

A Study on Prevention of Money Laundering Act, 2002

{As amended by the Prevention of Money Laundering
(Amendment) Act, 2012 (2 of 2013) (w.e.f. 15-02-2013)}



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

Over the last decade, the globalization has been accompanied by the growth of cross-border and national underground economies fueled by illegal businesses. The Governments across the globe have initiated several measures besides putting in place a legal and administrative framework to detect and prevent these illegal businesses or fund trafficking by adopting the legislative framework of Anti Money laundering. Since it has a major affect on the financial health of the system of any country, there is a need for enhanced transparency and financial integrity in national financial systems. It is, therefore, critically important to have in place strong antimony laundering/combatting the financing of terrorism (AML/CFT) oversight mechanisms, to protect the integrity of the financial system, and also to ensure that public funds mobilized to address the financial crisis will not be misused or misappropriated.

Chartered Accountants with their expertise in financial matters and exposure to business/commerce have a special role to play in the war against money laundering and contribute in the efforts made by the Government in this regard. Further, the new developments and the regulatory prescriptions in the area also throw open new areas of professional practice for the members.

It is in this context that the Committee on Economic, Commercial Laws & WTO of the Institute of Chartered Accountants of India (ICAI), considering the importance of the matter, has decided to revise and update the publication on "A Study on Prevention of Money Laundering Act 2002" to apprise the members with the international compliances, financial Regulation and supervision under the law.

I wish to place on record my appreciation to CA. Sanjay Agarwal, Chairman, Committee on Economic, Commercial Laws & WTO and other members for their invaluable contribution in revising and updating this publication.

I hope this publication would serve as a useful guide to all the members and other interested users in their professional services

New Delhi
February 3, 2015

CA. K. Raghu
President, ICAI

Preface

Money laundering has become a world-wide menace. It is a threat to the good functioning of a financial system; however, it can also be the Achilles heel of criminal and anti-national activities. The inevitable social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious and hazardous to not only the business environment, but to the society as a whole. Most fundamentally, money laundering is inextricably linked to the underlying unethical and anti-social activities. Money Laundering enables such activities to continue as also expand their horizon which can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society across borders. For most countries, money laundering and terrorists' financing raise significant issues with regard to their prevention, detection and prosecution of those involved therein – directly or indirectly.

In the background of the above and the amendments to the Prevention of Money Laundering Act, 2002, by the related Amendment Act, 2012, the Committee on Economic, Commercial Laws, and WTO thought it necessary to make available the revised edition of its publication "A Study on the Prevention of Money Laundering Act, 2002", for the benefit of the members and all others concerned with or interested in the subject matter.

Through this revised publication, viz., "A Study on the Prevention of Money Laundering Act 2002" {As amended by the Prevention of Money Laundering (Amendment) Act, 2012 (2 of 2013 (w.e.f. 15-02-2013)}, of the Committee seeks to sensitise to the legal framework of the anti money laundering legislations, duties and obligations cast on the designated parties, authorities prescribed under the legislation vis-à-vis prevention of money laundering, and also the emerging professional opportunities in the area.

I am thankful to CA. K. Raghu, President, ICAI and CA. Manoj Fadnis, Vice-President, ICAI for the guidance extended to the Committee.

My sincere thanks are also due to my colleagues in the Committee, viz. CA. Shyam Lal Agarwal, (Vice-Chairman), CA. Tarun Jamnadas Ghia, CA. Dhinal Ashvinbhai Shah, CA. Nilesh Shivji Vikamsey, CA. M. Devaraja Reddy, CA. S. Santhanakrishnan, CA. Naveen N.D. Gupta, CA. Sanjiv Kumar Chaudhary, Shri Sunil Kanoria, Shri R.K. Jain (Members) and CA. Prasad N

L, CA. Prabhu Dayal Baid, CA. Ajay Kumar Alipuria (Co-opted members) and CA. Rajat Mengi (Special Invitee) for their valuable involvement in bringing out this revised edition of the Study.

My gratitude to Dr. Binoy Gupta, Chief Commissioner of Income Tax (Retd.) and the members of the Special Group that was constituted for revision and updation of this publication, namely, CA. Manoj Kumar Aggarwal, CA. Vijay Kumar Gupta, CA. Ajesh Kumar Aggarwal, CA. Sidharth Jain, CA. Sunil Kumar Gupta and CA. Anil Kumar Jain for their technical support in the above endeavour.

I would also like to place on record the appreciation for contribution made by the Committee Secretariat.

I hope that the readers would find the Study useful.

New Delhi
February 3, 2015

CA.Sanjay Agarwal
Chairman
Committee on Economic, Commercial Laws & WTO

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Chapter 1

Background

1. Meaning of money laundering:-

The term "money laundering" is said to have originated from the Mafia ownership of Laundromats (a self-service laundry service mark Laundromat) in the United States. Drug lords and gangsters in the 1950s showed the illegally earned money from a legitimate source by purchasing outwardly legitimate businesses to mix their illicit earnings with the legitimate earnings they received from these businesses and thus the word 'Laundering emerged'.

The original sighting was in newspapers reporting the Watergate scandal in the United States in 1973. The expression first appeared in a judicial or legal context in 1982 in America essentially in a drug trafficking context.

In Black's Law of Lexicon "the term laundering is referred to as investment or other transfer of money flowing from racketeering, drug transactions and other sources (illegal sources) into legitimate channels so that its original source cannot be traced."

In common parlance Money laundering is the process by which the proceeds of the crime and the true ownership of those proceeds, are concealed or made opaque so that the proceeds appear to come from a legitimate source thus making "dirty" money appear "clean".

2. Sources of Illegal Money:-

Money laundering washes the dirt off from the money / proceeds or profits generated from:

1. Real estate transactions
2. Drug trafficking
3. People smuggling
4. Arms, antique, gold smuggling
5. Casinos & Gambling avenues (such as Horse Race & lotteries)

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6. Prostitution rings
7. Financial frauds
8. Corruption, or
9. Illegal sale of wild life products and other specified predicate offences

Though the term "money laundering" was invented in the 20th Century, the activity of money laundering has been around far longer. Sterling Seagrave in his book *Lords of the Rim* provides a roundup of the history of the Overseas Chinese. He explains how the abuse of merchants and others by rulers led them to find ways to hide their wealth, including ways of moving it around without being identified and confiscated. Money laundering in this sense was prevalent 4000 years before Christ.

Money laundering is called what it is because that perfectly describes what actually happens: illegal or dirty money is put through a cycle of transactions, or washed, so that it comes out from the other end as legal or clean money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that they can eventually be made to appear as legitimate income.

3. Capone's Case:-

Almost a century ago, alcohol was prohibited in the U.S. There were many criminal gangsters who manufactured and distributed alcohol. One of the most famous Chicago gangsters was Al 'Scarface' Capone. Contrary to popular belief, Capone was not a part of the Mafia. He actually spent his entire life fighting the Mafia. He had never worked in the U.S. military.

He was such a nuisance that President Herbert Hoover declared him Public Enemy No. 1 and ordered action against him. Several Government Departments, including the Income Tax department, went after him.

Systematic money laundering was unknown in those days, for it was quite a simple process. The money launderers simply picked up bagfuls of loose notes from retail dealers and deposited them in the nearest banks. The banks did not ask any questions. They were only too happy to receive huge sums of money.

Capone claimed that he was earning less than 5,000 USD a year, the threshold limit for paying Income Tax; that his income was not taxable and therefore he was not required to file any returns of income nor required to

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pay any taxes. Capone did not have a bank account or any investment in his own name.

Systematically and laboriously, Federal Agent Frank J. Wilson collected details of Capone's expenses. At the end of it, Capone was charged and tried for evasion of Income Tax. In spite of persistent threats to the jurors and bribery offers, resulting in last minute change of the entire jury, Capone was found guilty on all counts.

In October 1931, Capone was sentenced to 11 years imprisonment and a fine of 50,000 USDs, - the severest punishment till then imposed for a tax offence. His appeals were dismissed and he spent his term in the infamous Alcatraz prison in St. Francisco Bay. Capone's conviction made it clear that even earners of illegal income have to properly plan their tax affairs. His conviction paved the way for modern money laundering.

4. Alcohol Sale:-

Prohibition was lifted in 1933. By this time, Capone, who was in prison, had been replaced by his friend, the Sicilian Charlie 'Lucky' Luciano. Luciano befriended Meyer Lansky, a Jew, who originated modern money laundering techniques.

5. Origin of Mafia:-

In the 1950s, Senator Estes Kefauver's Special Senate Committee on Organized Crime held a series of televised hearings, which, for the first time, made the public aware of the existence of the worldwide criminal syndicate, which came to be known as the Mafia. The identities of a number of its leading members also became public knowledge. This led to the passing of the Narcotics Control Act in 1956.

The world's biggest drug traffickers met in the Grand Hotel, Palermo from October 10 to 14, 1957 to work out new strategies. From this date, money laundering changed from an unstructured series of unrelated events to a sophisticated, organized and institutionalized system of alternate financial management, as we know it now.

6. Beginning of Regulation

By 1970, money laundering had become a serious problem. The U.S. Government passed The Currency and Foreign Transactions Reporting Act

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of 1970 requiring all banks to report cash transactions in excess of \$ 10,000 a day (the original limit was \$ 1,000). Individuals carrying more than \$ 5,000 across the border were required to submit similar reports.

But in practice, these provisions were breached with impunity by simply splitting the transactions to below \$ 10,000, a process called smurfing.

In 1986, the US Government made attempts to avoid the reporting requirements a distinct criminal offence.

Ironically, one of the methods of concealing the source of money was legal gambling. The major headache that gangsters faced was that the money was in cash, often in small denomination coins. If the coins were put into the bank, questions would be asked. And the storage of large amounts of money in low value coins is a storage nightmare. So they created businesses, slot machines and laundries. That is how the term "money laundry" was born.

Money laundering means different things in different countries. This is because only proceeds of crime (or criminal conduct) can be laundered. Also, many countries have restricted the classification of crimes that are regarded as underlying crimes for money laundering. In some countries, any criminal activity for which, if a person were convicted would lead to a sentence of imprisonment will be regarded as a predicate crime, whilst in others only offences described in a list are to be regarded as creating "dirty money". A further twist is that some countries will allow a person to be prosecuted for laundering the proceeds of criminal conduct overseas, provided the conduct would have been criminal in both countries.

In most countries that have counter-money laundering laws, a person can be guilty of the offence of laundering the proceeds of someone else's criminal conduct. Many countries have laws that make laundering a continuing offence and the date of the predicate crime is irrelevant. Also, many countries have changed the law recently in two important ways.

The first is to include a provision for a person to be guilty of money laundering if there is a "reasonable cause for suspicion". That means that a Court can infer that the person knew or ought to have known that the money was, or was likely to have been, the proceeds of criminal conduct.

The second is to include a provision that it is an offence to be involved in laundering type transactions where the money is intended by someone else to be used in the preparation for or execution of a crime.

Chapter 2

Professional Opportunities for Chartered Accountants

Chartered Accountants, with their inherent abilities sharpened by the specialized knowledge of accounts, finance and law, experience and attention to detail can provide the following services to their clients, being reporting entities, Law Enforcement agencies and others in relation to the Prevention of Money Laundering Act, 2002.

1. As consultants

- (a) By their vast expertise in handling huge quantitative data for verification of the exact nature of transactions.
- (b) Developing data marts to track and monitor deviant patterns and analyzing customer behavior pattern.
- (c) By building effective AML programs for financial organisations to protect them from potential threats.

2. As trusted partners of the Government

- (a) By implementation of the Prevention of the Money Laundering Act, 2002 in letter and spirit. The implementation assistance could be in the form of developing AML policy and control architecture.
- (b) By KYC/PMLA investigations and inspections.

3. Conducting Know-Your Customer [KYC] audit

- (a) By using customers due diligence procedures to confirm the identity of clients from the records produced by him.
- (b) By systems audit for checking customer's Identity from external database.
- (c) By formulating and implementing the programme of KYC and forwarding it to the Director (appointed under Section 49 of the PMLA Act, 2002 [Rule 9 (7) of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005.

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4. Advisory services:

By identifying the risk and mitigating controls in the customer area of acceptance, retail, banking and sales channel management.

5. General role

Special reviews, inspections and investigations arising from Suspicious Transaction Reporting (STR).

As Compliance advisors: by interpreting various provisions of law and procedures and drafting documents.

Functional Consultants as implementers of AML systems.

6. Other opportunities to CAs under PMLA: - Following further opportunities (membership and representation) are available to CAs under PMLA

- (a) CAs having specialized qualifications as may be prescribed and having experience in the field of finance and accounts, can be appointed as a members of the Adjudicating Authority constituted by the Central Government u/s 6 of the PMLA.
- (b) A CA who has been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949) or as a registered accountant under any law for the time being in force or partly as a registered accountant and partly as a chartered accountant for at least ten years can be appointed as a member of the Appellate Tribunal constituted by the Central Government u/s 27 of the PMLA.
- (c) A CA can be an "authorised representative" [as defined under section 288(2) of the Income-tax Act, 1961] and can appear on behalf of its client in respect of an appeal preferred before the Appellate Tribunal-section 39(1) of PMLA.

7. Audit under PMLA Act 2002- A new Vista opened for Chartered Accountants:

Sub –section (1A) of section 13 of the PMLA Act, 2002 as amended till date, confers the following power on the Director to ensure compliance:-

“(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the

Professional Opportunities for Chartered Accountant

opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

(1B) The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the Central Government."

Further enabling provisions have also been inserted vide Rule 10B of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (as amended by Notification No. 12/2013 dated 27.08.2013) as under: -

"10B. Expenses for audit. (1) The expenses of, and incidental to, audit referred to in sub-section (1A) of section 13 of the Act (including the remuneration of the accountant, qualified assistants, semi-qualified and other assistants who may be engaged by such accountant) shall be paid in accordance with the amount specified in sub-rule (2) of rule 14B of the Income-tax Rules, 1962 for every hour of the period as specified by the Director.

(2) The period referred to in sub-rule (1) shall be specified in terms of the number of hours required for completing the report.

(3) The accountant referred to in sub-section (1A) of section 13 of the Act shall maintain a time sheet and submit it to the Director, along with the bill.

(4) The Director shall ensure that the number of hours claimed for billing purposes is commensurate with the size and quality of the report submitted by the accountant."

While Rule 10B read with Section 13(1A) and 13(1B) are self explanatory, it may be noted that by virtue of the above amendments, a whole new gamut of opportunities have been thrown open to Chartered Accountants.

Chapter 3

Definitions [Section 2]

The various definitions have been drastically amended by the Prevention of Money Laundering (Amendment) Act 2012. The following are the current definitions.

Sec 2(1)(a)-Adjudicating Authority

"Adjudicating Authority" means an Adjudicating Authority appointed under sub-section(1) of section 6;-

Sec 2(1)(b) - Appellate Tribunal

"Appellate Tribunal" means the Appellate Tribunal established under section 25;-

Sec 2(1)(c) - Assistant Director

"Assistant Director" means an Assistant Director appointed under sub-section (1) of section 49;-

Sec 2(1)(d) - Attachment

"Attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;-

Sec 2(1)(da)- Authorised Person

"Authorised person" means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999;-

Sec 2(1)(e) - Banking Company

"Banking Company" means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;-

Sec 2(1)(f) – Bench

"Bench" means a Bench of the Appellate Tribunal;-

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Sec 2(1)(fa) – Beneficial Owner – [Inserted by Amendment of 2013 – w.e.f. 15-02-2013]

"Beneficial Owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;'

Sec 2(1)(g) – Chairperson

"Chairperson" means the Chairperson of the Appellate Tribunal.

Sec 2(1)(h) – Chit fund company

"Chit fund company" means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in section 2 of the Chit Funds Act, 1982(40 of 1982);-

Sec 2(1)(ha) – Client [Inserted by Amendment of 2013 – w.e.f. 15-02-2013]

"Client" means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting.

Sec 2(1)(i) – Co-operative Bank

"Co-operative Bank" shall have the same meaning as assigned to it in clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961);

Sec 2(1)(ia) – Corresponding Law

"Corresponding Law" means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences

Sec 2(1)(ib) – Dealer [Inserted by Amendment of 2013 – w.e.f. 15-02-2013]

"Dealer" has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956 (74 of 1956)

Sec 2(1)(j) – Deputy Director

"Deputy Director" means a Deputy Director appointed under sub-section (1) of section 49;-

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Sec 2(1)(k) – Director or Additional Director or Joint Director

"Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 49;

Sec 2(1)(l) – Financial Institution

"Financial Institution" means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India

Sec 2(1)(m) – Housing Finance Institution

"Housing Finance Institution" shall have the meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987 (53 of 1987);-

Sec 2(1)(n) – Intermediary

"Intermediary" means,—

- (i) a stock-broker, sub-broker share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992); or
- (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 (74 of 1952) or any member of such association; or
- (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
- (iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);;-

Sec 2(1)(na) – Investigation

"Investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;-

Section 2 – Definition

Sec 2(1)(o) – Member

"Member" means a Member of the Appellate Tribunal and includes the Chairperson;

Sec 2(1)(p) – Money-Laundering

"Money-Laundering" has the meaning assigned to it in section 3;

Sec 2(1)(q) – Non-banking Financial Company

"Non-banking Financial Company" shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);-

Sec 2(1)(r) – Notification

"Notification" means a notification published in the Official Gazette;-

Sec 2(1)(ra) - Offence of Cross Border Implications

"Offence of Cross Border Implications" means.-

- (i) Any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to India; or
- (ii) Any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation: Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-Laundering (Amendment) Act, 2009.

Sec 2(1)(rb) – Payment System [Inserted by Amendment of 2009]

"Payment System" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

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Explanation: For the purpose of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;-

Sec 2(1)(rb) – Payment System Operator [Inserted by Amendment of 2009]

"Payment System Operator" means a person who operates a payment system and such person includes his overseas principal.

The explanation to this clause has given an exhaustive definition of overseas principal to cover people who are indulging in such activities from outside the country.

Sec 2(1)(s) – Person "Person" includes—

- (i) an individual,-
- (ii) a Hindu undivided family,-
- (iii) a company,-
- (iv) a firm,-
- (v) an association of persons or a body of individuals, whether incorporated or not,-
- (vi) every artificial judicial person not falling within any of the preceding sub clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;-

Sec 2(1)(sa) – Person Carrying on Designated Business or Profession [Inserted by Amendment of 2013 – w.e.f. 15-02-2013]

"Person carrying on designated business or profession" means,—

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;
- (iii) real estate agent, as may be notified by the Central Government;
- (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- (v) person engaged in safekeeping and administration of cash and liquid

Section 2 – Definition

securities on behalf of other persons, as may be notified by the Central Government; or

- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time-to-time;

Comment : These are the new reporting entities. It needs to be noted that lawyers and chartered accountants are not included in this.

