Special Recommendations.”¹³⁴ Finally, the recommendation calls on jurisdictions to impose sanctions on money/value transfer services, including informal systems that operate without a license or registration and “which fail to comply fully with the relevant FATF Forty Recommendations or the Eight Special Recommendations”¹³⁵

Pursuant to its mission, FATF has taken a unique role by stressing the importance of implementing its initiatives by member and non-member jurisdictions.¹³⁶ To this end, FATF has set up four regional review groups to assess the anti-money laundering regulations in a number of jurisdictions against a list of twenty-five “Criteria Identifying Detrimental Rules and Practices that Impede International Cooperation,” which FATF compiled in light of the Forty Recommendations and the Eight Special Recommendations.¹³⁷

Following this review, FATF releases a list of non-cooperative countries.¹³⁸ After being identified as a “non-cooperative” jurisdiction, FATF urges the “non-cooperative” states to execute measures to improve their legal and financial systems as “expeditiously as possible in order to remedy the . . . deficiencies identified in the reviews.”¹³⁹ Additionally, in accordance with Recommendation Twenty-One, FATF advises that “[f]inancial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions,” from the non-cooperative countries.¹⁴⁰ Furthermore, FATF announced that should the countries identified as “non-cooperative” fail to make necessary reforms, FATF members may consider adopting countermeasures against such jurisdictions.¹⁴¹ FATF has also announced its preparedness “to provide technical assistance” to

monitoring and ensuring such compliance. . . .

Id.

134. *Id.* In particular, applicable Recommendations include 10-21 and 26-29. According to the scope and application of Special Recommendation VI, a money or value transfer service may be provided by persons (natural or legal) through the regulated financial system or informally through non-bank financial institutions or through a network or mechanism that operates outside the regulated system, like *hawala*. See *id.*

135. *Id.*

136. FATF Secretariat, OECD, *Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures 3* (June 20, 2003), http://www1.oecd.org/fatf/pdf/NCCT2003_en.pdf [hereinafter *FATF 2003 Review*].

137. *Id.* at 3; see also Todd Doyle, *Cleaning Up Anti-Money Laundering Strategies: Current FATF Tactics Needlessly Violate International Law*, 24 HOUS. J. INT'L L. 279, 295 (2002) (describing the four regional review groups to consist of “the Americas, Asia/Pacific, Europe, and Africa and the Middle East”).

138. *FATF 2003 Review*, *supra* note 136, at 3.

139. *Id.* at 17.

140. *Forty Recommendations*, *supra* note 115, at 7.

141. *FATF 2003 Review*, *supra* note 136, at 5.

assist jurisdictions in the design and implementation of their anti-money laundering systems.¹⁴²

Indeed, since the establishment of FATF more than a decade ago, and the subsequent broadening of its mission, FATF has been instrumental in influencing both member and non-member nations in "instituting more rigorous reporting procedures within banks and other financial institutions," as well as establishing an extensive system of "peer review to assure compliance with FATF guidelines."¹⁴³ Generally, FATF strategy has elicited an "immediate response from targeted nations."¹⁴⁴

2. *Comments on the Financial Action Task Force Recommendations*

However, where FATF is to be commended in its widely adopted approach, the group's strategy, centered on licensing requirements for *hawala* and other IFT brokers, does not entirely account for reducing the economic incentives for a country's citizens and ex-patriots to engage in IFT systems, like the *hawala* system.¹⁴⁵ Registration and licensing requirements, although likely to deter illegal activities, will not succeed in reducing the economic attractiveness of the *hawala* system.¹⁴⁶ The emergence of *hawala* can be described as a "market response by economic agents to their economic environment."¹⁴⁷ Taken in this context, the international community should apply conclusions reached by the IMF and World Bank and focus its policy goals on combating the economic incentives to engage in *hawala* transactions. These incentives include: (1) inefficient and inadequate banking infrastructures; (2) lack of comparable alternatives to *hawala*; and (3) deficient global coordination and capacity building.¹⁴⁸

According to IMF and World Bank assessments, the *hawala* system should be understood as an "informal means of transferring funds" across borders used by individuals "constrained by the level of financial development and government policies" in their home countries.¹⁴⁹ Generally, the growth of IFT systems is "negatively correlated with the level of development and liberalization of the formal financial sector."¹⁵⁰ The attraction to IFT systems is increased in countries where inefficient banking institutions operate in environments that include strict foreign exchange controls and heightened state

142. Doyle, *supra* note 137, at 296.

143. *Id.* at 294.

144. *Id.* at 296 (describing that Liechtenstein, the Bahamas, and the Philippines have "each scrambled to review their regulatory schemes and to enact new measures bringing their banking laws up to compliance with FATF standards").

145. Wilson, *supra* note 5, at 12.

146. EL-QORCHI, *supra* note 13.

147. Congressional Hearing, *supra* note 45, at 44.

148. *Id.*

149. *Id.*

150. QORCHI ET AL., *supra* note 3, at 26.

intervention in the market.¹⁵¹ Where developed registration and licensing requirements will add a degree of official scrutiny to *hawala* operators, the ultimate incentives for *hawala* customers to engage these services will not change.¹⁵² Indeed, “relaxing or abolishing currency restrictions and controls” through “liberalization of interest rates, removal of income taxes on remittances from overseas and lifting restrictions on duties” could encourage business away from *hawaladars*.¹⁵³

Moreover, current formal remittance systems operating through banks and institutions like Western Union and MoneyGram are not competitive enough to draw customers away from *hawaladars*.¹⁵⁴ Registration and licensing requirements that are imposed on *hawala* operators do not address the economic competitive advantage enjoyed by *hawaladars*, and as long as such discrepancies endure *hawala* and other IFT systems will “continue to thrive and fill important gaps left by conventional society at the regional and international level[s].”¹⁵⁵ If the formal banking sector intends to compete with the informal remittance business, it should “focus on improving the quality of its service and reducing the fees charged.”¹⁵⁶

Additionally, developing international regulatory standards for IFT systems is a complicated procedure.¹⁵⁷ The growth IFT systems have enjoyed “over many years and across many countries points to the important role that these systems can play in the absence of a robust and efficient formal financial sector.”¹⁵⁸ Indeed, “[d]ifferences in the stages of economic” and political development demands that international regulations give consideration to “country specific circumstances and national legal systems.”¹⁵⁹ Often, prescribing regulations through licensing requirements will not ensure compliance.¹⁶⁰

Applying these IMF and World Bank conclusions to efforts to regulate *hawala* in India, Pakistan and the United Arab Emirates amplifies the weakness

151. *Id.* See also NIKOS PASSAS, RESEARCH AND DOCUMENTATION CENTRE OF THE DUTCH MINISTRY OF JUSTICE, INFORMAL VALUE TRANSFER SYSTEMS AND CRIMINAL ORGANIZATIONS, A STUDY INTO SO CALLED UNDERGROUND BANKING NETWORKS 70, http://minjust.nl:8080/b_organ/wodc/publications/ivts.pdf (n.d.) (last visited Feb. 15, 2005) (describing that the “faith of Pakistanis in banks and government was undermined when foreign currency deposits were frozen” and “citizens were only allowed to withdraw local currency”).