Sec 2(1)(sb) – Precious Metal

"Precious Metal" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;-

Sec 2(1)(sc) – Precious Stone

"Precious Stone" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;-

Sec 2(1)(t) – Prescribed

"Prescribed" means prescribed by rules made under this Act;-

Sec 2(1)(u) – Proceeds of Crime

"Proceeds of Crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;-

Sec 2(1)(v) – Property

"Property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

Explanation.—For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences

Sec 2(1)(va) – Real Estate Agent [Inserted by Amendment of 2013 – w.e.f. 15-02-2013]

"Real Estate Agent" means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994 (32 of 1994):-

Sec 2(1)(w) - Records

"Records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

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Sec 2(1)(wa) – Reporting Entity [Inserted by Amendment of 2013 – w.e.f. 15-02-2013]

"Reporting Entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession

Sec 2(1)(x) – Schedule

"Schedule" means the Schedule to this Act;

Sec 2(1)(y) – Scheduled Offence

"Scheduled Offence" means--

- (i) the offences specified under Part A of the Schedule; or
- (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or
- (iii) the offences specified under Part C of the Schedule;-

Comment: Earlier Part B has now been merged with Part A of the Schedule to PMLA. Now there is no Part B in the Schedule and hence no monetary limit of Rs. 30 lakhs. Only Part A and Part C exist in the Schedule where there is no monetary limit.

Sec 2(1)(z) – Special Court

"Special Court" means a Court of Session designated as Special Court under sub-section(1) of section 43;-

Sec 2(1)(za) – Transfer

"Transfer" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;-

Sec 2(1)(zb) – Value

"Value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

Sec 2(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such

provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

Chapter 4

What is Money Laundering

While there are several definitions of money laundering, the one that is commonly used is that of the **Financial Action Task Force on Money Laundering (FATF)**. It defines money laundering as "the processing of criminal proceeds to disguise their illegal origin" in order to "legitimize the ill-gotten gains of crime."

Before this, the phrase money laundering was applied only to financial transactions involving organized crime. However, this is now being expanded to encompass any financial transaction that generates an asset or a value as the result of an illegal act, which may involve actions such as tax evasion or false accounting.

1. Offence of Money Laundering - Section 3

Section 3 of the Prevention of Money Laundering Act, 2002 defines the **offence of money laundering** as follows:

"Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the ***[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming]** it as untainted property shall be guilty of offence of money laundering."

The essential ingredients of this definition are:-

1. A crime has been committed;-
2. There are proceeds of or gain from the crime;-
3. There is a transaction in respect of the proceeds of the gains
4. There is involvement in any activity connected with the concealment of the tainted money.
5. Substituted for "proceeds of crime and projecting " by the Amendment Act of 2012

2. Process of Money Laundering:-

Money laundering process generally comprises of three stages: -

First Step – Placement

The first step involves division of the proceeds into smaller lots (smurfing), so as to make movements thereof less susceptible. During this stage the cash generated by the crime is gradually attempted to be inserted into the financial system. This is a delicate stage as transformation attempted is less in – transparent and hence vulnerable to be noticed.

In simple terms, 'placement' involves the conversion of cash into some other form of liquid asset like bank draft, traveler's cheques, etc.

Second Step – Layering

This is the second stage during which the funds introduced in the financial system are rotated, remixed, transferred and re –transferred repeatedly. This may also involve transfers within the country and across the country. With the advent of e-mail and wire transfers, the layering stage has become less trailable and more intriguing.

The dirty money introduced in the financial system is routed through shell corporations very often existing in offshore banking heavens. The object of "layering" is to distance the fund from the origin, so as to make it very difficult to reach back or trace the origin.

Third Step – Integration

This stage of money laundering concerns itself with successful merging into the legitimate finance stream. The launderer may choose to invest the funds into real estate, luxury asset and business ventures. It is by adopting different tools of integration that the "dirty money" becomes indiscernible from the "clean money".

3. Who provides the laundering services*

The only information available as to who launders money comes from criminal and civil investigations, and the data represent the interaction of enforcement tactics with the underlying reality. Enforcement may aim primarily at operations that are more professional (because they are higher-value targets) or less professional (because they are easier to catch). Drug

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dealers' money launderers may get more attention because the dealers themselves are under more intense scrutiny.

The most obvious nexus between the criminal and financial realms would be persons inside the financial institutions themselves. Bank employees can be coerced or bribed not to file suspicious activity reports (SARs) or currency transaction reports (CTRs). Alternatively, the forms may be filled out, with the government's copy conveniently filed in the trash while the other copy remains in a drawer in case of an investigation.

A lawyer can use his or her own name to acquire bank accounts, credit cards, loan agreements, or other Money-Laundering tools on behalf of the client. Lawyers can also establish shell corporations, trusts, or partnerships. In the event of an investigation, lawyer-client confidentiality privileges can be invoked. In one case cited by the FATF in its 1997-98 typologies report, a lawyer charged a flat fee to launder money by setting up annuity packages for his clients to hide the laundering. He also arranged for credit cards in false names to be issued to his clients, who could use the cards to make ATM cash withdrawals. The card issuer knew only the identity of the lawyer and had no knowledge of the clients' identities.

Other professionals involved in money laundering include accountants, notaries, financial advisers, stockbrokers, insurance agents, and real estate agents. A British report on serious and organized crime noted that in 2002, "purchasing property in the UK was the most popular method identified, involving roughly one in three serious and organized crime groups where the method was known" (National Criminal Intelligence Service 2003, 53).

*(Source – "Chasing Dirty Money- The Fight Against Money Laundering" , Author – Peter Reuter & Edwin Truman)

4. Markets for Laundering Services*

Since money laundering is a criminal service offered in return for payment, making laundering services more expensive would reduce their volume and thus the volume of predicate crime. Price might thus serve as a performance indicator. Unfortunately, law enforcement agencies do not systematically record price information acquired in the process of developing Money-Laundering cases, since that information is not necessary to obtain a conviction.

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Moreover, price is an ambiguous concept in this context. Apart from the fact that some laundering agents provide only partial services (for example, placement or layering), there are at least two possible interpretations of price: first, the fraction received by the launderer, including what he or she paid to other service providers, and second, the share of the original total amount that does not return to the owner's control.

The latter share could include tax payments, as in the case of a retail proprietor who might charge only 5 percent for allowing the commingling of illegal funds with his or her store's receipts, but then he may have to add another 5 percent for the sales tax that would be generated by these fraudulent receipts.

The policy-relevant price is the second of these, i.e., the difference between the amount laundered and the amount eventually kept by the offender. Pushing offenders to use laundering methods that involve smaller payments to launderers but higher total costs (for example, because of taxes) to the predicate offender is indeed preferable to raising the revenues received by launderers as a group; after all, the difference may include payments to the public sector. Such substitution might occur if the Government mounted more sting operations aimed at customers.

The difference is by no means only of theoretical interest. Take, for example, one case cited by the Egmont Group (2000) of high-priced laundering where most of the price did not accrue to the launderer. A credit manager at a car loan company was suspicious about one of his customers. "Ray" had just bought a luxury sports car worth about \$55,000, financing the car through the credit company for \$40,000, and paying the balance in cash. Records showed that Ray had taken out several loans over the past few years, all for the same amount of money and with a large portion as a cash deposit. In many cases the loans had been repaid early with cash. The national financial intelligence unit realized Ray was laundering for a long-established criminal organization, putting cash from the sale of drugs into the banking system. He would resell the newly bought cars, obtaining checks to deposit into a single bank account,

in all totaling over \$300,000. The losses made on the loan and the drop in the automobiles' resale values were the cost of obtaining "clean" money.

The price paid for a particular money laundering service apparently is partly a function of the predicate crime and the volume of funds that needs to be

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laundered. Whereas legitimate financial transactions generate lower per-unit costs the larger they are, the opposite is true for money laundering—the risk of detection is a major cost, and that risk will rise with the quantity being laundered.

On the other hand, a broker involved in Colombian black market peso operations stated in an interview that he charged less for larger volumes of money. He once garnered between \$600,000 and \$700,000 (5 to 6 percent) on a \$12 million transaction that took two months to process. (Source -Public Broadcast Service (PBS) interview. Refer www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/david.html)

A large number of money laundering cases appear to involve opportunistic laundering rather than professional services. Where someone apart from the offender provides the service, he may provide it only to that offender, perhaps because they are related or connected through some other activity. Drug dealers appear to be more likely to purchase formal Money-Laundering services.

*(Source – “Chasing Dirty Money- The Fight Against Money Laundering” , Author – Peter Reuter & Edwin Truman)

Chapter 5

Why is Money Laundered

The gains of a crime are a direct link between the crime and the criminal who committed the crime. A criminal would be cautious in out letting the gains so as not to expose him to any suspicion. The huge amount illegally generated cannot be put to any use at once in entirety. The gains so made are therefore, needed to be concealed and converted so as to put them into such use that the same may make legitimate earning for the criminal or that the same can be reconverted for felicitating commission for further crimes.

The goal of large number of criminal acts is to generate a profit for the individual or group that carries out the Act. Today money laundering attracts the most attention when associated with trafficking in illicit narcotics. However, enterprising criminals of every sort, from stock fraudsters to corporate embezzlers to commodity smugglers, must launder the money flow, for 2 reasons:

1. The money trail itself can become evidence against the perpetrators of the offence.
2. The money per se can be the target of investigation and action.

1. Impact on Economy:-

Money laundering poses a serious threat to financial system integrity .It may emerge as a parallel economic system within a nation, controlled by a few. This may destabilize and perish a sound economy.

Among the negative effects of money laundering on countries are full range of severe macro economic consequences such as:

1. Unpredictable changes in money demand.
2. Prudential risks to the soundness of financial institutions and financial system.
3. Contamination effect on legal, financial transactions.
4. Increased volatility of International capital flows and exchange rates due to anticipated cross border transfers.

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5. Money-Laundering can have a dampening effect on foreign direct investment;- if a country's commercial and financial sectors are preserved to be under the control and influence of organized crime. (International Monitoring Fund).

Large scale money laundering would greatly influence in an adverse manner, the pattern of consumption, savings and investment making inroads on national economy. Combating money laundering is essential as it is threat to the good functioning of a financial system; however it can also be Achilles Heal of the criminal activity.

When funds are derived from crimes like robbery, extortion, embezzlement or fraud, Money-Laundering investigation is often the only way to locate the stolen funds and restore them to the victims.

2. Hawala remittances:-

The word Hawala means "trust" or "exchange", "hundi" means "bill of exchange ". It is an alternative remittance system that enables the transfer of funds without their actual physical movement (often without the use of a traditional financial institution). Very often using hawala is more cost effective and less bureaucratic than moving funds through officially recognized banking system.

Hawala is an alternative remittance system, traditionally operating outside the conventional financial sector, where value or funds are moved from one geographic location to another. Hawala has advantages of speedy transfer, lower rate of commission, and sure delivery. As the Hawala dealers do not have to maintain the infrastructure which normally a bank would be required to maintain, it is possible for the Hawala operator to keep the expenses minimum, resulting into lower charging rate .The method of transfer also assures more secrecy and no paper trail. It is for these reasons that the Hawala system is preferred over the other legitimate system of transferring funds.

3. Status of Anti-Money Laundering measures in other countries:-

- Offshore is where most of the world's dirty money is allegedly laundered, estimated at up to \$500 billion a year, more than the total income of the world's poorest 20%.

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- UK - £20 billion is generated annually by organised crime.
- USA - 9% of GDP
- Germany - 10% of GDP, while Italy, Greece and Spain are believed to have black economies amounting to approximately 25% of their GDPs
- In Russia and Central and Eastern Europe, it is anticipated that the black economy could amount to as much as 50% of GDP
- More money is stolen from the African continent every year than is donated in aid.
- Tax Havens have 1.2% of the world's population and hold 26% of the world's wealth, including 31% of the net profits of US MNCs United States multinationals.

Anti-Money Laundering Statues in other countries:

The awareness brought about due to the menace of drug trafficking and terrorism has led major countries of the world to enact laws or provide for anti-money laundering provisions. The measures taken by some of the countries are evident in the following statutes:

| <i>Country</i> | <i>Statues</i> |
|----------------|--|
| India | <ol style="list-style-type: none"> 1. Prevention of Money Laundering Act , 2002 2. Other Laws for Prevention of Money Laundering <ul style="list-style-type: none"> • Smugglers and Foreign Exchange Manipulators Forfeiture of Property Act, 1976 • The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) • The Benami Transactions (Prohibition) Act, 1988 • The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 |

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| <i>Country</i> | <i>Statues</i> |
|----------------|---|
| | 3. Other Related Acts having PMLA purview & implications <ul style="list-style-type: none"> • Banking Regulation Act ,1949 • Chit Funds Act ,1982 • DICGC Act, 1961 • NABARD Act,1981 • National Housing Bank Act ,1987 • RBI Act, 1934 • SEBI Act, 1992 • Insurance Act, 1938 • IRDA Act 1999 |
| USA | 1. Bank Secrecy Act, 1970 2. Money Laundering Control Act, 1986 codified at 18 USC Section 1956 and Sec.1957. 3. Annunzio-WyLie Anti-Money Laundering, 1992 Act. 4. Money Laundering Suppression Act, 1994. 5. Money Laundering and FinancialCrimes Strategy Act, 1998. 6. Patriot Act, 2001 7. Intelligence Reform and Terrorism Prevention Act, 2004 |
| UK | 1. Terrorism Act, 2000 2. Proceeds of Crime Act, 2002 3. Money-Laundering Regulations, 2007 |
| Germany | 1. Money Laundering Act, 1993 2. Sec.261 of Criminal Code, 1998 |
| Australia | 1. The Anti-money Laundering and Counter Terrorism Financing Act, 2006. |
| Malaysia | 1. Anti Money Laundering Act, 2001 |

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| <i>Country</i> | <i>Statues</i> |
|----------------|--|
| Thailand | 1. The Money Laundering Prevention and Suppression Act, B.E.2542. |
| Singapore | 1. Monetary Authority of Singapore (Anti-terrorism Measures) Regulations, 2002 2. Monetary Authority of Singapore (Freezing of assets of person), Regulations |
| New Zealand | 1. Proceeds of Crime Act, 1991 2. Mutual Assistance in Criminal Matters Act, 1992 3. Financialtransactions Reporting Act, 1996. |

The various provisions deal with forfeiture of Laundered proceeds and properties, punishes the acts of Money-Laundering and terrorism financing imposes criminal and civil Liability and makes it obligatory to maintain due diligence, suspicious transactions reporting and keep records for various entities Like banks, financial institutions, gambling sector, bullion dealing, designated professionals.

4. Origin and legislative background of PMLA

It has been accepted worldwide that the most effective way to combat tainted money is to confiscate the tainted money. There fore, there has been a global effort to trace and confiscate such money. India has also enacted stringent anti money laundering legislation and has put in place an effective and efficient machinery to implement its provisions, in letter and spirit. The following is a brief history of the present PMLA.

- UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.
- Financial Action Task Force (FATF) established in Paris in 1989 and made 40 Recommendations to combat money laundering.

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- Political Declaration adopted by UN General Assembly by its Resolution No. S-17/2 on 23.02.1990 which calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

UN Special Session on countering World Drug Problem Together from 8th to the 10th June, 1998 made another declaration regarding the need to combat Money-Laundering and called upon the Member States to adopt national Money-Laundering legislation and programme; India is a signatory to this declaration and was therefore obliged to enact its national money laundering law.

The PML Bill 1998 was introduced in Lok Sabha on 04-08-1998.

- Referred to Standing committee on Finance on 05-08-1998.
 - The Committee submitted its report on 04-03-1999.
 - The Bill was presented in Rajya Sabha on 08-03-1999.
 - Lok Sabha was dissolved on 26-04-1999.
 - The PML, Bill 1999 was presented in Lok Sabha on 29-10-1999.
 - The PML, Bill 1999 was passed in Lok Sabha on 02-12-1999.
 - Rajya Sabha referred the Bill to Select Committee.
 - The Committee finalized its report on 24th July 2000.
- PML Bill, 1999 was passed by both the Houses of the Parliament and brought on the Statute book as the Prevention of Money- Laundering Act, 2002.
 - PMLA, 2002 received the assent of the President on 17th January, 2003 became as Act No. 15 of 2003. and came into force with effect from 1st July, 2005. The PMLA was amended by the PML (Amendment) Acts of 2005 (No. 20 of 2005), 2009 (No. 21 of 2009) and 2012 (No. 2 of 2013) to introduce the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries. The broader concept of 'reporting entity' was also introduced which includes a banking company, financial institution, intermediary or a person carrying on a designated business or profession. The Amendments have expanded the definition of offence

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under money laundering to include activities like concealment, acquisition, possession and use of proceeds of crime and has also removed the upper limit of fine of Rupees five lakhs.

Prior to 15th February, 2013, i.e., the date of notification of the amendments carried out in PMLA, the Schedule also had Part B for scheduled offences where there was a monetary threshold limit of Rs 30 lakhs for initiating investigations for the offence of money laundering. However, all these scheduled offences, hitherto in Part B of the Schedule, have now been included in Part A of Schedule w.e.f. In other words, the threshold limit of Rs 30 lakhs has been removed wef 15 February 2013

5. Methods of Money Laundering

The following methods show the means or the medium through which launderers carry out their activities:

- (a) **Structuring ("Smurfing"):** Smurfing is possibly the most commonly used money Laundering method. It involves many individuals, who deposit cash into bank accounts or buy bank drafts in small amounts to avoid the reporting threshold.
- (b) **Bank Complicity:** Bank complicity occurs when a bank employee is involved in facilitating the money Laundering process by opening multiple accounts without following KYC norms or by allowing operations in cash without reporting them.
- (c) **Money Services and Currency Exchanges:** Money services and currency exchanges provide a service that enables individuals to exchange foreign currency that can then be transported out of a country. Money can also be wired to accounts in other countries. Other services offered by these businesses include the sale of money orders, cashiers cheques, and travelers cheques.
- (d) **Asset Purchases with Bulk Cash:** Money Launderers may purchase high value items like cars, boats or Luxury items such as jewellery and electronic items. Money Launderers will use these items but will distance themselves by having them registered or purchased in an associate's name.
- (e) **Electronic Funds Transfer:** Also referred to as telegraphic transfer or wire transfer, this money Laundering method consists of sending funds

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electronically from one city or country to another to avoid the physical handling of money.

- (f) **Postal Money Orders:** The purchase of money orders for cash allows money Launderers to send these financial instruments out of the country for depositing them into foreign or offshore accounts.
- (g) **Credit Cards:** Overpaying credit cards and keeping a high credit balance gives money Launderers access to these funds to purchase high value items or to convert the credit balance into cheques.
- (h) **Casinos:** Cash may be taken to a casino to purchase chips that can then be redeemed for a casino cheque.
- (i) **Refining:** This money Laundering method involves the exchange of small denomination bills for Larger ones and can be carried out by an individual who converts the bills at a number of different banks in order not to raise suspicion. This decreases the handling of Large quantities of cash.
- (j) **Legitimate Business / Co-mingling of Funds:** Criminal groups or individuals may take over or invest in businesses that customarily handle a high cash transactions in order to mix Illicit proceeds with those of Legitimate businesses. Criminals may also purchase businesses that commonly receive cash payments, including restaurants, bars, night clubs, hotels, currency exchange shops, and vending machine companies. They will then mix criminal funds as false revenue with income that would not otherwise be sufficient to sustain a Legitimate business.
- (k) **Value Tampering:** Money Launderers may Look for property owners who agree to sell their property, on paper, at a price below its actual value and then accept the difference of the purchase price "under the table". In this way, the Launderer can, for example, purchase a 2 million-rupee property for 1 million rupees, while secretly passing the balance to the seller. After holding the property for some time, the Launderer sells it for its true value of 2 million rupees.
- (l) **Loan Back:** Using this method, a criminal provides an associate with a sum of illegitimate money and the associate creates paperwork for a Loan or mortgage back to the criminal for the same amount, including all the necessary documentation. This creates an illusion that the

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criminal's funds are Legitimate. The scheme's Legitimacy is further reinforced through regularly scheduled Loan payments made by the criminal.