152. Wilson, *supra* note 5.

153. PASSAS, *supra* note 151, at 70. *But see* Wilson, *supra* note 5 (recognizing that strict foreign exchange controls are important tools of fiscal policy in the hands of governments seeking to stabilize their economy, which also have the effect of encouraging *hawala*).

154. See EL-QORCHI, *supra* note 13.

155. PASSAS, *supra* note 151, at 70.

156. EL-QORCHI, *supra* note 13. “A longer-term and sustained effort should be aimed at modernizing and liberalizing the formal financial sector, with a view of addressing its inefficiencies and weaknesses.” *Id.*

157. QORCHI ET AL., *supra* note 3, at 27.

158. *Id.*

159. *Id.*

160. *Id.*

behind a purely economic based strategy. An evaluation of the merits behind these countries strategies will reveal the *dual* importance economic and political factors can play in a successful strategy to regulate the *hawala* system.

PART III: *HAWALA* CASE STUDIES: INDIA, PAKISTAN AND UNITED ARAB EMIRATES

A. *India*

1. *Hawala in India and India's Response*

Estimates indicate that "ten billion of the fourteen billion dollars sent to India each year currently passes through unofficial channels," like the *hawala* system.¹⁶¹ Consequently, the Indian government has adopted firm measures with respect to the regulation of its informal market, in particular the *hawala* system, with the passage of two acts: The Financial Exchange Regulation Act (FERA)¹⁶² and its later consolidated and amended version, The Financial Exchange Management Act (FEMA).¹⁶³ These acts have explicitly prohibited "*hawala*-type" transactions.¹⁶⁴

FERA, enacted in 1973, was drafted with the objective of introducing regulations for the entry of foreign capital into India's economy.¹⁶⁵ It represents the Indian legislature's efforts to combat the extensive *hawala* system that continues to flourish in India.¹⁶⁶ As a result of "major changes in the Indian economy and liberalization of industrial and trade policies" in line with India's changed international economic and trade relations, the Indian legislature saw the "need for a more conducive climate for increased inflow of foreign investment and capital . . . to accelerate . . . growth."¹⁶⁷ FERA contained certain important "special restrictions in regard to foreign investment and the activities of individuals" engaged in foreign exchange, in particular the *hawala* system.¹⁶⁸

Under FERA, sections eight and nine provided "detailed legal prohibitions on the *hawala* market."¹⁶⁹ Section eight, for instance, placed

161. Gudka, *supra* note 18.

162. Foreign Exchange Regulation Act, No. 46 (1973) (India) [hereinafter FERA].

163. Foreign Exchange Management Act, (1999) (India) [hereinafter FEMA].

164. QORCHI ET AL., *supra* note 3, at 22. "The number of institutions . . . permitted to deal in foreign exchange has been closely defined, and the kinds of transactions permitted for customers . . . have been revised." *Id.*

165. INDIA INFO LAW, AN INTRODUCTION TO FOREIGN EXCHANGE REGULATION ACT 1973, <http://law.indiainfo.com/foreign-exchange/introduction.html> (n.d.) (last visited Feb. 25, 2005) [hereinafter INTRODUCTION TO FERA 1973].

166. *Id.*

167. *Id.*

168. *Id.*

169. Taxmann's Guide to Foreign Exchange Management Act, *Hawala Transactions*, Rashmin Sanghvi & Associates, at <http://www.rashminsanghvi.com/femabook5.htm> (1999)

restrictions on individuals who could engage transactions in foreign currency as well as restraints on conversions between Indian currency and foreign currency.¹⁷⁰ In particular, section eight imposed strict licensing requirements on money changers and prohibited the acquiring, borrowing, selling, or transferring of foreign exchange from persons other than an “authori[z]ed dealer” in India.¹⁷¹ Moreover, section eight regulated persons other than authorized dealers or money changers and imposed on them requirements to sell any foreign exchange acquired to an authorized dealer in an effort to legislatively force funds from the informal market into the formal market.¹⁷² Additionally, section nine of FERA specifically covered domestic transactions.¹⁷³ Section nine of FERA specifically restricted *hawala* transactions by prohibiting the making of any payment or credit to any person outside of India without conditional approval from the Indian Reserve Bank.¹⁷⁴ The remaining clauses in section nine of FERA supported the acts “main target of preventing the flight of capital from India through any channel.”¹⁷⁵ In 1993, FERA was revised and several amendments were enacted as part of the ongoing process of India’s economic liberalization relating to foreign investment and foreign trade for closer interaction with the world economy.¹⁷⁶

Taking into consideration the substantial financial developments in India since the passage of FERA, a bill to replace certain provisions of the act was introduced into the Indian legislature in August 1998.¹⁷⁷ FEMA reintroduces

(last visited Mar. 24, 2005) [hereinafter Taxmann’s Guide].

170. FERA § 8.

171. *Id.* § 8(1). For purposes of section eight “a person, who deposits foreign exchange with another persons or persons or opens an account in foreign exchange with another person, shall be deemed to lend foreign exchange to such other person.” *Id.*

172. *Id.* § 8(3). This section provides that:

Where an foreign exchange is acquired by any person, other than an authori[z]ed dealer or money changer, for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose . . . the said person shall, within a period of thirty days from the date on which he comes to know that such foreign exchange cannot be so used or the conditions cannot be complied with, sell the foreign exchange to an authorized dealer or to a money-changer.

173. *Id.* § 9.

174. *Id.* § 9(f). See also FERA § 9(1), explaining that for the purposes of section nine: [W]here any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authori[z]ed dealer) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authori[z]ed dealer.

Id. § 9(1).

175. Taxmann’s Guide, *supra* note 169, ch. 5.1; see also FERA § 9.

176. INTRODUCTION TO FERA 1973, *supra* note 165; see also INDIA INFO LAW, FOREIGN EXCHANGE MANAGEMENT ACT (FEMA) 1999 TO REPLACE FOREIGN EXCHANGE REGULATION ACT (FERA), at <http://law.indiainfo.com/foreign-exchange/fema.html> (last visited Oct. 20, 2003).

177. See FEMA.

and expands upon FERA's concept of licenses for moneychangers.¹⁷⁸ In particular, Chapter Two of FEMA prohibits persons from "enter[ing] into any financial transaction in India as consideration for or in association with acquisition or creation . . . of a right to acquire, any asset outside India by any person."¹⁷⁹ Additionally, FEMA provides for a heightened role of the Reserve Bank of India (Reserve Bank) in regulating these transactions by specifying that the Reserve Bank, in consultation with the Central Government, may specify: "(a) any class or classes of capital account transactions which are permissible; and (b) limit which foreign exchange shall be admissible for such transactions."¹⁸⁰

Additionally, the Reserve Bank, on a limited basis, has attempted to "increase the efficiency and cost effectiveness of banking services" in an effort to make IFT services, like *hawala*, "seem less attractive."¹⁸¹ Indeed, bank branch expansions in the 1970s and 1980s improved access to the formal banking sector by reducing the "per branch population."¹⁸² More recently, the Reserve Bank has allowed non-bank financial institutions to undertake "money transfer service schemes to facilitate swift and easy transfer of personal remittances from abroad to beneficiaries in India."¹⁸³ These schemes, operating through computerized post offices, are hoped to be more popular because money can now be received in less than ten minutes.¹⁸⁴ Moreover, the Indian Post Office also expects to profit off the service by obtaining ten percent of the share of remittances sent through the facility.¹⁸⁵

Beyond these measures, the government in India has established a special federal police unit with the sole function to fight economic crime, consistent with FATF Recommendation Twenty-Seven, calling on nations to "ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations."¹⁸⁶ The unit's mission is to tackle economic crimes like bank fraud and the movement of money from foreign countries through informal fund transfer systems.¹⁸⁷ Furthermore, this

178. *See id.* at ch. 2; *see also* Taxmann's Guide, *supra* note 169, ch. 5.3.

179. FEMA ch. 2(d); *see also* QORCHI ET AL., *supra* note 3, at 22 (describing that the recent FEMA specifically addresses *hawala*-type transactions by "prohibiting Indian residents from entering 'into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire any asset outside India by any person'"). *Id.*

180. FEMA ch. 2(a)-(b).

181. QORCHI ET AL., *supra* note 3, at 23.

182. *Id.*

183. *Id.*

184. Gudka, *supra* note 18. India launched the money ordering facility "in the United Arab Emirates to make it quicker for the large number of Indian expatriates there to send money home." *Id.*

185. *Id.*

186. PASSAS, *supra* note 151, at 62; *see also* Forty Recommendations, *supra* note 115, at 8 (describing institutional and other measures necessary in systems for combating money laundering and terrorist financing).

187. PASSAS, *supra* note 151, at 62.

unit is designed to target *hawala* brokers by reducing the amount of money sent through the IFT system as well as diverting funds to the regulated banking industry through strict enforcement of banking laws and extensive investigations of *hawala* operations.¹⁸⁸

2. Assessment of Indian Regulations

Although the Indian government has attempted to tackle its informal fund transfer industry since the early 1970's, its strict legislative guidelines, which essentially ban *hawala* transactions, have largely backfired.¹⁸⁹ This is attributable to several flaws in India's policy and government structure, specifically with respect to the lack of recognition by the Indian legislature that "where strong commercial interests tempt; no amount of legal restrictions will be successful."¹⁹⁰ Indeed, the roots of *hawala* transactions are firmly embedded in the Indian economic and, perhaps more importantly, political atmosphere and has worked to usher in an era of "bad politics" and corruption that has become indicative of the Indian democracy.¹⁹¹

Despite the Indian Government's most restrictive legal provisions, *hawala* remains a "routine transaction."¹⁹² Analysts indicate that people continue to transfer capital outside of India at their "sweet will."¹⁹³ Indeed, the Indian regulation of *hawala* is a typical example of where even the most severe licensing provisions cannot ensure compliance.¹⁹⁴ Since the Indian rupee continues to depreciate, "wealthy people seeking to protect the value of their wealth have a strong economic interest in transferring their wealth outside India."¹⁹⁵

Moreover, the Indian case is unique in that even the most restrictive licensing requirements will have little impact on *hawala* transactions given the extent of corruption evident in Indian politics.¹⁹⁶ Indeed, the Jain *Hawala* Scandal, which implicated top Indian politicians and bureaucrats for accepting illicit payment through *hawala* channels, amplifies this point.¹⁹⁷ In that case, the Indian Central Bureau of Investigation (CBI), while investigating a case "pertaining to funding of Jammu and Kashmir militants, raid[ed] a house in Delhi seizing account books" implicating India's rich and powerful, including the Prime Minister at the time, P.V. Narasimha Rao, in receiving funds through

188. *Id.*

189. *See id.* (describing that though the liberalization of the Indian economy was supposed to "help fight the prevalence of *hawala* . . . the problem continues almost unabated"). *Id.* at 63.

190. Taxmann's Guide, *supra* note 169, ch. 5(5)(1).

191. *See* SANJAY KAPOOR, BAD MONEY, BAD POLITICS: THE UNTOLD HAWALA STORY 88 (1996).

192. Taxmann's Guide, *supra* note 169, ch. 5(5)(1).

193. *Id.*

194. *See* discussion, *supra* Part Two B.

195. Taxmann's Guide, *supra* note 169, ch. 5(5)(1).

196. *See* KAPOOR, *supra* note 191, at 84.