6. Tax paid money is always "Clean Money" is it a myth

In common parlance no differentiation is made between 'Black Money' and 'Dirty Money'. Typically Money Laundering activity is associated with conversion of black money into white money. However, in reality money Laundering involves conversion of 'Dirty Money' (illegal source) into clean money (Legal business gain). Hence the Money Laundering process is a very vast activity. Taxation is a small subset of the entire activity.

7. FATF praises the efforts in India

In June 26, 2013 FATF stated that India had substantially addressed deficiencies in its regulatory checks against money laundering and terror financing activities and that India had significantly stepped up its probes into suspected money laundering and terror funding cases, although the low conviction rate remained a matter of serious concern. With a substantial improvement in India's regulatory provisions, FATF also decided to remove the country from its regular follow-up process for determining its compliance to the global AML/CFT standards. (India was put under this follow-up process in June 2010, when several gaps were noticed in its regulatory regime.)

In its 46-page status report on progress made by India on improving its AML/CFT regulatory regime, FATF lauded the efforts made by regulators such as RBI, SEBI and IRDA, as also the Finance Ministry, to ring-fence various financial activities from the money laundering and terror funding risks. It, however, observed that further efforts might be required for regulating casinos and non-profit organisations. With regard to financial services offered through a vast network of post offices, FATF said that necessary checks have been now put in place to avert any money laundering risks. The number of money laundering investigations in India has increased from 798 at the end of 2009 to 1,561 by April 2013. Besides, the number of persons accused of terror financing and the number of cases under probe has also increased and stood at 470 and 143 respectively between 2006 and March 2013. 'India is taking various actions with the aim to effectively

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implement the Prevention of Money Laundering Act. As a result, an increase in money laundering investigations and prosecution complaints can be observed. However, the absence of any money laundering conviction remains a serious effectiveness issue,' FATF said. With regard to the terror financing cases, FATF observed that the number of persons convicted has remained low, namely five in total between 2006 and March 2013, while there have been no new convictions since April 2011. 'In addition, there were no cases under trial in 2012, These figures reflect an effectiveness issue in the process that leads from accusation to conviction in India,' FATF said. 'Even though some improvement regarding effectiveness since the 2010 Mutual Evaluation Report (of regulatory checks in India) can be observed, the deficiency regarding effectiveness remains,' FATF said. With respect to the suspicious transactions reporting regime, the Financial Intelligence Unit has also enhanced its outreach programme to provide guidance to the financial sector on their reporting obligations, and has engaged in extensive compliance monitoring.

Chapter 6

Emerging Modus Operandi for Money Laundering

The Satyam Fraud Case

Large receipts from Fraudulent Financial Reporting crimes Lead to money Laundering arrangements.

The **Satyam Computer Services scandal** was publicly announced on 7 January 2009, when Chairman Ramalinga Raju confessed that Satyam's accounts had been falsified.

On 7 January 2009, company Chairman Ramalinga Raju resigned after notifying board members and the Securities and Exchange Board of India (SEBI) that Satyam's accounts had been falsified.

Raju confessed that Satyam's balance sheet of 30 September 2008 contained various inflated & wrong financial reporting. The amount involved in the said case was approximately Rs. 7000 Crores.

The matter is still under investigation and Large portion of money is being Laundered in various subsidiaries and companies of relatives to invest in the real estate.

As per SEBI's probe, as in mid 2014, the Satyam saga was India's biggest corporate fraud, a case of financial mis-statements to the tune of approximately Rs. 12,320 crores. SEBI ordered disgorgement of Rs. 1,849 crore worth of unlawful gains and another Rs. 1,200 crore of rupees as interest from B Ramalinga Raju, the Founder-Chairman, and four other top executives of erstwhile Satyam Computer, which was then the fourth largest IT firm in the country.

On 8 December 2014, the Economic Offences court in Hyderabad convicted B. Ramalinga Raju, his brother Rama Raju and eight others in a case of fraud filed by the Serious Fraud Investigation Office (SFIO) in 2009, and imposed on them a fine of Rs 5 lakh and 6 months of imprisonment. Those convicts were given a month to appeal against the ruling.

Many parties are being floated to launder money, warns EC

The Election Commission believes fraudulent political parties are being floated to Launder money which finds its way into the stock market and is also used to buy jewelery, but has Little to do with electoral campaigning or any other political expenses.

It says tax evasion and dubious donations could be behind a large number of defunct political parties in the country. The Commission says only 16% or 200 of 1, 200 registered parties were actually involved in political activities. Most of the other parties are floated to park money illegally as donations to exploit the tax exemptions enjoyed by registered political outfits.

Although not all inactive parties are dodgy, several instances of substantial cash transfers, ranging from Rs 15-30 Lakh, have been detected by the Commission which, it feels, were for non-political purposes.

Poll panel asks Finance Minister to probe accounts

Documents accessed through the Right to Information (RTI) Act show the Commission has been raising an alarm over an increase in the number of dud parties since 2006.

The Letter stated:, "Recently, the Commission has come across many cases of Little known unrecognized political parties receiving donations running into Lakhs of rupees, many times in cash, from individuals and companies." The Commission had also asked the Finance Ministry and the Central Board of Direct Taxes (CBDT) to examine the accounts of some parties. RTI documents, accessed by the Association for Democratic Reforms (ADR), shows two registered unrecognized political parties—Parmarth Party and Rashtriya Vikas Party—received cash and came under scrutiny. On March 3, 2006 EC secretary K F Wilfred asked CBDT to scrutinize the transactions. Parmarth Party received Rs 15 Lakh in just one transfer in 2004 while Rashtriya Vikas Party received two "donations" of Rs 75 Lakh and Rs 50 Lakh from one company within two months.

ADR national coordinator Anil Bairwal said, "A Lot of parties are being formed to Launder money. There is no transparency in the working of national parties either. We must have stronger Legislation that regulates political parties and makes them accountable."

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Political Fronts

1. Only 16% or 200 of 1,200 registered parties were actually involved in political activities
2. Several instances of big cash transfers ranging from 15-30 Lakh detected.
3. Most such parties floated to park money illegally as donations to exploit tax exemptions given to registered political outfits.

(Source: Article in The Times of India, 14th January, 2011)

Chapter 7

International Conventions and Resolutions

The year 1988 marked the starting point for an international strategy for countering drug related money. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances provided the first legal definition of Money-Laundering.

In addition, the Basle Statement of Principle adopted around the same time, involved the banking and financial system of all member countries in detecting funds of criminal origin and terrorism financing. Since then, a series of international legal measures and international initiatives have been established to fight the menace of money laundering.

1. The Vienna Convention or the 1988 Convention

The 1988 Convention against Unlawful Traffic in Narcotic Drugs and Psychotropic Substances, the fruit of the experience of nearly a century in drug control, is the first convention that laid the foundations of a new strategy to combat drug trafficking organizations. It moved away from emphasizing drug trafficking to attacking the goal of all organized crimes. The Convention recognized that "illicit drug traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels," and became the first international forum to launch the fight against the proceeds of crime. The Convention provided a definition of money laundering that has been incorporated in many laws as well as in most international conventions on the subject. The Convention also instituted a complete mechanism for mutual international assistance in the area of confiscation that seeks to resolve the problems that result from the fact that the assets in which drug traffickers invest their profits are not always found in the country where the party involved carries out these activities, where he has his domicile or even where he is arrested. Signed on October 20, 1988, the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances took effect on November 11, 1990. Till June 2014, 189 countries had ratified it.

2. The Strasbourg Convention or the Council of Europe's Convention on Laundering

The Convention adopts the definition of money laundering coined by the Vienna Convention, as well as the provisions on international cooperation in the area of seizure, confiscation and mutual judicial assistance in investigations. However, it extends the field of its intervention to all the proceeds of crime, defining them broadly as "any economic advantage from criminal offences." It also adopts the recommendations of the FATF with respect to the rules for preventing money laundering in banking and financial systems. All the members of the Council of Europe, except Armenia, Bosnia and Herzegovina, Georgia and Turkey have ratified it. Two non-members, Australia and Monaco, have also ratified it.

3. The OECD Convention on Corruption

The Convention on Combating Bribery of Foreign Public Officials' in International Business Transactions was signed by 35 signatories in Paris on December 17, 1997 and took effect on February 15, 1999. Its goal is to protect international trade (and by extension the emerging client States) from the scourge of corruption, while preserving equal opportunities among exporting countries. The Convention does not target only acts of active corruption in international business transactions (exchanges and investments). It requires the signatory States to make the corruption of foreign public officials a criminal violation and, pursuant to Article 3, to provide "effective, proportionate and dissuasive" sanctions against individuals and legal entities, comparable to those applied in the cases of corruption against its officials. It provides an autonomous definition of the notion of a foreign public official, whether or not they belong to a signatory state, as well as a broad interpretation of territorial jurisdiction. It published the OECD analysis of the cost of foreign bribery and corruption on 2.12.2014.

4. Recommendations of FATF

The FATF (Financial Action Task Force on Money Laundering) is an inter-governmental body, which sets standards and develops and advocates policies to fight money Laundering and terrorist financing. It currently has 36 members, 34 countries and governments and two international organizations; and more than 25 observers. It has five FATF-style regional bodies and more than 15 other international organizations or bodies.

The (FATF) was established by the G-7 Summit in Paris in 1989, with the

International Conventions and Resolutions

primary responsibility of developing a world-wide standard for anti-money laundering (AML) and combating the financing of terrorism (CFT). It works in close cooperation with other key international organizations, including the IMF, the World Bank, the United Nations, and FATF-style regional bodies (FSRBs), most of which participate in its meetings as observers.

FATF has devised and promulgated 40 Recommendations, which set out the basic, universally applicable framework for legal and regulatory systems, law-enforcement activities, and the work of supervisory and regulatory agencies. After September 11, 2001, the FATF expanded its mission beyond money Laundering and agreed to use its expertise in the worldwide effort to combat terrorist financing. An extraordinary FATF Plenary on Financing of Terrorism, held in Washington, D.C. in October 2001, issued 8 Special Recommendations on Terrorist Financing as a new international standard to supplement the 40 Recommendations. This standard has been subsequently expanded and elaborated and now includes 9 Special Recommendations.

Part B of the Forty Recommendations suggests the measures to be taken by financial institutions and non-financial business and professions to prevent money Laundering and terrorist financing. In February 2012, published Revised FATF Recommendations.

5. The Egmont Group Financial Intelligence Units (FIUs)

The fight against money Laundering has been an essential part of the overall effort to combat illegal narcotics trafficking, the activities of organised crime, and more recently the financing of terrorist activities. It became obvious over the years that banks and other financial institutions were an important source for information about money laundering and other financial crimes being investigated by law enforcement agencies. Concurrently, governments around the world began to recognize the virulent dangers that unchecked financial crimes posed to their economic and political systems. To address that threat, a number of specialized governmental agencies were created as countries around the world developed systems to deal with the problem of money laundering. These entities are now commonly referred to as "financial intelligence units" or "FIUs". They provide law enforcement agencies around the world with an important avenue for information exchange.

Recognizing the benefits inherent in the development of a FIU network, in 1995, a group of FIUs at the Egmont Arenberg Palace in Brussels decided to establish an informal group for strengthening international co-operation. Now known as the Egmont Group, these FIUs meet regularly to find ways of

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cooperation, especially in the areas of information exchange, training and sharing of expertise.

There are currently 190 countries with recognized operational FIU units, with some others in various stages of development. Countries have to go through a formal procedure established by the Egmont Group in order to be recognized as meeting the Egmont Definition of an FIU. The Egmont Group as a whole meets once a year. Since the Group is not a formal organization, it does not have a permanent secretariat. Administrative functions are shared on a rotation basis. Aside from the Egmont Support position, Working Groups and the Egmont Committee conduct common business.

FIUs, receive, analyze, and disclose information by financial institutions to competent authorities of suspicious or unusual financial transactions. Although every FIU operates under different guidelines, most FIUs, under certain provisions, can exchange information with their foreign counterparts. In addition, many FIUs can also be of assistance in providing government administrative data and public record information to their counterparts, which can also be helpful to investigators. One of the main goals of the Egmont Group is to create a global network by promoting international co- operation among FIUs.

The ongoing development of FIUs exemplifies how countries around the world continue to intensify their efforts to focus on research, analysis and information exchange in order to combat money Laundering, terrorist financing and other financialcrimes.

6. The Basel Statement of Principles

The Basel Committee on Banking supervision, which came to be formed in 1974 consists of a group of about 13 countries. The countries are represented by their Central Bank. Though the committee has no force of law it formulates broad supervisory standards and guidelines and recommends statements of best practices on a wide range of bank supervisory issues. It consists of 28 members and 4 observers.

The Basel Committee has issued "Statement on prevention of criminal use of banking system for the purpose of money laundering". The recommendations touch the following aspects.

- (a) Proper customer identification

International Conventions and Resolutions

- (b) High ethical standards and compliance with laws
- (c) Co-operation with Law enforcement authorities;
- (d) Policies and procedure to adhere to the statement.

"Banking Supervisors must determine that banks have adequate policies, practices and procedures in place, including strict "know your customer" rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally by criminal elements.

The Basel Committee has further issued an extensive paper on KYC (Know Your Customer) entitled "Customer due diligence for banks". The same are intended to benefit banks against its fight against money laundering. In addition, the Basel Committee in this document, strongly supports the "adoption and implementation of the Financial Action Task Force recommendations, particularly those relating to banks", and intends that the standard of Customer Due Diligence" be consistent with the FATF recommendations".

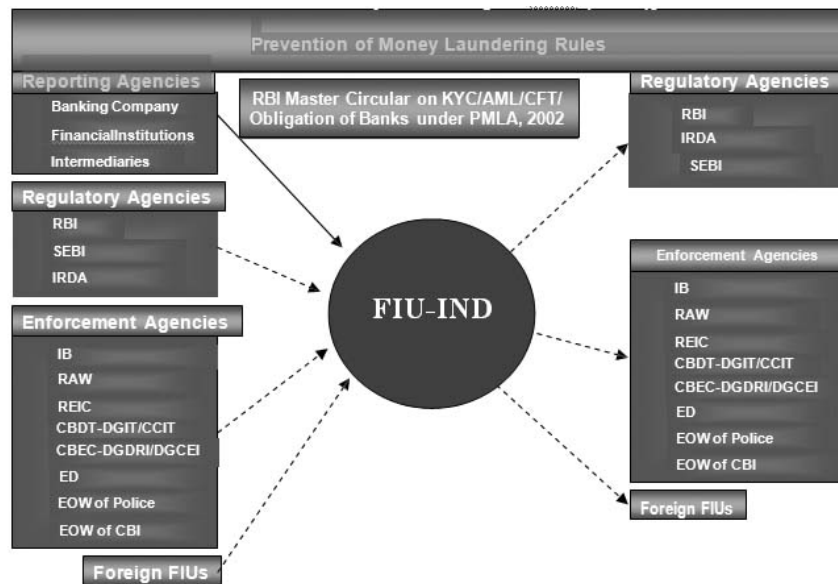
The Basel Committee has also laid down requirements for common equity, leverage ratios and liquidation ratios.

Chapter 8

Role of Financial Intelligence Unit-India

The Government of India vide O.M. dated 18th November, 2004 set up the Financial Intelligence Unit – India (FIU-IND) as the national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing global efforts against money Laundering and related crimes. FIU-IND is an independent body that reports directly to the Economic Intelligence Council (EIC), headed by the Finance Minister of the country.

1. AML framework in India



2. Powers of Financial Intelligence Unit (FIU)

The Director, Financial Intelligence Unit, India, under the Ministry of Finance,

Role of Financial Intelligence Unit-India

Department of Revenue, is empowered to exercise the exclusive powers conferred in respect of the provisions herein stated.

1. Clause (b) of sub-section (1) of section 12 and its proviso i.e. the Banking Company and Financial Institution and intermediary shall be liable to furnish information of transaction referred to in clause (a) and proviso of section 12 of the Act to the Director, Financial Intelligence Unit.
2. Power of director to impose fine under section 13 i.e. imposition of fine on Banking Companies or Financial Institution or Intermediary on failure to comply provision of section 12 of the Act.
3. Power under sub-section (2) of section 26 i.e. to present the case with respect to any Appeal before the Appellate Tribunal.
4. Power under sub-section (1) of section 50, regarding summons, production of documents and to give evidence etc., in respect of provisions of section 12 of the Act.

3. Core Functions of FIU-IND

The core functions of FIU-IND includes Intelligence Management, comprising of

- (i) Maintaining National database on Cash Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) received from reporting entities under PMLA
- (ii) Conducting analysis of CTRs/STRs received,
- (iii) Screening and processing requests from Domestic Law Enforcement and Intelligence agencies and foreign FIUs.
- (iv) Disseminating information to relevant domestic law enforcement and Intelligence agencies and foreign FIUs; and strategic management comprising of (a) reviewing regulatory and operational issues and suggesting policy changes to counter Money-Laundering and related crimes, (b) promoting awareness on issues concerning money Laundering and related crimes.

The following are some of the statistics published by the FIU-India.

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Cash Transaction Report Statistics

Description- This Statistics is generated annually from the Reports submitted by the Financial Sector on Monthly Basis for a Cash transaction or set of Transactions exceeding INR 10 Lacs in a particular Account in a calendar month.

| Type of Reporting Entity | CTRs Received 2007-08 | CTRs Received 2008-09 | CTRs Received 2009-10 | CTRs Received 2010-11 | CTRs Received 2011-12 | CTRs Received 2012-13 | CTRs Received 2013-14 | CTR Receipt till 31st March 2014 |
|----------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|
| Public Sector Banks | 20,62,742 | 31,08,675 | 44,13,849 | 54,63,252 | 69,03,096 | 43,48,060 | 31,31,651 | 3,15,46,270 |
| Private Indian Banks | 16,54,749 | 19,80,045 | 17,84,665 | 24,42,286 | 24,06,855 | 18,36,427 | 2,165,262 | 16,128,548 |
| Private Foreign Banks | 84,407 | 88,239 | 84,428 | 1,05,288 | 83,655 | 78,574 | 34,488 | 5,99,659 |
| Cooperative Banks & Others | 1,58,015 | 3,34,191 | 4,11,462 | 6,76,281 | 8,04,646 | 5,92,171 | 2,81,350 | 34,12,096 |
| Total | 39,59,913 | 55,11,150 | 66,94,404 | 86,87,107 | 1,01,98,262 | 68,55,232 | 56,12,751 | 5,16,86,572 |

Counterfeit Transaction Report Statistics

Description: This Statistics is generated annually from the Reports submitted by the Financial Sector on Monthly Basis for all Cash transactions where forged or counterfeit currency notes have been used

Suspicious Transaction Report Statistics

Description: This Statistics is generated annually from the Reports submitted by the Financial Sectors within 7 working days on being satisfied that the transaction is suspicious.