197. *See id.*

India's illegal *hawala* market.¹⁹⁸ Twenty-four politicians were ultimately charged with being "beneficiaries of [sixty-four million] rupees in bribes and gifts" from businessmen.¹⁹⁹

The Indian case, particularly with respect to its *hawala* scandal, illustrates that a nation's stage of economic, financial, and political development must be taken into account when formulating regulatory strategies, particularly with respect to IFT systems like the *hawala* system that are so firmly rooted in that country's financial and political being.²⁰⁰ In a developing country like India, criminal elements already exploiting *hawala* transactions have a strong incentive to infiltrate the political structure to ensure their survival and are able to find willing partners in Indian politicians who "have not seen big money, and they need these funds to win an extremely costly election[s]."²⁰¹ Moreover, FATF recommendations, which rely heavily on strong criminal justice infrastructures to enforce licensing requirements, are disadvantaged in India where high ranking Indians are able to escape prosecution unscathed.²⁰² Indeed, Narasimha Rao survived "numerous corruption scandals in government," the worst of them being a payment to "escape prosecution in [a] stock market scam."²⁰³

B. Pakistan

1. *Hawala* in Pakistan and Pakistan's Response

The *hawala* system in Pakistan operated in a predominantly unregulated environment for years,²⁰⁴ having only recently come under more focused

198. KAPOOR, *supra* note 191; see also *Jain Hawala Case Rocks India*, Mahendra Agaarwal Online, at http://mahendra-agarwalonline.20m.com/PR_JainHawalaCase.htm (Mar. 2, 1996) [hereinafter *Jain Hawala Case*].

199. *Jain Hawala Case*, *supra* note 198. The *Jain Hawala* case implicated high ranking officials in India including "seven serving Cabinet ministers, all of whom have resigned; the president of the leading opposition Bharatiya Janata Party, who gave up his parliamentary seat; and the chief minister of the local government in New Delhi, who also quit." *Id.*

200. See QORCHI ET AL., *supra* note 3, at 28. In this joint IMF and World Bank study the authors conclude that for the regulation of the *hawala* system will among other things depend on "the ability of the formal financial sector to respond to the legitimate market demand for *hawala* type transactions." *Id.* This conclusion can be expanded, using the Indian case, to include comprehensive political reforms to ensure compliance with regulations.

201. KAPOOR, *supra* note 191, at 88.

202. See *id.*

203. *Hard Times*, NEWS INSIGHT, Oct. 8, 2003, at <http://www.indiareacts.com/archivedebates/nat2.asp?recno=736&ctg=>. "Although there is no rule on the effect of corruption charges on political careers in India few politicians are said to hit rock bottom." *Id.*

204. See *Experts Urge Measured Regulation of 'Hawala' Monetary Transfers*, ARAB AMERICAN BUSINESS, at http://www.arabamericanbusiness.com/June2002/intbus_expertsurgemeasured.htm (n.d.) (last visited Sept. 27, 2003) [hereinafter *Arab American Business*]. "Mohammed al-Qorschi, a senior economist with the International Monetary Fund," reported that Pakistan alone "received around \$5 billion a year through paperless transactions." *Id.*

legislative scrutiny.²⁰⁵ Indeed, it has been reported that the State Bank of Pakistan (SBP), prior to undergoing policy refinements, had periodically made large “outright dollar purchases from offshore moneychangers.”²⁰⁶ Moreover, with a large number of Pakistanis living abroad and seeking to remit funds back to Pakistan, the Pakistani economy has undergone “a long history of various forms of capital controls.”²⁰⁷ To this end, Pakistan has “tried to encourage capital to stay in Pakistan” or eventually flow into the regulated financial system through two early initiatives: (1) the Foreign Exchange Bearer Certificates (FEBCs) Scheme in 1985; and (2) the Foreign Currency Bearer Certificates in 1992 (FCBCs).²⁰⁸ The aim of these initiatives was to “attract funds from Pakistanis abroad and to reduce the attraction of *hundi* and the *hawala* networks in the country.”²⁰⁹

Post September 11, Pakistan, under pressure from the United States and the International Community, has “crack[ed] down on money laundering and regulating the *hawala* fund-transfer system.”²¹⁰ The SBP recently issued a report titled, “Islamic Finance and Pakistan’s Efforts in the Financial War on Terrorism,” which highlighted Pakistan’s revitalized effort in the financial war on terrorism and money laundering.²¹¹ In that report, Pakistan details its revised approach to banking through adopting the recommendations of FATF and “actively participating as a member” of that group’s regional Asia-Pacific Group on Money Laundering.²¹² Indeed, Pakistan, after reviewing its existing banking systems and procedures, has developed a “multiple track strategy” to reign in *hawala* markets, the main elements of which include: (1) the development of comprehensive legislation to fill in the gaps and loopholes in the existing laws, and “empower and streamline the procedures for monitoring, detection, reporting, investigation, [and] prosecution of offenses;” and (2) the

205. See Jawaid Bokhari, *U.S. For Anti-Money Laundering Regime*, DAWN INTERNET EDITION, June 23, 2001, <http://www.dawn.com/2001/06/23/top14.htm>. The US State department advised Pakistan to establish a system of reporting suspicious transactions by all financial institutions. *Id.* The Pakistani Government has “promulgated new ordinances addressing various financial crimes” but Pakistan does not have a financial intelligence unit. *Id.*

206. Nadeem Malik, *U.S. for Tough Anti-Money Laundering Law*, THE INT’L NEWS, Sept. 20, 2003, at <http://www.jang.com.pk/thenews/sep2003-daily/20-09-2003/main/main4.htm>. It is reported that the State Bank of Pakistan purchased \$1.4 billion in 2001-2002. *Id.*

207. QORCHI ET AL., *supra* note 3, at 22.

208. PASSAS, *supra* note 151, at 63-64. The FCBCs were “timed rather badly” as its “issuance coincided with the close down of . . . a bank managed by Pakistani’s . . . amid accusations of unprecedented fraud, corruption and money laundering.” *Id.*

209. *Id.*

210. *Snow Praises Pakistan’s Moves to Choke Off Terrorism Funding*, NEWS CHANNEL 8, Sept. 19, 2003, <http://www.news8.net/news/stories/0903/103235.html> [hereinafter *Snow Praises Pakistan*].

211. ISHRAT HUSAIN, STATE BANK OF PAKISTAN, ISLAMIC FINANCE AND PAKISTAN’S EFFORTS IN THE FINANCIAL WAR ON TERRORISM ¶ 1, <http://www.sbp.org.pk/about/speech/2003/23-apr-03.htm> (n.d.) (last visited Feb. 4, 2005).

212. *Id.*

strengthen the regulatory and supervisory capacity of the Pakistani government.²¹³

Under the first element of Pakistan's strategy the informal market will be allowed to "co-exist along with the conventional banks."²¹⁴ To this end, the Governor of the SBP has prepared a draft act that conforms to FATF standards.²¹⁵ The law would require profiling of all the account holders, "both existing and new, to detect suspicious transactions."²¹⁶ These measures are in conformity with FATF Recommendations Thirteen and Fourteen calling on nations to encourage reporting of suspicious transactions.²¹⁷ Moreover, Pakistan's new profiling procedures are consistent with FATF Recommendations designed to curb the anonymity associated with *hawala* transactions by calling on financial institutions to "undertake customer due diligence measures, including identifying and verifying the identity of . . . customers."²¹⁸

Within Pakistan's strategy to develop comprehensive legislation, Pakistani President Pervez Musharraf's government passed a law that requires "hawala dealers to register with the government and document their transactions."²¹⁹ This law is consistent with FATF Special Recommendation VI containing a core requirement for jurisdictions to require licensing or registration of persons that provide money transfer services.²²⁰ The newly promulgated legal framework calls for the "transformation of money changers into foreign exchange companies" and "allows money changers a two-year period to register" and comply with the new rules.²²¹

Under the second element of Pakistan's comprehensive strategy, the SBP, Securities Exchange Commission of Pakistan (SECP),²²² and the National

213. *Id.*

214. *Id.* ¶ 2

215. Malik, *supra* note 206.

216. *Id.*

217. *Forty Recommendations*, *supra* note 115, at 5. FATF Recommendation Thirteen states that:

If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit.

Id.

218. *Forty Recommendations*, *supra* note 115, at 2. This recommendation calls on financial institutions to "not keep anonymous accounts or accounts in obviously fictitious names." *Id.*

219. *Snow Praises Pakistan*, *supra* note 210.

220. *Id.* See also *Interpretive Note*, *supra* note 130 (describing that Special Recommendation VI consists of three core elements).

221. QORCHI ET AL., *supra* note 3, at 22.

222. The SECP was created in 1997 by the Securities Exchange Commission of Pakistan Act and "succeeded the Corporate Law Authority which had been administering the corporate laws in Pakistan since 1981." Securities and Exchange Commission of Pakistan, *About Us*, at <http://www.secp.gov.pk/aboutus.htm> (n.d.) (last visited Feb. 25, 2005).

Accountability Bureau (NAB)²²³ have developed distinct and identifiable responsibilities consistent with FATF recommendation Twenty-Seven.²²⁴ Under the new system, the

State Bank of Pakistan will be responsible for regulation, supervision, detection and reporting in respect of all the banking institutions; SECP for non-bank finance companies and NAB for investigation and prosecution. [The] Anti-Narcotic Force already has the authority and powers to investigate and prosecute drug-related money transactions.²²⁵

Moreover, Pakistan's banking reforms have come at the heels of a political overhaul of the Pakistani government led by General Parvez Musharraf.²²⁶ Musharraf, who orchestrated a bloodless coup in October 1999 against the then Prime Minister Nawaz Sharief,²²⁷ introduced a series of sweeping amendments to the Pakistani Constitution which his government anticipates will lay the groundwork for a "fair and clean[] democracy [in Pakistan] and . . . block corrupt and incapable politicians from participation in . . . election[s]."²²⁸ Whether Musharraf has delivered on his promise of a "fair and clean" democracy in Pakistan is far from decided. However, the impact of Musharraf's government's on the Pakistani economy, which is projected to grow this year at a rate of 4.5 percent is undisputed.²²⁹ Indeed, "fiscal austerity" and political reform measures imposed by Musharraf's government have led to increased tax revenues, low interest rates and a shrinking national debt in Pakistan.²³⁰ Another positive feature with respect to

223. See National Accountability Bureau of Pakistan, at <http://www.nab.gov.pk/> (last modified Mar. 7, 2005) (last visited Mar. 24 2005). The NAB was established in Pakistan in 1999 pursuant to a Presidential Ordinance calling for a "free, transparent, and across the board accountability" of cases involving "corruption, corrupt practices, misuse/abuse of power, misappropriation of property and kickbacks." *Id.*

224. See HUSAIN, *supra* note 211, ¶ 2; see also *Forty Recommendations*, *supra* note 115, at 8. That recommendation stresses that "countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations." *Id.*

225. HUSAIN, *supra* note 211, ¶ 2.

226. Harold Gould, *Coup in Pakistan – An Expert's Initial Observations*, DEFENSE AND THE NATIONAL INTEREST, Oct. 15, 1999, <http://www.d-n-i.net/fcs/comments/c325.htm>.

227. To many outside observers the coup against Prime Minister Nawaz Sharief was no surprise as Shareif was widely recognized as incapable of "significantly reducing corruption, improving living standards, or constructively managing political dissent in Pakistan." *Id.*

228. Syed Atiq Ul Hassan, *The Road Map of Democracy in Pakistan*, at http://www.totse.com/en/politics/the_world_beyond_the_usa/166079.html (n.d.) (last visited Mar. 24, 2005).

229. John Lancaster, *Finding Opportunities in Post-9/11 Pakistan; Growing Economy Sparks Return of Capital, Expertise*, WASH. POST, Feb. 17, 2003, at A27, available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A18570-2003Feb16¬Found=true>.

230. *Id.*

Pakistan's economy is Pakistani rupee's health which "has gained 11% against the greenback since September 11, largely because of a crackdown on the black market *hawala* system of money transfers, as part of the war on terror."²³¹ As a result, the country's foreign exchange reserves have topped \$9.5 billion for the first time, giving the Pakistani rupee unusual strength.²³²

2. Assessment of Pakistani Legislation

Contrary to the Indian example, the initial assessment of the Pakistani Government's efforts to regulate *hawala* transactions appears positive.²³³ After the implementation of reporting requirements and simultaneous initiatives by the SBP, "thousands of dealers across Pakistan have watched their thriving businesses falter and in some cases collapse."²³⁴ Moreover, since the change in policy official remittances have tripled.²³⁵ Indeed, the SBP has seized the opportunity to increase official remittances and has instituted systems to maintain a database of all remittances and "introduce[ed] a handful of new products" that will ensure delivery of cash quicker.²³⁶

The reason for Pakistan's success can be attributed to its successful recognition of the policy goals necessary to regulate *hawala* transactions beyond mere licensing of *hawaladars*.²³⁷ Indeed, coupled with Pakistan's licensing requirements were initiatives to improve the SBP banking practices, particularly, allowing the informal market to co-exist with formal banks for a period of time as well as the implementation of successful fiscal austerity measures to improve Pakistan's economic standing.²³⁸ With obvious disincentives for the use of the *hawala* system, expatriate Pakistanis have been

231. Naweena A. Mangi, *Pakistan Turns an Unlikely Corner*, BUSINESS WEEK, Apr. 15, 2002, at http://www.businessweek.com/bwdaily/dnflash/apr2002/nf20020415_4345.htm.