Chapter 9

Directorate of Enforcement

The Directorate of Enforcement is under the administrative control of the Department of Revenue, Ministry of Finance, and Govt. of India. With its headquarters in New Delhi, it has seven zones at Mumbai, Kolkata, Delhi, Jalandhar, Chennai, Ahmedabad and Bangalore.

1. Powers of Enforcement Directorate

The Director of Enforcement holding office immediately before the 1st day of July, 2005 under the Foreign Exchange Management Act, 1999 (42 of 1999) shall be entitled to exercise the exclusive powers conferred under the following provisions:

1. Section 5 Provisional attachment of property involved in money – laundering for a period of 180 days.
2. Section 16 Power of survey.
3. Section 17 Power of search and seizure.
4. Section 18 Power to search persons.
5. Section 19 Power to arrest.
6. Section 20 Retention of property.
7. Section 21 Retention of records.
8. Section 26 (1) To prefer appeals before the Appellate Tribunal
9. Section 45 To file complaints before the Special Court.
10. Section 50 Power regarding summons, production of documents and to give evidence.
11. Section 57 To apply for Letter of request to a contracting state.
12. Section 60 Power of attachment, seizure and confiscation in contracting State or in India.
13. Section 63 To impose penalty in respect of failure to give information.

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It is submitted that there cannot be any exercise of power by the Directorate of Enforcement in respect of section 62. The same provides punishment for offences specified therein, i.e. vexatious, searches and wrongful detention and arrests. The reference of the said section in the notification appears to be erroneous.

Chapter 10

Overview of the Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 (PMLA 2002) and the Rules notified there under came into effect on July 1, 2005. Director, FIU-IND and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant sections of the Act to implement the provisions of the Act.

The Prevention of Money Laundering Act, 2002 consists of ten Chapters containing 75 sections and one Schedule. Amendments were made to this Act vide the Prevention of Money Laundering (Amendment) Act, 2005(20 of 2005) Prevention of Money laundering (Amendment) Act, 2009 (21 of 2009) and Prevention of Money laundering (Amendment) Act, 2012 (2 of 2013).

The following table provides an insight into the scheme of the Act:

| Chapter No | Sections | Title |
|------------|----------|---|
| I | 1-2 | Preliminary |
| II | 3-4 | Offence of Money laundering |
| III | 5-11 | Attachment, Adjudication and confiscation |
| IV | 12-15 | Obligation of Banks, Financial Institutions and Intermediaries. |
| V | 16-24 | Summons, Searches And Seizures, etc. |
| VI | 25-42 | Appellate Tribunal |
| VII | 43-47 | Special Courts |
| VIII | 48-54 | Authorities |
| IX | 55-61 | Reciprocal arrangements for assistance in certain matters and procedure for confiscation of property. |
| X | 62-75 | Miscellaneous |
| Schedule | Part A | Offences which are covered regardless of the value |
| Schedule | Part C | Offences having Cross Border implications |

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1. Provisions of the Act

Section 1 - Short title, extent and commencement

(1) This Act may be called the Prevention of Money-Laundering Act, 2002.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Section 2 – Definitions

Please refer Chapter III of this publication

Section 3 – Offence of Money-Laundering & Punishment of such offence

Whomsoever directly or indirectly attempts to indulge or knowingly assists or is a party or is actually involved in any process or activity connected with* [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of Money-Laundering.

- **Substituted for “proceeds of crime and projecting” by the Amendment Act of 2012**

For the offence under money laundering, there are three basic limbs:

- (a) there should be a crime as defined under Schedule of offences.
- (b) there should be proceeds arising out of the aforesaid scheduled crime.
- (c) the proceeds of aforesaid crime should be concealed/ possessed/ acquired or used and projected or claimed as untainted property,

For Example, where a person who has received Rs.5,00,000 cash for exporting cocaine out of India deposits the same in installments of Rs.18,500 regularly so as to avoid the reporting threshold (also known as structuring/ smurfing) was held guilty by the Court under Section 25 of the Narcotic Drugs & Psychotropic Substances Act, 1985. Such act is considered as offence under the Money Laundering Act, 2002.

For example, a person who pays by way of Income Tax an amount less than that which he is supposed to pay, by window dressing the financial

Overview of the Prevention of Money Laundering Act, 2002

statements and consequently withdraws the extra 'profit' in the form of cash from the business will be considered as an offender under the Income Tax Act, 1961 but not under the Money laundering Act, 2002 since acts committed under the IT Act are not covered by the Money Laundering Act.

A man committed a murder (offence as per section 302 of Indian Penal Code) and had money for committing such crime in his possession but he was not held guilty by the Court of law. In this case, he will not be covered under the purview of this act.

Section 4 - Punishment for Money-Laundering

- ❖ Whoever commits the offence of Money-Laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.
- ❖ Provided that where the proceeds of crime involved in Money-Laundering relates to any offence specified under paragraph 2 of Part A of the Schedule viz. to an offence specified under the Narcotic Drugs and Psychotropic Substances Act, 1985, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

Earlier there was a ceiling of Rs. 5 lakh for fine which ceiling has been removed w.e.f. 15-02-2013.

Section 5 - Attachment of property involved in money laundering

Where the Director or Deputy Director authorized by him on the basis of material in his possession has reason to believe (which should be recorded in writing) that -

- (a) any person is in possession of any proceeds of money laundering; and
- (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner, which may result in frustrating any proceedings relating to confiscation of such proceeds of crime,

then he may provisionally attach such property for a maximum period of 180 days from the date of order. No Provisional Attachment Order (PAO) shall be made unless a report under section 173 of the Code of Criminal Procedure, 1973 or a complaint has been filed with the Magistrate or Court for taking cognizance of the scheduled offence.

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The Director/ Deputy Director immediately after attaching a property should file a complaint within 30 days and should forward the copy of the order alongwith the material in his possession to the Adjudicating Authority in a sealed envelope.

Every order of attachment shall cease to have effect after the expiry of 180* days or the date of order made under Section 8(2) by the Adjudicating Authority whichever is earlier.

- **150 days increased to 180 days by the Amendment Act of 2012**

The person interested in the enjoyment of immovable property shall not be prevented from such enjoyment.

Section 6-Adjudicating Authority

As per section 6 the Central Government by notification appoints an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act. An Adjudicating Authority shall consist of a Chairperson and two other Members; provided that 1 Member each shall be a person having experience in the field of law, administration, finance, accountancy.

(a) Composition of Adjudicating Authority

- (a) An Adjudicating Authority shall consist of a Chairperson and two other members. Of the two members, one member shall be a person having experience in field of law and one member shall be a person having experience in the field of finance, accountancy or administration.
- (b) The Central Government shall appoint a member to be the Chairperson of the Adjudicating Authority.

(b) Qualification of Members

- (a) To qualify for appointment as a member, in the field of law;
 - I. He should be qualified for appointment as District Judge; or
 - II. He should be a member of Indian legal Service and should have held a post in Grade I of that service.
- (b) To qualify for appointment as a member in the field of Finance, Accountancy or Administration, he should have such qualification as may be prescribed in the rules.

Overview of the Prevention of Money Laundering Act, 2002

(c) Functioning of the Adjudicating Authority

- (a) The jurisdiction of the Adjudicating Authority may be exercised by the Benches
- (b) Bench may be constituted by the Chairperson of the Adjudication Authority with one or two Members as the Chairperson of the Adjudication Authority may deem fit.
- (c) The Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and such other places as the Central Government may in consultation with the Chairperson by notification specifies.
- (d) The Central Government shall, by notification, specify the areas in relation to which each bench of Adjudicating Authority may exercise jurisdiction.
- (e) Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.
- (f) If at any stage of the hearing of any case or matter it appears to Chairperson or a member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

(d) Duration of Office Terms and Conditions, Resignation, Removal, Vacancy of Office of Member:

- (a) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office:
Provided that no Chairperson or other Member shall hold office as such after he has attained the age of sixty-five years.
- (b) The salary and allowances payable to and the other terms and conditions of service of the Member shall not be varied to his disadvantage after appointment.
- (c) If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then the Central Government shall appoint another person in

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accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Adjudicating Authority from the stage at which the vacancy is filled.

- (d) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall unless he is permitted by the Central Government or relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office , whichever is the earliest.

- (e) The Chairperson or any other Members shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.
- (f) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
- (g) When the chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other causes, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

(e) Procedure to Be Followed By Adjudicating Authority

The Adjudicating Authority is not bound to follow the procedure laid down by the Code of Civil Procedure, 1908(5 of 1908).The Adjudicating Authority shall have powers to regulate its own procedure. To these powers, there are two limitations placed on the Adjudicating Authority.

- (i) The procedure that may be regulated should not be contrary or inconsistent with any of the provisions of the Act.
- (ii) The Adjudicating Authority shall be guided by the principles of natural Justice.

Overview of the Prevention of Money Laundering Act, 2002

The Adjudicating Authority in exercise of powers conferred by sub-section 15 of section 6 of the Act, enabling it to frame Regulations of its own practice and procedure has made the Adjudicating Authority Regulations, 2006.

Section 7 - Staff of Adjudicating Authorities

- (1) The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.
- (2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.
- (3) The salaries and allowances and other conditions of service of the officers and employees of the Adjudicating Authority shall be such as may be prescribed.

Section 8- Adjudication

(1) - On receipt of complaint under sub section (5) of section 5, or applications made under sub section (4) of section 17 or under sub section (10) of section 18, if the Adjudicating Authority has reasons to believe that offence u/s 3 has been committed by a person, then he may serve a notice of minimum 30 days to call upon such person to indicate the source of income/ earnings by means of which he has acquired the attached property and to give him a chance to prove his innocence.

Further, if such property is being held by a person on behalf of any other person or jointly held by more than one person, then such other person(s) shall also be served a notice and given a chance to be heard.

- (2) - The Adjudicating Authority shall, after—
- (a) considering the reply, if any, to the notice issued under sub-section (1);
 - (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and
 - (c) taking into account all relevant materials placed on record before him,
- shall by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering.

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(3) – If the Adjudicating Authority decides under Section 8(2) that any property is involved in Money-Laundering, he shall confirm the attachment of property made under Section 5(1) or retention of the property. Confirmation of attachment or retention of property or record seized or frozen under section 17 or section 18 shall-

- (a) continue during pendency of the proceedings for offence of money laundering before a court in India or outside India; and
 - (b) become final after an order of confiscation under section 8(5) or 8(7) or 58B or 60(2A) of PMLA
- (4) Possession of attached property –forthwith i.e. immediate, then and there. Possession can be physical or constructive or symbolic depending on the facts and circumstances of the case. Possession continues till confiscation.

(5) On the conclusion of a trial, Special Court shall order confiscation of property involved in money laundering

(6) On the conclusion of a trial, Special Court shall order release of property, if not involved in money laundering.

(7) Appropriate orders regarding confiscation or release of the property

If the trial cannot be concluded due to the death of the accused or for any other reason, then the Court shall, on application by the Director or the entitled owner of the property, pass appropriate orders regarding confiscation or release of property.

Section 9- Vesting of property in Central Government

Where an order of confiscation has been made under sub section (5) or sub section (7) of section 8 or section 58B or sub section (2A) of Section 60 in respect of any property of a person, all the rights and title in such property shall vest absolutely with the Central Government free from all encumbrances.

If the Adjudicating Authority is of the opinion that any encumbrances have been created with a view to defeat the provisions of the Act, then it can by an order declare such encumbrances or interest to be void. However, this provision shall not discharge any person from any liability, which may be enforced against such person by a suit for damages.

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Section 10-Management of Properties Confiscated

This section provides for management of properties confiscated under the proposed Act.

Sub- section (1) seeks to authorize the Central Government to appoint by notification in the Official Gazette officers not below the rank of a Joint Secretary to the Government to perform the functions of an Administrator.

Sub- section (2) proposes that the Administrator so appointed shall receive and manage the confiscated property according to conditions that maybe prescribed by rules.

Sub- section (3) seeks to provide that the Administrator shall also take such measures as the Central Government may direct to dispose off the property which is vested in the Central Government under section 9.

Section 11- Power Regarding Summons, Production of Documents and Evidence, etc.

(1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) All the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(3) Every proceeding under this section shall be deemed to be a judicial

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proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

Section 12 – Reporting entity to maintain records

Section 12(1)(a) : Every reporting entity shall have to maintain a record of all transactions covered as per the nature and value of which may be prescribed, in such manner as to enable it to reconstruct individual transactions (**Rules 3,4 & 5 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereafter called the PMLMR Rules)**);

Section 12(1)(b) : They shall furnish to the Director (FIU) within such time as may be prescribed information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed (**Rule 7 & 8 of PMLMR Rules)**;

Section 12(1)(c) : They shall verify the identity of its clients in such manner and subject to such conditions as may be prescribed (**Rule 9 of PMLMR Rules)**;

Section 12(1)(d) :They shall identify the beneficial owner, if any, of such of its clients, as may be prescribed (**Rule 9 of PMLMR Rules)**

Section 12(1)(e) : They shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients for a period of five years in case of record and information relating to transactions (**Rule 10 of PMLMR Rules)**

Section 12(3) : They shall maintain the said records for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

Reserve Bank of India's Master Circular

The Reserve Bank of India had earlier issued several circulars on 'Know Your Customer' (KYC) and monitoring of transactions. The Reserve Bank of India has now issued Master Circular RBI/2014-15/56/ DNBS (PD) CC No. 387/03.10.42/ 2014-15 dated 01.07.2014 on 'Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards (AML) -'Prevention of Money Laundering Act, 2002 -Obligations of NBFCs in terms of Rules notified thereunder, consolidating all the circulars issued on the subject upto 30.06.2014.

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Section 12A- Access to Information

Every reporting entity shall furnish all such information as asked by the Director-FIU within prescribed time and manner and such information shall be kept confidential by the reporting entity.

Section 13- Powers of Directors to impose fine

The director either on his own or on the basis of any application received by any authority, officer or person make enquiry or cause such enquiry to be made regarding the obligation of the reporting entity.

and at any time during the enquiry, as per the nature and complexity of the case, he may direct such reporting entity to get its records audited by a chartered accountant who is from among the penal appointed by central government and the expenses for such audit will be borne by the Central Government

If the entity or its designated director or any of its employee has failed to comply with the obligations under this Chapter then:-

- (a) He may issue a written warning
- (b) Direct such persons to comply with specific instructions
- (c) He may direct such persons to send reports at said intervals regarding measures taken by them.
- (d.) He may impose penalty on such persons for each failure not below than Rs. 10000 which may extend to Rs. 100000.

The director will forward a copy of such order to all the reporting entities who are a part of such proceedings.

Section 14 - No civil proceedings

Section 14 gives immunity to the directors and employees of reporting entity against all civil or criminal proceedings.

Section 15 - Procedure and manner of furnishing information by reporting entities

The procedure and manner of furnishing information by the reporting entities will be prescribed by the Central Government in consultation with the Reserve Bank of India.

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Section 16 - Power of Survey

Section 16 empowers an authority to enter, on having reason to believe that an offence under Section 3 has been committed, any place within the limits of the area assigned to him or in respect of which he is authorised. It also seeks to empower the officer authorized to conduct the survey to require any proprietor, employee or any other person who is attending to the matters at the place of survey to assist the officer in affording him the facility to inspect the required records, to check or verify the proceeds of crime or any transactions related to the proceeds of crime which may be found at the site of survey and to furnish the required information.

Section 16(3) empowers such authority to:

1. Place marks of identification on the records inspected by him and make or cause to be made extracts or copies there from;
2. Make an inventory of any property checked or verified by him;
3. Record the statements of any person present in the place, which may be useful for, or relevant to, any proceedings under the Act.

Immediately after completion of the survey, the authority conducting the survey shall send the reasons recorded and the material in his possession to the Adjudicating Authority in a sealed envelope.

Section 17-Search and seizure

(1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purpose of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person-

- (i) has committed any act which constitutes Money-Laundering, or
- (ii) is in possession of any proceeds of crime involved in Money-Laundering, or
- (iii) is in possession of any records relating to Money-Laundering, or
- (iv) is in possession of any property related to crime

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

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- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record, or property, if required or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

Provided that no search shall be conducted unless, in relation to the scheduled offence a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, or any other officer who may be authorised by the Central Government, by notification, for this purpose.

Where it is not practicable to seize such record or property, the officer authorised may make an order to freeze such property. As a result, the transfer of property shall take place only after the prior permission of the officer making such order and a copy of such order shall be served on the person concerned.

Also if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such

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Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority, seizing any record or property under this section, shall, within a period of thirty days from such seizure, file an application, requesting for retention of or for continuation of the order of freezing such record or property, before the Adjudicating Authority.

Section 18 - Search of persons

(1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act. But no such search shall be carried out unless a report has been forwarded to the Magistrate or a complaint has been filed by the authorized person relating to the scheduled offence. In cases where no report is required to be forwarded, a similar report of information shall be submitted by the authorized officer to the Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit or any other officer who may be authorised by the Central Government

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate: Provided that the

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period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.

(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer superior in rank to him, or the Magistrate's Court.

(5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(8) No female shall be searched by anyone except a female.

(9) The authority shall record the statement of the person searched under sub-section (1) or subsection (5) in respect of the records or proceeds of crime found or seized in the course of the search:

(10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.

Section 19- Power to arrest

(1) If the Director, Deputy Director, Assistant Director or any other officer authorized in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward

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a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court.

Section 20- Retention of property

Under Section 20, where any property has been seized under Section 17 or Section 18 or frozen under sub section (1A) of Section 17 and the officer authorized by the Director has reason to believe that such property is required to be retained for the purpose of adjudicate on under Section 8, such property may be retained for a period of not exceeding 180 days from the day on which such property was seized and on expiry of the said period, the property shall be returned to the person from whom such property was seized unless the Adjudicating Authority permits the retention of such property beyond the said period. Immediately after passing an order for retention or continuation of freezing, the authorized officer shall forward a copy of such order and the material in his possession to the Adjudicating Authority within the prescribed time. Sub-section (4) requires the Adjudicating Authority, before authorizing the retention of such property beyond the specified period, to satisfy itself that the property is *prima facie* involved in money laundering and the property is required for the purposes of adjudication under Section 8. After the confiscation order has been passed, the Court / Adjudicating Authority shall direct the release of all property other than the property involved in Money-Laundering. Where an order releasing the property has been made by the Court, then the Director or authorized officer may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

Section 21-Retention of records

(1) Where any records have been seized, under section 17, or section 18 or frozen under sub section (1A) of Section 17 and the Investigating Officer or any other officer authorized by the Director in this behalf has reason to

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believe that such records are required to be retained for any inquiry under this Act, he may retain such records for a period not exceeding 180 days from the day in which such records were seized.

(2) The person, from whom records were seized or frozen, shall be entitled to obtain copies of records retained under sub section (1).

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period mentioned in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the property has been made by the Court or by the Adjudicating Authority, then the Director or authorized officer may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act

Section 22-Presumption as to records or property in certain cases

(1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force, it shall be presumed that—

- (i) such records or property belong or belongs to such person;
- (ii) the contents of such records are true; and
- (iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a

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record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—

- (a) presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Section 23 - Presumption in Inter-connected Transactions

Section 23 of the Act deals with presumption in interconnected transactions and provides that where money laundering involves two or more transactions and one or more such transactions are proved to be involved in money laundering, then for the purposes of adjudication or confiscation under Section 8 or for the trial of the Money-Laundering offence, it shall be presumed that the remaining transactions form part of such interconnected transactions, unless otherwise proved.

Section 24 - Burden of Proof

- (a) In the case of a person charged with an offence under section 3, the Authority or Court shall presume that such proceeds of crime are involved in money laundering, unless otherwise proved.
- (b) In the case of any other person, the Authority or Court shall presume that such proceeds of crime are involved in money laundering.

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Section 25 - Establishment of Appellate Tribunal

Chapter VI of the Act deals with Appellate Tribunal. Section 25 empowers the Central Government to establish an Appellate Tribunal to hear appeals against the orders of Adjudicating Authority and other authorities under the Act.

(a) Justification For Special Tribunals – The modern sociological condition as also the needs of time have necessitated growth of administrative law and administrative tribunal. Administrative tribunals may be called a specialized court of law, although they do not fulfill the criteria of a law court as ordinarily understood in as much as they cannot like an ordinary court of law entertain Suits on various matters, including the matter relating to the vires of legislation. However, such a tribunal like ordinary law courts is bound by the rules of evidence and procedure as laid down under the law and are required to determine the lis brought before it strictly in accordance with the law.

Reasons for creating special tribunals are: (1) Expert knowledge (2) Cost effectiveness (3) Speed (4) Flexibility (5) Informality.

Section 26 - Appeal to Appellate Tribunal

(1) The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any reporting entity aggrieved by any order of the Director made under sub section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub section (1) or sub section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed.

(4) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(a) Who Can Prefer An Appeal

In respect of an order passed by the Adjudicating Authority, the Director or

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any person aggrieved by the order may prefer an Appeal to the Appellate Tribunal. The aggrieved person would include:

1. the person to whom notice calling upon to show cause as to why all or any of the properties indicated in the notice should not be declared to be the properties involved in money laundering and confiscated by the Central Government, is served;
2. the person on whose behalf any of the property specified in the notice to show cause, is alleged to have been held by another person i.e. original owner of the "benami" property;
3. the joint owner/s of the property specified in the notice to show cause;
4. the claimant in respect of the property specified in the notice to show cause, but to whom no notice to show cause is issued.

(b) Aggrieved Person

The term "aggrieved person" is not defined in this Act including Section 26 of the Act. The term therefore will have to be construed in accordance with and with reference to the provisions regarding Adjudication contained in the Act.

"Generally speaking, a person can be said to be aggrieved by an order which is to his detriment pecuniary or otherwise or causes him some prejudice in some form or other.

A person who is not a party to litigation has no right to appeal. Merely because the judgment or order contains some adverse remarks against him he cannot be made a party to the litigation. But it has been held in a number of cases that a person who is not a party to a suit may prefer an Appeal with the leave of the Appellate Court and such leave would not be refused, where the judgment would be binding on him under explanation 6 to section 11 of the Code of Civil Procedure.

"The words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

(c) Form of Appeal

The Appeal to the Appellate Tribunal is required to be filed in such form as it prescribed.

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Rule (3) of Prevention of Money Laundering (Appeal) Rules, 2005 provides that every appeal preferred before the Appellate Tribunal against the order of the Adjudicating Authority or the Director, as the case may be, under section 26 of the Act shall be in form as appended to these rules and the appeal shall be in quadruplicate and accompanied by four copies of the order appealed against.

It further provides that the appeal shall set forth concisely and under distinct head the grounds of objection to the order appealed against and such grounds shall be numbered consecutively; and shall specify the address of service at which notice or other processes of the Appellate Tribunal may be served on the appellant and the date on which the order appealed against was served on the appellant.

(d) Appeal Fees

Rule 3(2) of Prevention of Money – Laundering (Appeal) Rules, 2005 provides for the payment of Appeal Fees.

(e) How the Appeal Is Expected to be Disposed of: The Appellate Tribunal after giving due opportunity of hearing to the parties, may pass orders thereon confirming, modifying or setting aside the impugned order. An Appellate Court has the same powers as the Original Court to completely dispose off the matter before it. But it cannot enlarge the scope of the proceeding in Appeal.

It is necessary to emphasize that though the Tribunal is not a court, it is invested with judicial power to be exercised in manner similar to the exercise of power of an appellate court acting under the Code of Civil Procedure. The authority to “pass such orders thereon as it thinks fit” under section. 33(4) of the Income Tax Act, 1922 is not arbitrary; the expression is intended to define the jurisdiction of the Tribunal to deal with and determine questions which arise out of the subject matter of the appeal in the light of the evidence and consistently with the justice of the case. The nature of the jurisdiction predicates that the Tribunal will approach and decide the case in a judicial spirit and for that purpose it must indicate the disputed questions before it with evidence pro and con and record its reasons in support of the decision.

(f) Necessity of Giving Reasons By The Tribunal: It is necessary for the Tribunal to assign reasons while disposing off an appeal before it. Reasons give clarity to an order. The need of assigning reasons is also based on the ground that the order of the Appellate Tribunal is amenable to further challenge.

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Reason is heartbeat of every conclusion and without the same it becomes lifeless.

Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity.

The reasons are like the bricks with which the edifice of justice is built. If the bricks are not in place, or are missing, the entire edifice comes crashing down. The conclusions arrived at by a judicial or quasi-judicial authority should rest upon the foundation or reasons and cannot be sustained if they are in the air. An order passed by a quasi-judicial forum has to be supported by convincing and cogent reasons, howsoever brief they may be.

(g) Expeditious Disposal: The Appellate Tribunal shall deal with the appeal filed before it expeditiously and shall endeavour to dispose it of within six months from the date of filing.

Section 27- Composition of Appellate Tribunal

- (1) The Appellate Tribunal shall consist of a Chairperson and two other Members.
- (2) Subject to the provisions of this act –
 - (a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;
 - (b) a Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit.
 - (c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify.
 - (d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.
- (3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a member from one Bench to another Bench.
- (4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

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(a) **Strength of Appellate Tribunal:** The total strength of Appellate Tribunal shall be of three members, including the Chairperson.

(b) **Working of The Appellate Tribunal:** The Appellate Tribunal may function through its Benches, which may be constituted by the Chairperson with one or two members as the Chairperson may deem fit. The Benches shall ordinarily sit at New Delhi. The Central Government shall by notification specify the areas in relation to which each Bench may exercise jurisdiction. The division of work amongst the Benches may be, therefore territory wise.

There are a large of number of Tribunals in the Country like Central Excise and Gold Control Appellate Tribunal (CEGAT), Board of revenue, Income Tax Appellate Tribunal Public Service Tribunals, Sales Tax Tribunals etc., which should have persons from legal background as a presiding judge to maintain the confidence of the public. In the opinion of the court the senior member of every Tribunal must be a person with a legal background as presiding officer of the Tribunal. This will ensure the compliance of mandate of Article 50 of the constitution. The court directed that all the authorities, including the government, to take speedy steps to ensure compliance of this judgement and appoint as presiding judge of every Tribunal a person with a legal background so that the Tribunal may be independent and may inspire confidence of the public. If it is a single member bench, then the person must be from a legal background.

The above para seems to be from a decision of SC/HC. Please give case title and citation. Supreme Court decision in UNION OF INDIA v. R. GANDHI, PRESIDENT, MADRAS BAR ASSOCIATION (Civil Appeal No. 3067 of 2004 etc.) MAY 11, 2010.

(c) **Powers of the Chairperson of Appellate Tribunal:** The president cannot be said to have an unguided, unfettered and unlimited jurisdiction as the same may be flawed with grave consequences. The Hon'ble court was therefore of the opinion that the following guidelines could serve the said purpose.

Supreme Court decision in Ajay Gandhi And Anr vs B. Singh And Ors Transfer Case (civil) 5 of 1997 on 5 January, 2004

- (i) initial posting of a member shall be done by the Government in consultation with the president of the Appellate Tribunal.
- (ii) Posting to different Benches shall be done by the President having regard ordinarily to the following:

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- (a) A member, save and except for sufficient and cogent reasons shall not be posted at a place where he had earlier been practicing as an advocate or a Chartered Accountant, as the case may be.
- (b) A member may not be posted at a place where any of his parents, spouse or other close relation is practicing as an advocate or a Chartered Accountant in taxation matters.
- (c) Save and except for sufficient and cogent reasons, the member shall not be posted at a place for a period exceeding five years. Ordinarily, a member may not be posted at a place for a period exceeding five years. Ordinarily, a member may not be posted at a place where he was earlier posted unless a period of two years has elapsed.
- (iii) The President shall keep the Government informed about the orders of posting. The Government, if it thinks fit, shall have the liberty to bring to the notice of the president, Appellate Tribunal relevant facts including that transfer and posting of a number is not in conformity with the aforementioned guidelines. It shall also be at liberty to bring to the notice of the President any case of extreme hardship which may be faced by a member by reason of such an order of transfer and posting.
- (iv) The Government shall have further liberty to request the President to transfer a member from a particular Bench when it is in public interest or in exceptional circumstances. The president, Appellate Tribunal ITAT, it goes without saying, shall consider the same in proper perspective. If the President refuses to comply with the request of the Central Government, although the transfer is in public interest, in such a case it would be open to the Central Government to pass the order of transfer.

Tribunal being the creatures of the statute have to abide by the provisions of the statute.

Section 28-Qualifications for Appointment

- (a) **Qualification for Chairperson:** The Chairperson to be appointed should be a person who is or has been judge of the Supreme court or of a High Court or is qualified to be a Judge of the High court.

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No sitting Judge of the Supreme Court or of a High Court can be appointed as the Chairperson of the tribunal except after consultation with the Chief Justice of India.

(b) Qualification for Member: For appointment as a member, a person should have any of the below mentioned qualifications:

- (i) Has been a member of the Indian legal Service and has held a post in Grade I of that service for at least three years; or
- (ii) Has been a member of the Indian Revenue Service and has held the post of Commissioner of Income Tax or equivalent post in that service for at least three years.
- (iii) Has been a member of the Indian Economic Service and has held the post of Joint secretary or equivalent post in that service for at least three years.
- (iv) Has been a member of the Indian Customs and Central Excise Service and has held the post of Joint Secretary or equivalent post in that service for at least three years.
- (v) Has been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949) or as a registered accountant under any law for the time being in force or partly as a registered accountant and partly as a chartered accountant for at least ten years.
- (vi) Has been a member of the Indian Audit and Accounts Service and has held the post of Joint Secretary or equivalent post in that service for at least three years.

It is provided that one of the members of the Appellate Tribunal shall be from the category mentioned in clause (v) or (vi) above.

Section 29 – Term of Office

Omitted by the Prevention of Money-Laundering (Amendment) Act, 2005 (20 of 2005).

Section 30 – Conditions of service

The salary and allowances payable to and the other terms and conditions of service (including tenure of office) of the Chairperson and other Members shall be such as may be prescribed:

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Provided that neither the salary and allowances nor the other terms and conditions of service (including tenure of office) of the Chairperson or any other Member shall be varied to his disadvantage after appointment.

Section 31 – Vacancies

Any vacancy arising in the office, other than temporary absence, in the office of the Chairperson or any other member the same shall be filled up by the Central Government by appointing another person in accordance with the provisions of the Act.

The proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Section 32 – Resignation and Removal

(a) Resignation by the Chairperson or Member: The Chairperson or a Member may by giving notice in writing, in this regard to the Central Government, resign his office. However, the Chairperson or the Member shall continue to hold office, unless permitted by the Central Government to relinquish his office, until

- (a) the expiry of three months from the date of receipt of such notice, or
- (b) a person duly appointed as his successor enters upon his office, or
- (c) the expiry of his term of office in terms of section 29 of the Act; whichever is the earliest.

(b) Removal of the Chairperson or a member from his office: The Chairperson or a Member cannot be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity; after an inquiry made by a person appointed by the President. The Chairperson or the member concerned is required to be informed of the charges against him in such inquiry and is further required to be given a reasonable opportunity of being heard in respect of those charges.

It is mandatory for the Central Government to consult the Chief Justice of India before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India.

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Section 33 - Member to act as Chairperson in certain circumstances

(a) Vacancy in the Office of the Chairperson : In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(b) Absence of Chairperson : When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Section 34 - Staff of Appellate Tribunal

- (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as that Government may think fit.
- (2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.
- (3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Section 35 – Procedure and Powers Of Appellate Tribunal

- (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.
- (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:--
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;

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- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter, which may be, prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 36 - Distribution of business amongst Benches

Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Section 37 - Power of Chairperson to transfer cases

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Section 38 - Decision to be by Majority

If the Members of a Bench consisting of two Members differ in opinion on any

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point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 39 - Right of the Appellant

Section 39 of the Prevention of Money Laundering Act, 2002 provides for the right of the appellant to either appear in person or take the assistance of an authorized representative of his choice to present his case before the Appellate Tribunal.

Section 40 - Members, etc., to be public servants

The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

Section 41 - Civil Court Not to Have Jurisdiction

Section 41 of the Prevention of Money Laundering Act, 2002 restricts the jurisdiction of civil courts. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 42- Appeal to High Court

Section 42 entitles any person aggrieved by any decision or order of the Appellate Tribunal to file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. However, the High Court, if satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, may allow it to be filed within a further period not exceeding sixty days.

The Explanation under the section clarifies as to within which High Court's jurisdiction the appeal provided shall lie. Accordingly 'High Court' means:

- (i) the High Court within the jurisdiction of which the aggrieved party

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ordinarily resides or carries on business or personally works for gain;
and

- (ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

Sections 43- Special Courts

Sections 43 to 47 of the Act deal with provisions relating to Special Courts. Section 43(1) empowers the Central Government to designate, in consultation with the Chief Justice of the concerned High Court, one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of classes as may be specified in the notification, for trial of offence punishable under Section 4.

Section 44- Offences to be tried by Special Courts

Section 44(1) provides that the scheduled offence and the offence punishable under Section 4, shall be tried only by the Special Court constituted for the area in which the offence has been committed and the Special Court trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence

A special court may upon a complaint made by an authority authorized in this behalf take cognizance of the offence without the accused is committed to it for trial.

if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of Money-Laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed

A Special Court while trying the scheduled offence or the offence of Money-Laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session

Section 45 – Offences to be cognizable and non-bailable

A person accused of an offence punishable for a term of imprisonment of

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more than three years under the Act shall not be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release; and where the Public Prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

However, the special court shall not take cognizance of any offence punishable under Section 4, except upon a complaint in writing made by (i) the Director or (ii) any officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or special order made by that Government.

Section 46 - Application of the Code of Criminal Procedure, 1973 to proceedings before Special Court

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor: Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause(u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.

Section 47 - Appeal and revision

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

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Section 48 - Authorities under the Act

Section 48 of the Prevention of Money laundering Act, 2002 classifies the authorities under the Act thus:

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) Such other class of officers as may be appointed for the purposes of this Act.

Section 49 - Appointment and Powers of Authorities And Other Officers

- (a) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.
- (b) Without prejudice to the provisions of sub-section (1), the Central Government may authorize the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.
- (c) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.

Section 50 - Powers of authorities regarding summons, production of documents and to give evidence

The Director shall, for the purposes of section 12, have the same powers as are vested in a Civil Court while trying a suit in respect of the following matters, namely:

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a reporting entity, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter that may be prescribed.

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The Director, Additional Director, Joint Director, Deputy Director and Assistant Director have been given the power to summon any person whose attendance they consider necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

The persons so summoned shall be bound to attend in person or through authorized agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

An Assistant Director or a Deputy Director can not impound and retain any records without recording the reason for doing so and can not retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

Section 51 - Jurisdiction of Authorities

(1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this act or the rules framed there under in accordance with such directions as the Central Government may issue for the exercise of powers and performances of the functions by all or any of the authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:

- (a) territorial area;
- (b) classes of persons;
- (c) classes of cases; and
- (d) any other criterion specified by the Central Government in this behalf.

Section 52- Power of Central Government to issue directions

Section 52 empowers the Central Government to issue, from time to time, such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act. The authorities and all other persons employed in execution of the Act have been put under obligation to observe and follow such orders, instructions and directions of the Central Government.

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Provided that, no such orders, instructions or directions shall be issued so as to-

- (a) require any authority to decide a particular case in a particular manner; or
- (b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Section 53 - Empowerment Of Certain Officers

The Central Government may, by a special or general order, empower an officer not below the rank of Director of the Central Government or of a State Government to act as an authority under this Act:

Provided that the Central Government may empower an officer below the rank of Director if the officer of the rank of the Director or above are not available in a particular area.

Section 54 - Certain officers to assist in inquiry, etc.

Section 54 of the Prevention of Money laundering Act, 2002 empowers and requires the following officers and others to assist in its enforcement.

- (a) officers of the Customs and Central Excise Departments;
- (b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961 (43 of 1961);
- (d) members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) officers of Police;
- (g) officers of Enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1973 (40 of 1999);
- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

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- (ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
- (hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);
- (hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);
- (hd) officers of the Pension Fund Regulatory and Development Authority;
- (he) officers of the Department of Posts in the Government of India;
- (hf) registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908 (16 of 1908);
- (hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988);
- (hh) officers and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949);
- (hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959 (23 of 1959);
- (hj) officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980)
- (i) officers of any other body corporate constituted or established under a Central Act or a State Act;
- (j) Such other officers of the Central Government, State Government, local authorities or reporting entities as the Central Government may, by notification, specify, in this behalf.

Section 55 - Definitions

In this Chapter, unless the context otherwise requires,

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- (a) "contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;
- (b) "identifying" includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;
- (c) "tracing" means determining the nature, source, disposition, movement, title or ownership of property.

Section 56 - Agreements with foreign countries

- (1) The Central Government may enter into an agreement with the Government of any country outside India for
 - (a) enforcing the provisions of this Act;
 - (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.
- (2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Section 57 - Letter of request to a contracting State in certain cases

- (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to
 - (i) examine facts and circumstances of the case,

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- (ii) take such steps as the Special Court may specify in such letter of request, and (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.
- (2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.
- (3) Every statement recorded or document or thing received under subsection (1) shall be deemed to be the evidence collected during the course of investigation.

Section 58 - Assistance to a contracting State in certain cases

Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.

Section 58A - Special Court to release the property

Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of Money-Laundering has not taken place or the property in India is not involved in Money-Laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

Section 58B - letter of request of a contracting State or authority for confiscation or release the property

Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of Money-Laundering.

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Section 59 - Reciprocal arrangements for processes and assistance for transfer of accused persons

(1) Where a Special Court, in relation to an offence punishable under section 4, desires that

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing or to produce it, or
- (d) a search warrant,

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Where a Special Court, in relation to an offence punishable under section 4 has received for service or execution

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search warrant,

issued by a Court, judge or Magistrate in a contracting State, it shall, cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where

- (i) a warrant of arrest has been executed, the person arrested shall be dealt with in accordance with the procedure specified under section 19;
- (ii) a search warrant has been executed, the things found in this search shall, so far as possible, be dealt with in accordance with the procedure specified under sections 17 and 18;

Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other things

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produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.

(3) Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in India, the Special Court or the Central Government may impose such conditions as that Court or Government deems fit.