232. *Id.* See also Imtiaz Gul, *Boom Time for Pakistani Economy*, ECONOMY NEWS, Sept. 2, 2003, at <http://english.aljazeera.net/NR/exeres/F5C15088-CB1D-4278-97F7-7C60F33132F5.htm>. In 2001, the rupee fell 23% against the U.S. dollar and in the 1990s, foreign investors lost an average of 8% to 10% on their investments every year on account of the depreciation of the rupee; "this year, for the first time, they won't – and this is a very good trigger from them to look at Pakistan." *Id.*

233. See *Pakistan Cripples the Money Movers*, BUSINESS WEEK, Jan. 31, 2002, at http://www.businessweek.com/bwdaily/dnflash/jan2002/nf20020131_6995.htm [hereinafter *Pakistan Cripples*].

234. *Id.* Forex Association of Pakistan, a Karachi-based trade group, reports that *hawala* business has been reduced by 75% in Pakistan. *Id.*

235. *Id.* "According to the most recent figures available from the State Bank of Pakistan, monthly remittances [through the formal sector] climbed to 260 million, from an average of 80 million." *Id.* The treasurer of Habib Bank, "Pakistan's second-largest bank, estimates that official remittances will rise from \$1.07 billion last year to \$2 billion by the end of fiscal 2002. Within the next two to three years . . . they could hit \$5 billion." *Id.*

236. *Id.* "Habib-Bank has automated its systems to maintain a database of all remittances and is introducing a handful of new products that will ensure delivery of cash within 24 hours." *Id.*

237. See *supra* discussion Part Two B.

238. *Id.*

routing their remittances through the banking system instead.²³⁹

However, a more evident difference between the Indian and Pakistani strategy rests in the differing political situations in each country. In Pakistan, “history has shown that military [g]enerals . . . are more skillful and diplomatic” than politicians.²⁴⁰ Musharraf’s government has been able to swiftly and effectively install fiscal precision and political reform measures that have helped reduce the economic incentives for both expatriate and resident Pakistani’s to engage in *hawala* in Pakistan.²⁴¹ Indeed, contrary to the case in India, where decades of corruption have bred more corruption, destabilizing efforts to reign in *hawala* transactions, Pakistani leaders have taken advantage of the political climate in Pakistan to implement balanced legislation. This has had a marked deterrent effect on Pakistan’s economic incentives to engage the *hawala* system.

C. United Arab Emirates (UAE)

1. *Hawala* in UAE and UAE Response

The UAE has been described as the third leg in a *hawala* triangle encompassing India and Pakistan.²⁴² Dubai is regarded as a “key point in the global *hawala* network” due, in part, to the “large presence of expatriate workers and businessmen there.”²⁴³ Post-September 11, Western nations, led by the United States, have alleged that chief terror suspects of the Al-Qaeda network “transferred funds through the *hawala* [system] . . . and the United Arab Emirates (UAE) was cited as a transit point from where most of the money spent by the individuals behind the Sept[ember] 11 terror attacks was reportedly transferred.”²⁴⁴ As a consequence, the UAE was placed on FATF’s “watch list” in the months following September 11.²⁴⁵

Partly in response to international pressure, the UAE Central Bank,²⁴⁶ in

239. See *Pakistan Cripples*, *supra* note 233.

240. Ul Hassan, *supra* note 228.

241. See *id.*

242. See *Pakistan Cripples*, *supra* note 233. *Hawala* “is an extensive international money transfer system based around the triangle of Pakistan, Dubai and parts of India.” *Id.*

243. Raveenran, *supra* note 105, at 5. In the United Arab Emirates (UAE) *hawala* “often takes the form of flight of capital resulting from exchange controls, regulations against outflow of funds and other policies followed by many Asian countries, including India.” *Id.*

244. N. Janardhan, *Hawala System Draws International Attention: Despite Crackdown, Alternative Banking System Thrives*, INTER PRESS SERVICE, June 14, 2002, at http://www.cyberdyaryo.com/features/f2002_0614_04.htm.

245. Raveenran, *supra* note 105.

246. See The Monetary System and Organization of Banking, No. 10, art. 5 (1980) (U.A.E.). The function of the UAE central bank is laid out in this statute:

The Bank shall direct the monetary, credit and banking policy and supervise over its implementation in accordance with the State’s general policy and in such ways as to help support the national economy and the stability of the currency. For the attainment of its objectives, the Bank shall: (1) exercise the privilege of currency

May 2002, hosted the first international conference on *hawala*.²⁴⁷ Over three-hundred delegates representing regulatory bodies, law enforcement agencies, supranational institutions, banks, and money changers from nearly forty participating countries gathered in Abu Dhabi to map an effective regulatory strategy for *hawala*.²⁴⁸ The conference, hosted by the UAE Central Bank National Anti-Money Laundering Committee,²⁴⁹ culminated in the "Abu Dhabi Declaration" recognizing the need for a regulatory and supervisory system through licensing for *hawala* transactions while simultaneously acknowledging that *hawala*, as a system, "has some positive aspects" that should not be banned.²⁵⁰ Following the recommendations of the conference, the UAE Central Bank revised its resolutions regarding the regulation of financial and monetary

issue in accordance with the provisions of this [1980] Law; (2) endeavor to support the currency, maintain its stability internally and externally, and ensure its free convertibility into foreign currencies; (3) direct credit policy in such ways as to help achieve a steady growth of the national economy; (4) organize and promote banking and supervise over the effectiveness of the banking system according to the provisions of this [1980] Law; (5) undertake the functions of the bank of the Government within the limits prescribed in this Law; (6) advise the government on financial and monetary issues; (7) maintain the U.A.E. Governments reserves of gold and foreign exchange; [and] (8) act as the bank for banks operating in the Country; (9) act as the State's financial agent at the International Monetary Fund

Id.

247. *Poor Man's Private Banking*, Emirates Bank Group, at <http://www.emiratesbank.com/ebg/resourcecenter/insights/insights34.htm> (May 2002); see also CENT. BANK OF THE U.A.E., UNITED ARAB EMIRATES, SECOND INT'L CONFERENCE ON *HAWALA* – CONFERENCE STATEMENT (Apr. 2004). Recently, the UAE hosted the Second International Conference on *hawala* which "acknowledged and reaffirmed the important achievements of the First International Conference on *Hawala*. . . ." *Id.*

248. *Id.*

249. U.A.E. Anti-Money Laundering Law, art. 9 (1995) (U.A.E.). This article provides for the creation of an anti-money laundering committee named The National Anti-Money Laundering Committee which:

[S]hall be formed under the chairmanship of the Governor of the [UAE] Central Bank, consisting of representatives of the following agents, as per their respective nominations: [a] The Central Bank[;] [b] The Ministry of Interior[;] [c] The Ministry of Justice, Islamic Affairs and Awqaf[;] [d] The Ministry of Finance and Industry[;] [e] The Ministry of Economy and Commerce[;] [f] Municipalities, economic departments or other agencies concerned with issuing trade licenses[;] [g] The UAE Customs Council.

Id.

250. Vimala Vasan, *UAE Looking at Steps to Regulate Hawala Dealings*, BUSINESS LINE, May 29, 2002, at <http://www.blonnet.com/2002/05/29/stories/2002052900500600.htm>; see also Anthony E. Wayne, International Dimension of Combating the Financing of Terrorism, Testimony to the House Committee on International Relations, Subcommittee on International Terrorism, Nonproliferation and Human Rights (Mar. 2003), at <http://www.state.gov/e/eb/rls/rm/2003/19113.htm>. The *hawala* system "ha[s] been in operation for years and [is] considered quite a normal transaction in most cases [for people] who earn through legitimate means [such as] blue-collar expatriate workers and other expatriate employees [who] resort to *hawala* due to the low cost charged and faster delivery system it offers." *Id.*

intermediaries.²⁵¹ To this end, the “Central Bank had recently issued 61 certificates to *hawala* brokers while another 22 brokers will be registered in the coming period.”²⁵²

The UAE has had formal banking regulations and supervision for non-bank remitters’ operators since the 1980s with passage of Union Law No. 10.²⁵³ Subsequent resolutions to the laws permit moneychangers to be licensed as “money remitters.”²⁵⁴ Under the law, “*hawala* operators must record details of persons or institutions that transfer an amount . . . of 2,000 [Dirhams] or [its] equivalent in other currencies.”²⁵⁵ Additionally, the law requires particular documentation to be used by *hawaladars* for customer identification purposes.²⁵⁶ In transfers of less than 2,000 Dirhams, the transferor should be issued a receipt.²⁵⁷

Moreover, in January 2002 the UAE passed an anti-money laundering law imposing restrictions on monetary transfers.²⁵⁸ The council of Ministers of the UAE approved the UAE Anti-Money Laundering Law, which makes the laundering of property derived from unlawful means a criminal offense. Relevant provisions of this act call for: (1) the creation of a “‘financial information unit’ to deal with money laundering and suspicious cases;”²⁵⁹ and

251. See UNITED ARAB EMIRATES CENT. BANK BD. OF DIRS., CENT. BANK OF THE UNITED ARAB EMIRATES, REGARDING THE REGULATION FOR FINANCIAL AND MONETARY INTERMEDIARIES - RESOLUTION NO. 126/6/95 (1995); UNITED ARAB EMIRATES CENT. BANK BD. OF DIRS., CENT. BANK OF THE UNITED ARAB EMIRATES, REGARDING THE REGULATION FOR FINANCIAL AND MONETARY INTERMEDIARIES - RESOLUTION NO. 153/5/97 (1995).

252. *U.A.E. Defends Hawala System*, UAE Interact - The Official Website for the Ministry of Information and Culture of the UAE, at <http://www.uaeinteract.com/news/default.asp?cntDisplay=10&ID=220> (last visited Apr. 10.2005).

253. See *The Monetary System and Organization of Banking*, No. 10 (1980) (U.A.E.); see also QORCHI ET AL., *supra* note 3, at 25.

254. UNITED ARAB EMIRATES CENT. BANK BD. OF DIRS., CENT. BANK OF THE UNITED ARAB EMIRATES, REGARDING REGULATING OF MONEY CHANGING BUSINESS IN THE U.A.E - RESOLUTION NO. 123/7/92, art. 2 (1992) [hereinafter RESOLUTION 123/7/92]. This resolution provides for a licensing requirement in the United Arab Emirates stating that “no person, whether natural or juridical, shall carry on money changing business in the United Arab Emirates unless he is licensed in writing by the Governor of the Central Bank to do so in accordance with this Resolution or unless he is exempted from the provisions thereof.” *Id.* See also QORCHI ET AL., *supra* note 3, at 25.

255. QORCHI ET AL., *supra* note 3, at 25; see also Resolution 123/7/92, *supra* note 254, art. 4(2); Press Release, Central Bank of the United Arab Emirates, Anti-Money Laundering New Law, at <http://www.cbuae.gov.ae/Releases/AntiMoneyLaundering2.htm> (n.d.) (last visited Oct. 29, 2003). The central bank through a decision of its Board of Directors reduced the thresholds for official identification to 2,000 Dirhams from 200,000 Dirhams for moneychangers. *Id.*

256. QORCHI ET AL., *supra* note 3, at 25. The law requires that the documents listed be used for customer identification: “(1) passport; (2) U.A.E. ID card for U.A.E nationals; (3) labor card for non-U.A.E. nationals; or (4) driver’s license.” *Id.*

257. *Id.*

258. *Id.*

259. UAE Anti-Money Laundering Law, at art. 7. This article states that:

[T]here shall be established, within the Central Bank, a unit named the ‘financial information unit’ to deal with money laundering and suspicious cases, and to

(2) agencies “concerned with licensing and supervision of financial institutions or other financial, commercial and economic establishments” to establish “mechanisms to ensure compliance of those institutions.”²⁶⁰