(4) Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

Section 60 - Attachment, seizure and confiscation, etc., of property in a Contracting State or India

(1) Where the Director has made an order for attachment of any property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub-section (6) of section 8, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.

(2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment, seizure, freezing or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under a corresponding law committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of Money-Laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected

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persons, that such property involved in Money-Laundering or which has been used for commission of the offence of Money-Laundering stand confiscated to the Central Government.

(3) The Director shall, on receipt of a letter of request under section 58 or section 59, direct any authority under this Act to take all steps necessary for tracing and identifying such property.

(4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

(6) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in the Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.

(7) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.

Section 61 - Procedure in respect of letter of request

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

Section 62 - Punishment for vexatious search

Section 62 says that any authority or officer, while exercising the powers under this Act, without reasons recorded in writing

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1. searches or causes to be searched, any building or place or
2. detains or searches or arrests any person

shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

Section 63 - Punishment for false information or failure to give information

Section 63(1) says that any person who willfully and maliciously gives false information resulting in an arrest or search to be made under this Act, could be punished with an imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

- (2) If any person,
 - (a) legally bound to state the truth about any matter relating to an offence under Section 3, refuses to answer any question put to him or refuses to sign any statement made by him in the course of proceedings under this Act
 - (b) or omits to attend or produce books of account or documents when called on summons,
 - (c) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign;

then such a person could be asked to pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure [Section 63(2)].

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

(4) A person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code (45 of 1860)

Section 64 - Cognizance of offences

- (1) No court shall take cognizance of any offence under section 62 or sub-

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section (1) of section 63 except with the previous sanction of the Central Government.

(2) The Central Government shall, by an order, either give sanction or refuse to give sanction within ninety days of the receipt of the request in this behalf.

Section 65- Application of the Code of Criminal Procedure, 1973

Section 65 states that the provisions of the Code of Criminal Procedure, 1973 can be applied, as long as they are not inconsistent with the provisions of this Act, to arrest, search, seizure, attachment, confiscation, investigation, prosecution, and all other proceedings under this Act. (These are the words used in the Act).

Section 66 - Disclosure of information

The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to-

- i. any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of Illicit traffic in narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or
- ii. such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

Section 67 - Bar of suits in civil courts

No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.

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Section 68 - Notice, etc., not to be invalid on certain grounds

No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Section 69- Recovery of fines

Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any authorised officer may proceed to recover the amount from the said person in the manner as prescribed in Schedule II of the Income-tax Act, 1961 (43 of 1961) for the recovery of arrears and he shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Section 70 - Offences by Companies

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other

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officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation 1.-- For the purposes of this section,

- (i) "company" means any body corporate and includes a firm or other association of individuals; and
- (ii) "director", in relation to a firm, means a partner in the firm.

Explanation 2. - For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

Section 71 – Act to have overriding effect

The Act is a special enactment having been enacted to deal with an ever increasing menace of money laundering. The provisions of the Act are therefore, declared to have overriding effect over provisions in other statute. The provisions of this Act shall prevail over anything inconsistent therewith contained in any other law.

Section 72 - Continuation of proceedings in the event of death or insolvency

- (1) Where—
 - (a) any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred; or
 - (b) any appeal has been preferred to the Appellate Tribunal, and--
 - i. in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or
 - ii. in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply, to such appeal.

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- (2) Where--
 - (a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High court under section 42; or
 - (b) any such appeal has been preferred to the High Court, then--
 - i. in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or
 - ii. in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court, then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provision of section 42 shall, so far as may be, apply, or continue to apply, to such appeal.
- (3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency- towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be.

Section 73 – Power to make rules

The Central Government may, by notification, make rules for carrying out the provisions of this Act.

- (a) the form in which records referred to in this Act may be maintained;
 - (aa) the manner of provisional attachment of property under sub-section (1) of Section 5
- (b) the manner in which the order and the material referred to in sub-section (2) of section 5 to be maintained
- (c) matters in respect of experience of Members under sub-section (3) of section 6
- (d) the salaries and allowances payable to the other terms and conditions of service of Members of the Adjudicating Authority under sub-section (9) of section 6
- (e) the salaries and allowances payable to and other terms and conditions

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of service of the officers and employees of the Adjudicating Authority under sub-section (3) of section 7

- (ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8
- (f) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 10
- (g) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (1) of section 11
- (i) the nature and value of transactions and the time within which the information of transactions under clause (b) of sub-section (1) of section 12 shall be furnished
- (j) the manner and the conditions in which identity of clients shall be verified by the reporting entities under clause (c) of sub-section (1) of section 12
- (ji) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12
- (jii) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13
- (k) the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 as required under section 15
- (l) the manner in which the reasons and the material referred to in sub-section (2) of section 16 shall be maintained
- (m) the rules relating to search and seizure under sub-section (1) of section 17
- (n) the manner in which the reasons and the material referred to in sub-section (2) of section 17 shall be maintained
- (o) the manner in which the reasons and the material referred to in sub-section (2) of section 18 shall be maintained

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- (p) the manner in which the order and the material referred to in sub-section (2) of section 19 shall be maintained
- (pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20
- (q) the manner in which records authenticated outside India may be received under sub-section (2) of section 22
- (r) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 26
- (s) the salary and allowances payable to and the other ³[terms and conditions of service (including tenure of office)] of the Chairperson and other Members of the Appellate Tribunal under section 30
- (t) the salaries and allowances and the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 34
- (u) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 35
- (ua) conditions subject to which a police officer may be authorised to investigate into an offence under sub-section (1A) of section 45
- (v) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of section 50
- (w) the rules relating to impounding and custody of records under sub-section (5) of section 50
- (x) any other matter which is required to be, or may be, prescribed

Section 74 - Rules to be laid before Parliament

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that

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any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

Section 75- Power to remove difficulties

Section 75 empowers the Central Government to make such provisions not inconsistent with the provisions of this Act so as to remove any difficulty that may arise while giving effect to the provisions of this Act. However, no order can be made under this section after the expiry of two years from the commencement of this Act.

Chapter 11

Prevention of Money Laundering Act (PMLA) Rules

1. Enforcement of the PMLA, 2002 (Notification no.GSR 436(E) Dated 01.07.2005)
2. Appointment of Adjudicating Authority [Notification No. GSR 437(E), Dated 1-7-2005]
3. Constituting New Delhi Bench of Adjudicating Authority [Notification No. GSR 438(E), Dated 1-7-2005]
4. Constitution of Appellate Tribunal [Notification No. GSR 439(E), Dated 1-7-2005].
5. Appointment of the Director, FIU-India as Director under the Act. [Notification No. GSR 440(E), Dated 1-7-2005].
6. Appointment of the Director, Enforcement Directorate, as Director under the Act. [Notification No. GSR 441(E), Dated 1-7-2005].
7. The Prevention of Money-Laundering (the Manner of forwarding a copy of the Order of Provisional Attachment of Property along with the Material, and copy of the Reasons along with the Material in respect of Survey, to the Adjudicating Authority and its period of Retention) Rules, 2005 [Notification No. GSR 442(E), dated 01-07-2005]
8. The Prevention of Money-Laundering (Receipt and Management of Confiscated Properties) Rules, 2005 [Notification No.GSR 443(E), dated 01-07-2005]
9. The Prevention of Money-Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 Prevention of Money-Laundering Rules, 2005. [Notification No. GSR 444 (E), dated 01-07-2005].

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10. The Prevention of Money-Laundering (Forms, Search and Seizure and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005 [Notification No. GSR 445 (E), dated 01-07-2005].
11. The Prevention of Money-Laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its period of Retention) Rules, 2005 [Notification No. GSR 446(E), dated 01-07-2005].
12. The Prevention of Money-Laundering (the Manner of Forwarding a Copy of the Order of Retention of Seized Property along with the Material to the Adjudicating Authority and the period of its Retention) Rules, 2005 [Notification No. GSR 447(E), dated 01-07-2005].
13. The Prevention of Money-Laundering (Manner of Receiving the Records authenticated Outside India) Rules, 2005 [Notification No. GSR 448(E), dated 1-7-2005].
14. The Prevention of Money-Laundering (Appeal) Rules, 2005 [Notification No. GSR 449(E), dated 1-7-2005]
15. Notification No. 15/2005 dated 13-12-2005 [G.S.R. 717 (E)], amending Rule 5, 7, 8 and 10 of the Rules notified by [Notification No. 9/2005]
16. Power to Disclose Information Conferred on the Director, FIU [Notification no.GSR 381(E) Dated 27.06.2006]- Section 66 of PMLA, 2002]
17. Power to Disclose Information Conferred on the Director, Directorate of Enforcement [Notification no.GSR 382 (E) Dated 27.06.2006]- Section 66 of PMLA, 2002]
18. Notification No. 4/2007 dated 24-05-2007 [G.S.R. 389 (E)] amends rule 2, 3, 8 and 9 of the Rules notified by Notification No. 9/2005
19. Notification No. 13/2009 dated 12-11-2009 [G.S.R. 816 (E)] amends rule 2, 3, 5, 6,7, 8, 9 and 10 of the Rules notified by Notification No. 9/2005
20. Notification No. G.S.R. 76(E), dated 12-2-2010- Amendment in rules 3, 4, 5, 7 and 9

Prevention of Money Laundering Act (PMLA) Rules

21. Notification No. 10/2010 [G.S.R. 508 (E)], dated the 16th June, 2010-
Amendment in Rules 2, 9, 10
22. Notification No. 14/2010 [GSR 980(E)] dated 16th December 2010-
Amendment in Rule 2.
23. Notification No.G.S.R. 481 (E), dated the 24th June, 2011-
Amendment to name of Rules. (Rule 1)
24. Notification No. 12/2013 [G.S.R. 576(E)] dated 27th August, 2013-
Amendment to Rule 2 & 3, Omission of Rule 6, Substitution of Rule 5,
7, 8, 9 & 10 and Insertion of New Rules 10A and 10B. These rules and
notifications are available at the following link <http://fiuindia.gov.in/>

Chapter 12

Maintenance of Records

1. Overview

Sec 2(1) (w) of the Prevention of Money Laundering Act, 2002, defines the term *"Records"* to include the records maintained in the form of books or stored in a computer or such other form as may be prescribed.

Section 12 (1) (a) of the said Act makes it mandatory for every banking company, financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month.

In exercise of the powers conferred under sub section (1) and (2) of Section 73 of the Act the Central Government in consultation with the RBI notified vide Notification number 9/2005 dated 1st July, 2005 '**The Prevention of Money- Laundering (Maintenance of Records of the nature and value of transactions, the procedure and manner of maintaining and time of furnishing information and verification and maintenance of records of the identity of clients of the Banking Companies, Financial Institutions and Intermediaries) Rules 2005**'. This Notification further amended by Notification 15/2005 dated 13/12/2005 and Notification 4/2007 dated 24/05/2007. The Rules were last amended by G.S.R. 576(E), dated 27th August, 2013 (w.e.f. 27-8-2013) Rules 3, 4 and 5 relates specifically to maintenance of records containing information and procedure and manner of maintaining information.

Rule 6 pertaining to the period of retention of records and transactions (10 years) has been omitted in 2013. Similar amendments have also been made to Rule 10(3), which is being discussed in subsequent Chapters.

2. Obligations of the entities

As per Rule 3 of the said Rules, every reporting entity shall maintain the record of:

- All cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency.

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- All series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency.
- All transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency.
- All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions.
- All suspicious transactions whether or not made in cash.
- All cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India.
- All purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity, as the case may be.

3. Records – Matter and retention

Rule 4 requires that the records maintained by the reporting entity shall contain all necessary information specified by the Regulator to permit reconstruction of individual transactions.

Accordingly, the records should contain the following information:

- (a) the nature of the transaction(s);
- (b) the amount of the transaction and the currency in which it was denominated;
- (c) the date on which the transaction was conducted; and
- (d) the parties to the transaction.

4. Procedure and manner of maintaining information

Rule 5 Lays down the Procedure and manner of maintaining information and has been substituted in 2013. The amended rule stipulates the following:

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1. Every reporting entity shall maintain information in respect of transactions with its client referred to in rule 3 in accordance with the procedure and manner as may be specified by its regulator from time to time.
2. Every reporting entity shall evolve an internal mechanism for maintaining such information in such form and manner and at such intervals as may be specified by its regulator from time to time.
3. It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of maintaining information as specified by its regulator under sub-rule (1).

Chapter 13

Furnishing of Information

1. Overview

Section 12 (1)(b) of the Prevention of Money Laundering Act, 2002, makes it mandatory for every reporting entity to: furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed.

2. Procedure and manner of furnishing information

Rules 7 and 8 specify the procedure and manner for furnishing information:

- (1) Every reporting entity shall communicate to the Director the name, designation and address of the Designated Director and the Principal Officer.
- (2) The Principal Officer shall furnish the information referred to in clauses (A), (B), (BA), (C), (D), (E) and (F) of sub-rule (1) of rule 3 to the Director on the basis of information available with the reporting entity. A copy of such information shall be retained by the Principal Officer for the purposes of official record.
- (3) Every reporting entity shall evolve an internal mechanism having regard to any guidelines issued by regulator, for detecting the transactions referred to in clauses (A),(B),(BA),(C),(D), (E) and (F) of sub-rule (1) of rule 3 and for furnishing information about such transactions in such form as may be directed by its Regulator.
- (4) It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of furnishing information as specified by its Regulator.

3. Information which has to be furnished

(This has already been discussed in detail in the preceding Chapter and such information is to be furnished to FIU-IND under Rule 3). The Prevention of Money-Laundering Act, 2002, and the rules made there under require every Reporting Entity*, to furnish to FIU-IND information relating to -

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- (A) cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
- (B) series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month;
- (BA) transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency;*
- (C) cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions;*
- (D) suspicious transactions whether or not made in cash.
- (E) cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India.
- (F) purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity, as the case may be.

*Reporting Entity means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

4. Cash transaction reports

Cash transaction reports refer to:

- A. All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
- B. All series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency.

[Source : <http://fiuindia.gov.in/furnishing-cashtransac.htm>]

5. Suspicious transaction reports

Suspicious transaction' means a transaction referred to the Rule 3 of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 including an attempted transaction, whether or not made in cash which, to a person acting in good faith -

- (a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or
- (b) appears to be made in circumstances of unusual or unjustified complexity; or
- (c) appears to have no economic rationale or bonafide purpose; or
- (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

[Source : <http://fiuindia.gov.in/furnishing-suspicious.htm>]

Submission of Suspicious Transaction Reports

The following table shows the number of Suspicious Transaction Reports (STRs) submitted by various categories of reporting entities. An STR includes details of all accounts, transactions, individuals and legal persons/entities related to a suspicious transaction.

| Category | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 2011-12 | Total Till 31.03.12 |
|------------------------|------------|-------------|-------------|--------------|--------------|--------------|---------------------|
| Banks | 437 | 1183 | 2826 | 7394 | 12287 | 14949 | 39076 |
| Financial institutions | 88 | 288 | 841 | 1655 | 7006 | 14712 | 24590 |
| Intermediaries | 292 | 445 | 742 | 1018 | 1405 | 1656 | 5558 |
| Total | 817 | 1916 | 4409 | 10067 | 20698 | 31317 | 69224 |

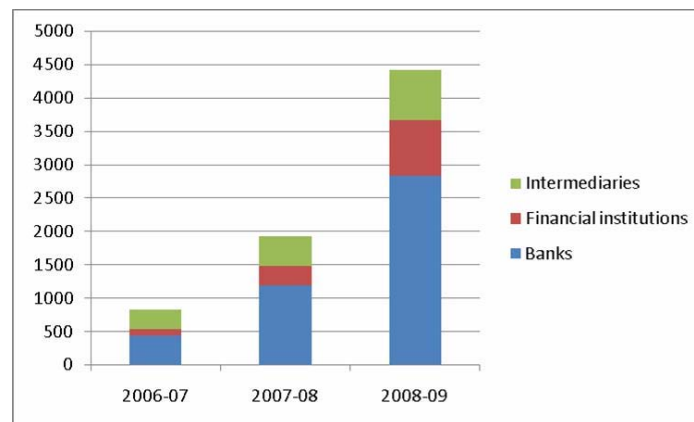
[Source : FIU Annual Report for FY 2011-12]

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Receipt of Cash Transaction Reports Form Banking Companies

| Type of bank | 2008-09 | 2009-10 | 2010-11 | 2011-12 | Till 31st March 2012 |
|-------------------------------|----------------|----------------|----------------|-----------------|----------------------|
| Public Sector Bank | 3108675 | 4413849 | 5463252 | 6903096 | 19888872 |
| Indian Private Banks | 1980045 | 1784665 | 2442286 | 2406855 | 8613851 |
| Private Foreign Banks | 88239 | 84428 | 105288 | 83665 | 361620 |
| Co-operative Banks and others | 334191 | 411462 | 676281 | 804646 | 2226580 |
| Total | 5511150 | 6694404 | 8687107 | 10198262 | 31090923 |

[Source : FIU Annual Report for FY 2011-12]



Examples of suspicious transactions are indicated as under:

1. Identity of the client

- False identification documents
- Identification documents which could not be verified within reasonable time
- Non-face to face client
- Doubt over the real beneficiary of the account
- Accounts opened with names very close to other established business entities

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2. Background of the client

- Suspicious background or Links with known criminals

3. Multiple accounts

- Large number of accounts having a common account holder, introducer or authorized signatory with no rationale
- Unexplained transfers between multiple accounts with no rationale
- Activity in Accounts
- Unusual activity compared to past transactions
- Use of different accounts by client alternatively
- Sudden activity in dormant accounts
- Activity inconsistent with what would be expected from declared business
- Account used for circular trading

4. Nature of transactions

- Unusual or unjustified complexity
- No economic rationale or bonafide purpose
- Source of funds are doubtful
- Appears to be case of insider trading
- Investment proceeds transferred to a third party
- Transactions reflect likely market manipulations
- Suspicious off market transactions

5. Value of transactions

- Value just under the reporting threshold limit in an apparent attempt to avoid reporting
- Large sums being transferred from overseas for making payments
- Inconsistent with the clients apparent financialstanding
- Inconsistency in the payment pattern by client
- Block deal which is not at market price or prices appear to be artificially inflated/deflated

[Source : <http://fiuindia.gov.in/furnishing-suspicious.htm>]

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6. Counterfeit Currency Reports

The Prevention of Money-Laundering Act, 2002, and rules made thereunder require every banking company, financial institution and intermediary, to furnish to FIU-IND information relating to all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions.

[Source : <http://fiuindia.gov.in/furnishing-counterfeitcurrencytransac.htm>]

7. Cross Border Wire Transfer Reports

All reporting entities are required to furnish to Director, FIU-IND report of all cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of the fund is in India.

[Source : <http://fiuindia.gov.in/furnishing-cbwtrs.htm>]

8. Report on sale/purchase of immovable property

All reporting entities are required to furnish to Director, FIU-IND the report on all purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity as the case may be.

[Source : <http://fiuindia.gov.in/furnishing-ipsr.htm>]

9. Methods of filing

Reports can be filed either in manual or electronic format. However, a reporting entity must submit all reports to FIU-IND in electronic format if it has the technical capability to do so. The required technical capability is defined as follows:

- (i) A personal computer with 32 MB memory RAM, 800 x 600 VGA video display, Windows® 98/Me/NT/2000/XP; and
- (ii) An Internet connection.