2. Assessment of UAE Legislation

The UAE has largely followed Pakistan’s strategy of balanced regulation of *hawala* through licensing while also making additional efforts to address weaknesses that may exist in the formal sector.²⁶¹ Like Pakistan, the UAE recognized that “[o]ver-regulation or, indeed, making [*hawala*] illegal would not work . . . [i]t would drive the business[es] underground” like the case in India.²⁶² However, as the UAE, distinct from India and Pakistan, is primarily a *hawala* remitting country, its regulatory approach must have an increased focus on effective law enforcement and improved service quality in order to deter *hawala* transactions at their source.²⁶³

Unlike the Indian and Pakistani cases, the UAE enjoys a heightened quality of political stability and formal financial sector security, each of which, as has been demonstrated in India and Pakistan, has an important influence on the regulatory attitude toward *hawala*.²⁶⁴ As the UAE is primarily a *hawala*-remitting country, the regulatory scheme adopted by UAE authorities recognizes this fact, and its supervisory interest stems primarily from concerns

which reports of suspicious transaction shall be sent from all financial institutions and other financial, commercial and economic establishments. The committee shall determine the format for reporting suspicious transactions and methods of communicating reports to the said unit. The said unit shall render the information available with it at the disposal of law enforcement agencies to facilitate their investigations. The said unit may exchange information on suspicious transactions with their counterparts in other countries in accordance with international conventions to which the state is party, or on the basis of reciprocity.

Id.

260. U.A.E. Anti-Money Laundering Law, art. 11. This article states that: [A]gencies concerned with licensing and supervision of financial institutions or other financial, commercial and economic establishments are required to establish appropriate mechanisms to ensure compliance of those institutions with anti-money laundering rules and regulations in the state. This should include reporting of suspicious cases, upon detection thereof, to the unit stated in Article 6 herein.

Id.

261. See Interview by International Herald Tribune with Sultan bin Nasser Al-Suwaidi, the United Arab Emirates Central Bank Governor (Oct. 10, 2003).

262. *Id.* Sultan bin Nasser Al-Suwaidi, the UAE Central Bank Governor, recognized the challenge he faced was to:

[C]reate a system that enabled the many people, particularly foreign workers, who have used the [*h*]awala system for legitimate purposes, to continue doing so, while making it as difficult as possible for those who want to abuse the [*h*]awala system for illegal purposes.

Id.

263. See QORCHI ET AL., *supra* note 3, at 25.

264. *Id.* at 27.

about *hawala*'s potential for abuse.²⁶⁵ Consequently, the UAE has cooperated with international efforts to prosecute criminal *hawala* operations, in particular with respect to the international effort against Al-Barakaat, a Somali-based *hawala* operation.²⁶⁶ Al-Barakat had locations in over forty countries and used its *hawala* system to provide "material, financial and logistical support" to terrorist groups through its financial center located in Dubai.²⁶⁷ The UAE, coordinating with the United States Department of Treasury, was able to successfully block Al-Barakat's assets in Dubai, disrupting the organizations cash flow in excess of sixty-five million dollars.²⁶⁸ Indeed, the UAE's balanced legislative and enforcement technique worked to successfully undermine the financial power of trafficking networks and organized crime, amplified by the case of Al-Barakat.²⁶⁹

CONCLUSION

Hawala transfers provide a cost effective, speedy, reliable, and trustworthy method for remittances. The *hawala* system has survived because of its demonstrated resilience in a banking market that is both competitive and efficient. The mechanics behind a typical *hawala* transfer, consisting of transactions across international lines involving multiple currencies and settlement procedures, do not differ from other remittance systems, the only derogation being *hawala*'s existence in the informal realm. Having legitimate purposes, such as worker remittances, humanitarian relief and personal investment expenditures, *hawala* plays an important role in many nations. However, like any other financial system, *hawala*'s susceptibility to abuse for illegitimate purposes, like smuggling, money laundering, and terrorist financing has drawn serious criticism from the international community.

The Financial Action Task Force, a creation of the Group of Seven Industrialized Nations, has taken the lead in modeling and recommending that countries adopt legislation to regulate informal fund transfers, including *hawala*. FATF's list of Forty Recommendations and subsequent addition of Eight Special Recommendations has served as the benchmark for domestic efforts to regulate the informal banking sector. FATF's active role in identifying, reviewing, and sanctioning non-compliant countries has served as motivation for nations to adopt FATF style policies based on licensing of individuals engaged in the informal business transactions. However, FATF recommendations fail to account for several economic incentives inherent in the *hawala* system. A detailed study of India, Pakistan, and the UAE reveals the

265. *Id.* at 27.

266. Press Release, Statement of Jimmy Gurule, Under Secretary for Enforcement U.S. Department of the Treasury Before the Commission on Security and Cooperation in Europe (May 8, 2002) (transcript available with author).

267. *Id.*

268. *Id.*

269. *Id.*

importance of a country's economic and political environment in reigning in the *hawala* system.

India's strict approach to regulating its informal economy, amounting to an all-out ban on *hawala*, had poor results. Due, in part, to India's corrupt democratic system, India's legislative efforts to curb *hawala* transactions have largely been underscored, despite its attempts to implement many FATF recommendations. This result can be explained by deficiencies in FATF's recommendations that fail to account for political reforms necessary in many *hawala* remitting and receiving countries. Conversely, more recent efforts by Pakistan and the UAE have seemingly accounted for the Indian mistake of over regulation and have attempted to reign in *hawala* transactions through gradual licensing requirements coupled with financial and political sector reforms, offering competitive remittance alternatives to *hawala*. In Pakistan, for instance, efforts to regulate *hawala* took shape after a political overhaul of the Pakistani government. Additionally, successful cooperative efforts to reign in criminal *hawala* enterprises based in the UAE highlight the important role *hawala* remitting countries play in the *hawala* regulatory effort.

Given these considerations, countries seeking to regulate their *hawala* markets would serve themselves well by examining India, Pakistan and the UAE as examples of both effective and ineffective polices and legislation. Pakistan and the UAE have recognized the inherent economic incentives to engage in *hawala* and have taken advantage of their domestic political climates to implement balanced legislative and political reforms that recognize and respond to these incentives. Other net *hawala* remitting and receiving countries should follow suit and implement similar balanced economic and political responses.