It must be noted that every reporting entity has to ensure reporting by all its branches either in manual or electronic format. Thus, a reporting entity has to adopt only one format for all its branches.

Furnishing of Information

Methods of filing reports Available/ not available

Manual Filing Not Available

Electronic Filing on CD Not Available

Electronic filing over secure gateway Available

It must be noted that every reporting entity is necessarily required to furnish information to Director, FIU-IND *online* in a standard format prescribed for the purpose by the Reserve Bank of India, Securities and Exchange Board of India, the Insurance Regulatory & Development Authority or other sector Regulators, as the case may be. For this purpose, the reporting entity has to register itself with FIU-IND using the portal <https://finnet.gov.in>.

10. Methods of submitting electronic reports

Electronic formats can be furnished to the FIU-IND over a secure gateway.

11. Due dates for furnishing information to the FIU

| Report | Description | Rule no. (#) | Due Date |
|--------|--|--------------|--|
| CTR | All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency. | 8(1) | 15 th day of the succeeding month |
| | All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month | 8(1) | |
| CCR | All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions | 8(1) | |

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| | | | |
|--|--|------|--|
| NTR | All transactions involving receipts by non profit organizations of value more than Rs. Ten lakhs or, its equivalent in foreign currency | 8(1) | |
| CBWTR | All cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India. | 8(1) | |
| IPR | All purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity*, as the case may be. | 8(3) | 15th day of the month succeeding the quarter. |
| STR | All suspicious transactions whether or not made in cash | 8(2) | Not later than seven working days on being satisfied that the transaction is suspicious. |
| * - Yet to be notified | | | |
| Source : http://fiuindia.gov.in/furnishing-duedates.htm | | | |
| (#) The Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 as amended by the Prevention of Money-Laundering (Maintenance of Records) Amendment Rules, 2013. | | | |

12. Reporting formats

These formats vary from one reporting entity to another and from one report to other. For example, for reporting STR, there are separate information while it is separate for reporting of CTR. The formats are complex yet user friendly. For the sake of brevity, they are not being referred here. However, for academic purpose, one may refer the same at the link: - [<http://fiuindia.gov.in/faq-reportingformats.htm>]

Chapter 14

Client Due Diligence

1. Client Due Diligence (formerly verification of the identity of clients)

The stipulations relating to Client Due Diligence by every reporting entity (*earlier referred to as 'Every banking company, financial institution and intermediary'*) are contained under Rule 9 of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 as amended by the Prevention of Money-Laundering (Maintenance of Records) Amendment Rules, 2013.

In so far as client due diligence is concerned, vis-à-vis old Rule (pre amended), there is a sea of change. Every banking company, financial institution and intermediary was required to undertake verification of the identity of its clients. However, post amendment, every reporting entity is required to undertake an extensive client due diligence. Thus, post amendment, greater onus and responsibility has been casted on reporting entities.

The expression, 'client due diligence' has also been defined as under (as per the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 as amended by the Prevention of Money-Laundering (Maintenance of Records) Amendment Rules, 2013): -

"Rule 2(1)(b) "Client due diligence" means due diligence carried out on a client referred to in clause (ha) of sub-section (1) of section 2 of the Act:"

Rule 14(ii) of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 as amended by the Prevention of Money-Laundering (Maintenance of Records) Amendment Rules, 2013 requires that every reporting entity shall formulate and implement a Client Due Diligence Programme, incorporating the requirements of sub-rules (1) to (13) and guidelines issued under clause (i) of Rule 14.

Further Rule 14(iii) of the said Rules, requires that the said Client Due Diligence Programme shall include policies, controls and procedures, approved by the senior management, to enable the reporting entity to

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manage and mitigate the risk that have been identified either by the reporting entity or through national risk assessment.

It may be noted here that Rule 14(i) vests powers in the regulator to issue guidelines incorporating the requirements of sub-rules (1) to (13) above and may prescribe enhanced or simplified measures to verify the client's identity taking into consideration the type of client, business relationship, nature and value of transactions based on the overall money laundering and terrorist financing risks involved.

Meaning of client

"Client" means a person who engages in a financial transaction or activity with a reporting entity. The term also includes a person on whose behalf the person who engages in the transaction or activity is acting.

Meaning of transaction

The word "transaction" has been defined under Clause (h) of Rule 2 of the above Rules and has undergone a substantial change by amendment made in 2013. Post amendment, the expression reads as under: -

- (h) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof and includes –
- (i) opening of an account;
 - (ii) deposits, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means;
 - (iii) the use of a safety deposit box or any other form of safe deposit;
 - (iv) entering into any fiduciary relationship;
 - (v) any payment made or received in whole or in part of any contractual or other legal obligation;
 - (vi) any payment made in respect of playing games of chance for cash or kind including such activities associated with casino; and
 - (vii) establishing or creating a legal person or legal arrangement.

2. Documents (only certified copies) required for verification of an individual [Rule 9(4) & Rule 9(5)]

Where the client is an individual, he shall for the purpose of sub-rule (1), submit to the reporting entity:

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- One certified copy of an 'officially valid document' containing details of his identity and address
- One recent photograph
- Such other documents including the nature of business and financial status of the client as may be required by the reporting entity :

Provided that photograph need not be submitted by a client falling under clause (b) of sub-rule (1).

It may be noted that the expression, "officially valid document" means the passport, the driving licence, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by Election Commission of India, job card issued by NREGA duly signed by an officer of the State Government, the letter issued by the Unique Identification Authority of India containing details of name, address and Aadhaar number or any other document as notified by the Central Government in consultation with the [Regulator]:

Provided that where simplified measures are applied for verifying the identity of the clients the following documents shall be deemed to be officially valid documents:—

- (a) identity card with applicant's Photograph issued by Central/State Government Departments, Statutory/Regulatory Authorities, Public Sector Undertakings, Scheduled Commercial Banks, and Public Financial Institutions;
- (b) letter issued by a Gazetted officer, with a duly attested photograph of the person.

It may, however, be noted that, a concession, with reference to documents to be furnished, has been permitted in respect of Individuals, holding a small account in a banking company under Rule 9(5), which provides as under: -

(5) Notwithstanding anything contained in sub-rule (4), an individual who desires to open a small account in a banking company may be allowed to open such an account on production of a self-attested photograph and affixation of signature or thumb print, as the case may be, on the form for opening the account:

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Provided that-

- (i) the designated officer of the banking company, while opening the small account, certifies under his signature that the person opening the account has affixed his signature or thumb print, as the case may be, in his presence;
- (ii) a small account shall be opened only at Core Banking Solution linked banking company branches or in a branch where it is possible to manually monitor and ensure that foreign remittances are not credited to a small account and that the stipulated limits on monthly and annual aggregate of transactions and balance in such accounts are not breached, before a transaction is allowed to take place;
- (iii) a small account shall remain operational initially for a period of twelve months, and thereafter for a further period of twelve months if the holder of such an account provides evidence before the banking company of having applied for any of the officially valid documents within twelve months of the opening of the said account, with the entire relaxation provisions to be reviewed in respect of the said account after twenty four months;
- (iv) a small account shall be monitored and when there is suspicion of money laundering or financing of terrorism or other high risk scenarios, the identity of client shall be established through the production of officially valid documents, as referred to in sub-rule (4) of rule 9; and
- (v) foreign remittance shall not be allowed to be credited into a small account unless the identity of the client is fully established through the production of officially valid documents, as referred to in sub-rule (4) of rule 9.

3. Documents (only certified copies) needed for the verification of a Company: [Rule 9(6)]

Where the client is a company, it shall for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:-

- (i) Certificate of incorporation.
- (ii) Memorandum and Articles of Association
- (iii) A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf.

Client Due Diligence

- (iv) An officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf.

4. Documents (only certified copies) needed for the verification of a Partnership Firm: [Rule 9(7)]

Where the client is a partnership firm, it shall for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:-

- (i) Registration certificate
- (ii) Partnership deed
- (iii) An officially valid document in respect of the person holding an attorney to transact on its behalf.

5. Documents (only certified copies) needed for the verification of a Trust: [Rule 9(8)]

- i. Registration certificate
- ii. Trust deed
- iii. An officially valid document in respect of the person holding an attorney to transact on its behalf.

6. Documents (only certified copies) needed for the verification of an Association of Persons (AOP) or a Body of Individuals (BOI):[Rule 9(9)]

Where the client is an unincorporated association or a body of individuals, it shall submit to the reporting entity one certified copy of the following documents:-

- (i) Resolution of the managing body of such association or body of individuals.
- (ii) Power of attorney granted to him to transact on its behalf.
- (iii) An officially valid document in respect of the person holding an attorney to transact on its behalf.
- (iv) Such information as may be required by the reporting entity to collectively establish the legal existence of such an association or body of individuals.

7. Documents needed for the verification of a Juridical Person: [Rule 9(10)]

Where the client is a juridical person, the reporting entity shall verify that any person purporting to act on behalf of such client is so authorized and verify the identity of that person.

8. When Client Due Diligence required

In this regard, important provisions are contained under Rule 9(1) and mandates client due diligence to be carried by a reporting entity no sooner than, at the time of commencement of an account-based relationship or at the time of carrying out-

- (i) transaction of an amount equal to or exceeding rupees fifty thousand, whether conducted as a single transaction or several transactions that appear to be connected, or
- (ii) any international money transfer operations.

The process of client due diligence must include, on the part of each reporting entity: -

- (i) Identification of its clients, verification of their identity, obtaining information on the purpose and intended nature of the business relationship;
- (ii) Determine whether a client is acting on behalf of a beneficial owner, and identify the beneficial owner and take all steps to verify the identity of the beneficial owner: [for detailed meaning of beneficial ownership Refer Rule 9(3)].

Further sub-Rule (2) also permits, subject to certain conditions, reliance by a reporting entity, for carrying out client due diligence on third parties.

9. Client Due Diligence – Fallouts and ongoing exercise

While Rule 9(11) provides that no reporting entity shall *allow the opening of or keep* any anonymous account or account in fictitious names or account on behalf of other persons whose identity has not been disclosed or cannot be verified,

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Rule 9(12) provides that every reporting entity *shall exercise ongoing due diligence* with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary, the source of funds.

Lastly Rule 9(13) states that every reporting entity *shall carry out risk assessment* to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, and products, services, transactions or delivery channels that is consistent with any national risk assessment conducted by a body or authority duly notified by the Central Government.

10. Maintenance of records of identity of clients (Rule 10)

Rule 10 of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 lays down that: every reporting entity, shall maintain records of the identity of its clients.

At the outset, it may be noted that the above Rule has been substituted by [Notification No. 12/2013/F.No.P.12011/1/2013-SO(ES(Cell)) Gazetted on 27.08.2013. some of the notable changes are being tabulated as under: -

| Particulars | Pre amended rule 10 [old] | Post amended rule 10 [new] |
|------------------------------------|--|---|
| Maintenance of records | Relating to identity of clients. | Relating to identity of clients <i>in accordance with Rule 9.</i> |
| Manner of Maintenance of records | Records shall be maintained <i>in hard and soft copies</i> in a manner as may be specified by the Regulator. | Records shall be maintained in <i>such</i> manner as may be specified by the Regulator. |
| Duration of Maintenance of records | Records shall be maintained <i>for 10 years</i> from the date of cessation of transactions | Duration has been done away with. It has been further provided that in the absence of records of identity of the client, the reporting entity would |

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| | | |
|--|--|--|
| | | seek the same from the clients and upon failure of client to furnish their records of identity, the reporting entity shall close the accounts of such clients. |
|--|--|--|

11. Know Your Customer Guidelines

The objectives of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities. It was introduced in the late 1990s in the United States. The US government became very strict after 9/11 and all Regulations for KYC were finalized before 2002.

The US has made changes in its major Legislations -- Bank Secrecy Act, USA Patriot Act, etc. to make KYC norms really effective for the banking sector.

Taking a leaf out of the US book, the Reserve Bank of India too directed all banks to implement KYC guidelines for all new accounts in the second half of 2002.

For existing accounts, imposing KYC norms was little difficult, so the RBI issued guidelines for it at the end of 2004.

12. What is KYC

Let us first understand what KYC norms actually mean. For the purpose of KYC policy, a 'Customer' is defined as:

- (a) a person or entity that maintains an account and/or has a business relationship with the bank.
- (b) one on whose behalf the account is maintained (i.e. the beneficial owner)
- (c) beneficiaries of transactions conducted by professional intermediaries such as Stock Brokers, Chartered Accountants, Solicitors etc. as permitted under the law, and
- (d) any person or entity connected with a financial transaction which can pose significant reputational or other risks to the bank, say , a wire transfer or issue of a high value demand draft as a single transaction.

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In order to prevent identity theft, identity fraud, money laundering, terrorist financing, etc., the RBI had directed all banks and financial institutions to put in place a policy framework to know their customers before opening any account.

This involves verifying customers' identity and address by asking them to submit documents that are accepted as relevant proof.

Mandatory details required under KYC norms are proof of identity and proof of address. Passport, voter's ID card, PAN card or driving license are accepted as proof of identity, and proof of residence can be a ration card, an electricity or telephone bill or a Letter from the employer or any recognised public authority certifying the address.

Some banks may even ask for verification by an existing account holder. Though the standard documents which are accepted as proof of identity and residence remain the same across various banks, some variations are permitted, which differ from bank to bank.

Hence, all documents shall be checked against banks requirements to ascertain if those match or not before initiating an account opening process with any bank. Thus opening a new bank account is no longer an easy task.

13. Other aspects of KYC

To prevent the possible misuse of banking activities for anti-national or illegal activities, the RBI has given various directives to banks:

1. Strengthening the banks' 'Internal Control System' by allocating duties and responsibilities to their staff and periodically monitoring them.
2. Before giving any finance at branch level, making sure that the person has no links with notified terrorist entities and reporting any such 'suspect' accounts to the government.
3. ReguLar 'Internal Audit' by internal and concurrent auditors to check if the KYC guidelines are being properly adhered to by the banks.
4. Most important, banks must keep a keen watch on all banking transactions and identify suspicious ones. Such transactions will be immediately reported to the bank's head office and authorities and norms shall also be laid down for freezing such accounts.

The RBI had come up with more specific guidelines regarding KYC. These were divided into four parts:

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(a) Customer Acceptance Policy: Every bank should develop a clear Customer Acceptance policy laying down explicit criteria for Acceptance of customers. The Customer Acceptance policy must ensure that explicit guidelines are in place on the following aspects of customer relationship in the bank:-

1. No account is opened in anonymous or fictitious benami(s) name.
2. Not to open an account or close an existing account where the bank is unable to apply appropriate customer due diligence measures.
3. Bank should prepare a profile for each new customer based on risk categorization.

It is important to bear in mind that the adoption of customer acceptance policy and its implementation should not become too restrictive and must not result in denial of banking services to general public especially to those who are financially or socially disadvantaged.

(b) Customer Identification Procedures: The policy approved by the Board of banks should clearly spell out the Customer Identification Procedure to be carried out at different stages i.e. while establishing a banking relationship ; carrying out a financial transaction or when the bank has a doubt about the authenticity/veracity or the adequacy of the previously obtained customer identification data.

CIP means identifying the customer and verifying his/her identity by using reliable, independent source documents, data or information.

(c) Monitoring of Transactions: Ongoing monitoring of transactions is an essential element of effective KYC procedures. Banks should pay special attention to all complex, unusually large transactions and all unusual patterns which have no apparent economic or visible lawful purpose. Very high account turnover inconsistent with the size of the balance maintained may indicate that funds are being washed through the account. High-risk accounts have to be subjected to intensified monitoring.

(d) Risk management: The Board of directors of the bank should ensure that an effective KYC programme is put in place by establishing appropriate procedures and ensuring their effective implementation.

Banks internal audit and compliance function have an important role in evaluating and ensuring adherence to the KYC policies and procedures. As a

Client Due Diligence

general rule, the compliance function should provide an independent evaluation of the bank's own policies & procedures, including legal & regulatory requirements.

14. Risk Assessment

Every reporting entity shall carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, and products, services, transactions or delivery channels that is consistent with any national risk assessment conducted by a body or authority duly notified by the Central Government. The risk assessment mentioned above shall—

- (a) be documented;
- (b) consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;
- (c) be kept up to date; and
- (d) be available to competent authorities and self-regulating bodies.

15. Introduction of New Technologies- Credit cards/ debit cards/smart cards/gift card

Banks should pay special attention to any money laundering threats that may arise from new or developing technologies including internet banking that may favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes. Many banks are engaged in the business of issuing a variety of Electronic Cards that are used by customers for buying goods and services, drawing cash from ATMs and can be used for electronic transfer of funds.

Chapter 15

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In News – India

Swiss bank UBS - India's lone banking regulator, Reserve Bank of India, recently blocked the application of Swiss bank UBS for a banking license in India on the ground that it was involved in \$8 billion money laundering racket.

Satyam Computer - The Enforcement Directorate has registered a case against Satyam Computer and its tainted founder chairman B Ramalinga Raju for alleged money laundering.

Former Jharkhand Chief Minister Madhu Koda – A Nationwide search conducted in 37 premises spread over the four states of Bihar, Jharkhand, West Bengal and Maharashtra in connection with the money laundering scam in which former Jharkhand Chief Minister Madhu Koda and his close aides, Binod Kumar Sinha and Sanjay Choudhary, are the prime accused.

Agusta Westland Chopper deal - A Notable businessman has been booked under PMLA ACT by ED on allegations of kickbacks in the Rs 3,600-crore Agusta Westland Chopper deal. [*Source* : IBN Live News Channel]

Black money: SIT suggests amendments to PMLA : Advocating inclusion of offences committed under various other statutes under the ambit of the Prevention of Money Laundering Act (PMLA), the Special Investigation Team on black money has suggested institution of a statutory mechanism empowering the Enforcement Directorate to initiate proceedings suo motu. The SIT proposes that statutes like the Mines Act, the MMD Act, The Income-Tax Act, The Customs Act & other direct and indirect tax laws need to be included to expand the ambit of money laundering investigations. [*Source* : The Hindu, News paper]

CWG scam: Enforcement Directorate questions MP in money laundering case - The agency's probe into money laundering charge against the Pune Member of Parliament is with regard to its complaint on the basis of a First Information Report (FIR) by the Central Bureau of Investigation (CBI) on charges of cheating, conspiracy and corruption in the Timing, Scoring Result system (TSR) contract of the Commonwealth Games at a huge cost of Rs 141 crore. *Source*: PTI dated 17.04.2013

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ED attaches Rs 1 bn assets in NSEL case - The Enforcement Directorate has attached a fresh estimated Rs 100 crore assets of a borrower company and its associates in connection with money laundering probe in the National Spot Exchange Limited (NSEL) scam case. The agency's latest action, under Prevention of Money Laundering Act (PMLA), has been taken against the borrower company and its two group companies, which owe the investors Rs 922 crores, sources said. The ED had earlier attached Rs 75 crore assets belonging to the same firms. The agency had conducted searches on the premises of the company on 31 October and had sealed a number of them in various cities. The ED had earlier registered a criminal case under PMLA in this case which had rattled the bourse for allegations of largescale financial misdeeds. The ED, suspects that the firm laundered huge amounts of sums generated from the operations at NSEL and its investigations suggest these funds were ploughed into real estate and other avenues. An attachment action under money laundering laws is meant to deprive the accused of the benefits of the ill-gotten property or assets. The order can be challenged before the Adjudicating Authority of PMLA within 180 days. *[Source : December 16, 2013 New Delhi, PTI]*

ED may register fresh PMLA case against Abhishek Verma -: The Enforcement Directorate may register a fresh money laundering case against arms dealer Abhishek Verma for allegedly receiving money from a Swiss defence firm to keep out of the Government's blacklist. The ED, which has been probing Verma and his associates in the Naval war room leak case of alleged violations of forex and money laundering laws, has got new information based on the latest FIR filed by the CBI against the arms dealer. The fresh case under the provisions of the Prevention of Money Laundering Act could be registered on the basis of the CBI complaint against Verma, where he has been accused of taking USD 5,30,000 from Swiss firm Rheinmetall Air Defence AG (RAD) for using his influence to stall the blacklisting proceedings initiated by the government against it after the Ordnance Factory Board (OFB) scam had surfaced. *[Source: <http://zeenews.india.com>]*

Graft case: Assets worth Rs 863 crore sealed

Initiating one of its biggest criminal actions in a money laundering case, the Enforcement Directorate had attached assets worth Rs 863 crore of a leader of a Political Party and his associates in connection with its probe into alleged corruption in an infrastructure project.

The ED had in 2012 registered a criminal probe under the Prevention of

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Money Laundering Act (PMLA) against the individuals and associated firms based on a CBI FIR in this case. This is the fourth PMLA attachment order issued by the ED in this case. [**Source:** www.rediff.com]

Karnataka mining scam: Rs 37.86 crore assets attached

A special anti-money laundering court has ordered attachment of assets worth over Rs 37.86 crore belonging to former Karnataka minister and mining baron and his wife in connection with an alleged multi-crore iron ore mining scam.

The assets, which included a Rs 4 crore flat in Bangalore, a Rs 14 lakh house in Bel ary, fixed deposits and cash in bank accounts, were attached by the Enforcement Directorate (ED) under the provisions of the Prevention of Money Laundering Act (PMLA).

The Adjudicating Authority stated: "After careful consideration of the material placed before me, including the FIR, charge sheet filed by CBI and the submissions by the learned counsels, I am convinced prima facie that the defendants (Reddy and wife) had committed scheduled offences, generated proceeds of crime and ploughed them into properties provisional attached". The court is the nodal judicial body set up to decide cases of enforcement and money laundering. [**Source :** www.deccanchronicle.com]

Madhu Koda case: Jharkhand ex-ministers' assets frozen - A special PMLA court has frozen properties worth over Rs 5.8 crore belonging to Kamlesh Kumar Singh, former Jharkhand Minister in the Madhu Koda cabinet, declaring them as proceeds of money laundering crime.

The order has been issued while confirming a provisional attachment order of the Enforcement Directorate (ED) which seized these properties after taking cognizance of a Jharkhand Vigilance Bureau FIR in the case in 2009. The probe is being done by the Lucknow zonal unit of ED. The Adjudicating Authority of the Prevention of Money Laundering Act (PMLA) in Delhi, termed these assets to "have been involved in money laundering" and ordered their attachment. [**Source :** IBN Live News Channel]

NRHM scam: ED attaches assets of ex-UP Minister - In its first major action in the multi-crore National Rural Health Mission the Enforcement Directorate had attached assets worth Rs 60 crore belonging to former Uttar Pradesh Minister and others under money laundering laws. The ED's zonal office in Lucknow has attached a number of flats under the criminal

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provisions of the money laundering law, located in Lucknow, Banda (UP), Noida and Delhi. The agency, had registered a criminal case under the Prevention of Money Laundering Act. [Source: <http://www.indiatvnews.com>]

Over 300 bank accounts, 200 firms involved in Saradha scam - A complicated maze of 338 bank accounts and 224 companies was used by the perpetrators of the Saradha chitfund scam which is alleged to have duped numerous investors of their hard earned monies in various states including West Bengal, Odisha and Assam. The Enforcement Directorate (ED), which has been probing the Saradha scam under money laundering laws, has put together the jigsaw puzzle through which the Saradha group and its sister companies conducted the alleged dubious business transactions which came to light early last year after investors raised their voice and said they were cheated. In one of the most voluminous investigations being carried out by the agency involving lakhs of multi-layered transactions, it was found that "more than 90 per cent of such companies existed only on paper and only 17 companies out of the 224 companies actually had carried out some business."

A total of 390 bank accounts have been frozen by the agency till now even as it has written to these financial institutions for providing details on "lakhs of transactions" done by the group before it got defunct and closed the shop. The agency is also expected to attach more assets of the group and of the entities involved under PMLA laws as the particular provision in this law is aimed to deprive the accused the benefits of his or her ill-gotten wealth. [Source : IBN Live News Channel]

PMLA case: Trial begins, court records statement of ED officer - The court had put on trial 19 accused — 10 individuals and nine companies — under the provisions of PMLA after they had pleaded not guilty and said that they will face the trial for the charges against them. The court had framed charges against the accused, saying that Raja allegedly in "connivance" with other co-accused was involved in "parking" of illegal gratification of Rs 200 crore in DMK's Kalaighar TV. If convicted, Raja and others will face a maximum sentence of up to seven years.

While framing charges against the accused, the court had observed there was enough material on record to make out a "prima facie" case against the accused who were chargesheeted by ED on April 25 for committing an offence punishable under PMLA. [Source: Press Trust of India 31 October, 2014]

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Eight under ED scanner for cheating jeweler- The Enforcement Directorate (ED) has filed a complaint against eight persons under the Prevention of Money Laundering Act (PMLA) for cheating a jeweller and an advocate of nearly Rs 1 crore. This is the second complaint, which is equivalent to a charge sheet under the Indian Penal Code, filed by the ED. The first was in the case of drug trafficking. The ED, which is empowered under the PMLA to investigate cases where the proceeds of crime are projected as untainted money, had taken up the investigation against the Dutch national Ashok Chugani who fooled the jeweller and an advocate into parting with lakhs of rupees. The police have already investigated the two cases against Chugani and charge sheeted him. [*Source*: Times of India Publications, Bombay]

Punjab Minister Majithia questioned by ED in drug money laundering case: Punjab Revenue Minister Bikram Singh Majithia was questioned by the Enforcement Directorate (ED) in connection with the alleged Rs 6,000 crore money laundering drugs racket case.

Official sources said Majithia reached the ED office in Jalandhar, at the stipulated time of 11 AM, where a criminal case has been launched under the PMLA to probe this case. "Majithia's statement will be recorded under PMLA laws and the questioning is in progress," the sources said. The ED has been probing an international drug racket, which was unearthed with the arrest of an NRI, Anoop Singh Kahlon, by the Fatehgarh Sahib Police in March 2013 and Majithia's name came under the scanner after statements of other accused were recorded in the case. [*Source* : News paper clippings Dec 26, 2014 Chandigarh]

SEBI Bans 260 Entities from accessing the Markets for misusing Exchanges and probing listed shell companies role in helping tax evaders. In a detailed order, the regulator has passed on information on bogus long term capital gains through penny stocks to Income Tax Department, the Enforcement Directorate and Financial Intelligence Unit (FIU-IND) for necessary action at their end as may be deemed appropriate by them. Order dated 19.12.2014 passed in the case of First Financial and Radford Group available at www.sebi.gov.in.

International News:

- Data of 24,000 HSBC Swiss account holders stolen, potentially exposing large number of international clients to prosecution by tax authorities in their home countries.

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- The Serious and Organized Crime Agency (SOCA) believes that Naresh Kumar Jain is responsible for laundering millions of pounds of profits from organized crime gangs in the UK over several years.
- Jain is suspected of laundering money for Albanian and Italian heroin dealers, and narcotics cartels in America, the United Arab Emirates, Pakistan and Britain, according to inquiries in Italy and the US. German and US police say Jain's operation has tentacles in all of the major drug and terrorism hotspots across the globe. He was also wanted by police in Spain and the Netherlands.
- Jain was bailed in Dubai – where he faces trial for breaking foreign exchange laws – and fled his business headquarters. He resurfaced in his nativeland India, where authorities raided several properties owned by him and issued an all ports alert.
- The family of NRI businessman Raj Bhojwani, facing trial in tax haven island of Jersey on the charges on money laundering in a truck sale deal to Nigeria, has a leged "racial discrimination" and is all set to move the UN Human Rights Commission and British Institute of Human Rights.
- Bhojwani's counsel Hitesh Jain, in a letter to former Prime Minister Manmohan Singh, a copy of which is with PTI, has alleged that Jersey is interested in making a case against the businessman, confiscate his assets and share them with Nigeria.

Bhojwani's family and Lawyers say his human rights have been violated and they are requesting Government of India and External Affairs Ministry that a committee be appointed to inquire into the facts of the case and also watch the current proceedings in Jersey to ensure that an Indian citizen's rights are protected and he gets a fair trial.

WASHINGTON (AP) -- The government on Friday accused Wall Street's most powerful firm of fraud, saying Goldman Sachs & Co. sold mortgage investments without telling the buyers that the securities were crafted with input from a client who was betting on them to fail.

And fail they did. The securities cost investors close to \$1 billion while helping Goldman client Paulson & Co., a hedge fund, capitalize on the housing bust. The Goldman executive accused of shepherding the deal allegedly boasted about the "exotic trades" he created "without necessarily understanding all of the implications of those monstrosities!!!"

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The civil charges filed by the Securities and Exchange Commission are the government's most significant legal action related to the mortgage meltdown that ignited the financial crisis and helped plunge the country into recession.

The news sent Goldman Sachs shares and the stock market reeling as the SEC said other financial deals related to the meltdown continue to be investigated. It was a blow to the reputation of a financial giant that had emerged relatively unscathed from the economic crisis.

Goldman Sachs denied the allegations. In a statement, it called the SEC's charges "completely unfounded in law and fact" and said it will contest them.

The SEC is seeking to recoup the money lost by investors and impose unspecified civil fines against Goldman Sachs and the executive, Fabrice Tourre. The SEC could enter into settlement negotiations over the amount if Goldman changed its stance and decided not to fight the charges in a trial. The SEC said Paulson paid Goldman roughly \$15 million in 2007 to devise an investment tied to mortgage-related securities that the hedge fund viewed as likely to decline in value. Separately, Paulson took out a form of insurance that allowed it to make a huge profit when those securities' value plunged.

The fraud allegations focus on how Goldman sold the securities. Goldman told investors that a third party, ACA Management LLC, had selected the pools of subprime mortgages it used to create the securities. The securities are known as synthetic collateralized debt obligations.

The SEC alleges that Goldman misled investors by failing to disclose that Paulson & Co. also played a role in selecting the mortgage pools and stood to profit from their decline in value. Two European banks that bought the securities lost nearly \$1 billion, the SEC said.

"Goldman wrongly permitted a client that was betting against the mortgage market to heavily influence which mortgage securities to include in an investment portfolio, while telling other investors that the securities were selected by an independent, objective third party," SEC Enforcement Director Robert Khuzami said in a statement.

But Goldman said in a statement that it never mischaracterized Paulson's strategy in the transaction. It added that it wasn't obliged to "disclose the identities of a buyer to a seller and vice versa."

The charges name only Goldman Sachs and Tourre, who was a vice president in his Late 20s when the alleged fraud was orchestrated in 2007.

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Tourre, the SEC said, boasted to a friend that he was able to put such deals together as the mortgage market was unraveling in early 2007.

In an e-mail to the friend, he described himself as "the fabulous Fab standing in the middle of all these complex, highly leveraged, exotic trades he created without necessarily understanding all of the implications of those monstrosities!"

Tourre, 31, has since been promoted to executive director of Goldman Sachs International in London.

Stanford University spokeswoman Elaine Ray said a student by the name of Fabrice Tourre received a master's degree in management science and engineering from the school in 2001.

Asked why the SEC did not also pursue a case against Paulson, Khuzami said: "It was Goldman that made the representations to investors. Paulson did not."

Paulson & Co. is run by John Paulson, who reaped billions by betting against subprime mortgage securities. He is not related to former Treasury Secretary Henry Paulson, a former Goldman CEO.

John Paulson was among the first on Wall Street to bet heavily against subprime mortgages. His firm earned more than \$15 billion in 2007, and he pocketed \$3.7 billion. He has since earned billions more, largely by betting against bank stocks and then buying them back after their shares plunged.

The following cases have principally been drawn from the Typologies Reports published by the FATF during the period 1997 - 2004:

(i) Money Transfers

Facts

The police arrested suspect A, the leader of an Iranian drug trafficking group, for possessing stimulants and other kinds of drugs. Subsequent investigation revealed that the suspect had remitted part of his illegal proceeds abroad.

A total of USD450,000 was remitted via three banks to an account on behalf of the suspect A's elder brother B at the head office of an international bank in Dubai. Transfers were made on five occasions during a two-month period in amounts ranging from USD 50,000 to 150,000.

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Another individual, suspect C, actually remitted the funds and later returned to Iran. On each occasion, C took the funds in cash to the bank, exchanged them for USD, and then had the funds transferred. Each of the transactions took about one hour to conduct, and the stated purpose for the remittances was to cover "living expenses".

Results

Suspect A was initially charged with violating provisions of the anti-narcotics trafficking law. The money transfers revealed during the investigation led to additional charges under the anti-money laundering Law.

Lessons

This case represents a classic example of a simple money laundering scheme and is also a good example of a case derived, not just from suspicious transaction reporting, but also as a follow-up to traditional investigative activity.

(ii) Exchange transaction relating to laundered drug money and diamond smuggling

Facts

A foreign exchange transaction of a European currency into US dollars for a value of almost USD177,000 was reported to the FIU of an FATF member jurisdiction (Country A). At the time of the transaction, the individual, of Asian origin, gave the exchange office an address in another FATF country (Country B). This transaction was soon followed by four more similar transactions. After several weeks, the total had already reached USD 618,000. After a break of six months, the exchange transactions resumed. Over a four-month period, the intermediary appeared with large amounts in pesetas to be converted into dollars. The total amount of the transactions described in reports to the FIU amounted to more than USD1.3mn.

The information obtained from law enforcement agency demonstrated that the individual had no criminal record in Country A. Given that the case involved large amounts for which there existed no apparently legitimate economic justification, the FIU pursued the investigation. Several foreign FIUs were queried. One of them was able to provide useful information: the individual was known as a member of a group of drug traffickers who performed the same type of transactions in the country involved. Investigation of the members of this group was already in progress in that

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country. Secondly, it appeared that the address provided during the first contact with the financial institution was false. On the basis of these elements, the FIU decided to turn over the case file to the prosecutorial authority. Subsequent investigation showed that the individual had not been acting alone. For a number of years she had played a dominant role in money laundering transactions involving a total amount of around USD11.5mn.

Results

The individual was arrested in the company of one of her accomplices and in possession of a large sum in US dollars. She accepted the retail foreign exchange transactions as well as the illicit origin of the funds. According to her account, they were derived from illegal diamond trafficking. She was sentenced to four years in imprisonment (two of which were suspended) and a fine of nearly USD1mn. The funds seized, as well as the amounts exchanged, were confiscated; her accomplices were sentenced to two years in prison (one of which was suspended).

Lessons

This example clearly illustrates the importance of international co-operation and the exchange of information between FIUs and their foreign counterparts in the detection of money laundering transactions. It also demonstrates the necessity for financial institutions to continue sending suspicious transaction reports to the FIU, even when they do not at first seem to produce an immediate response from the authorities.

(iii) Launderers recruit individuals for the use of their bank account

Facts

An FIU received suspicious transaction reports from three financial institutions concerning international fund transfers. Through police investigation, it was discovered that several individuals were acting as money collectors for a cocaine trafficking organisation. Their job was to identify and "recruit" professionals already established in various trades and services who might be amenable to earning some extra money by allowing their bank accounts to be used in a laundering scheme. The professionals would place cash in their accounts and then transfer the sum to accounts indicated by the money collectors.

The professionals involved in this activity were active in several types of business, including travel agencies, and import/export of commodities and

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computers. In return for their services, they received a commission on the funds transferred through their accounts. The transfers out of the accounts were justified by fictitious invoicing that corresponded to their particular business.

Results

This investigation uncovered an organisation that was laundering the proceeds of cocaine trafficking believed to be worth USD 30 million. Several members of the group were identified and tried in two countries.

Lessons

This scheme illustrates how criminals put additional measures into place to distance the money from the narcotics trafficking operation. Cash is collected from the drug dealer; the collector passes the funds to the launderer; the launderer then passes them to the recruited business professional, who then transfers the funds abroad for further processing. The money continues to move, and the trail becomes more complex. The use of professionals can establish a 'break' in the trail, and so thwart financial investigators.

(iv) Use of bank safety deposit boxes

Facts

A Law enforcement investigation centred on the suspicious behaviour of a bank customer who appeared to be exchanging old, outdated banknotes for a new series of banknotes. The suspect appeared to be storing the old banknotes in one of the safe deposit boxes of the bank.

The suspect received social security payments and had no other identifiable legitimate income.

Further enquiries revealed that the suspect had an extensive criminal history and had recently purchased a motor vehicle with a large amount of cash and owned a number of high value real estate properties.

Results

The investigation established that the suspect was involved in drug cultivation in the houses he had purchased using the proceeds of his drug trafficking activities. The suspect used the bank's safe deposit facilities to store cash obtained from the sale of illegal drugs and also to keep the jewellery purchased with illegal money.

Lessons

This example illustrates that a complicated money laundering scheme is not required to integrate illegal proceeds back into circulation.

(v) Laundering through temporary bank accounts Facts

An investigation revealed that the proceeds of a VAT evasion scheme were laundered through a number of temporary bank accounts. The launderer transferred the proceeds to a particular financial institution and requested that the funds be placed into a temporary account because he had not decided into which account to put them in. A few days later, he instructed the bank to pay the money in cash or through a cheque. The transaction was not registered in the books of the launderer. Investigators also discovered that the launderer used the temporary bank account for more than one transaction. Afterwards, he asked the bank to transfer the funds to accounts (at the same bank or another), which had been opened on behalf of companies controlled by the launderer. False invoices for fictitious deliveries to these companies were used to justify the transfers.

Lessons

Analysing and investigating transactions involving temporary bank accounts is very difficult. Often research has to be done manually at the bank where the transactions occurred; thus there could be a delay, sometimes a significant delay, before the institution may be able to provide information to authorities.

(vi) Use of a bureau de change and bank accounts under false names

Facts

A drug trafficking investigation established that cash collected from the sale of drugs was taken to a bureau de change at the border where large sums of money in small denominations were exchanged into denominations of a foreign currency. This money was then moved in bags of cash across the border to purchase a further supply of drugs.

Further investigation identified a scheme in which illegally obtained funds were deposited under a false name into a holding account within the bureau de change, which was controlled by the money launderer. During search operations of the premises, it was also established that the bureau de change did not maintain detailed record of cash transactions.

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Results

Three individuals were charged with money laundering in this investigation.

Lessons

Although the bureau de change had an obligation to identify customers and maintain records, it did not do so. A money laundering operation was uncovered through police investigation. This example shows that if preventive measures are not enforced laundering activity can continue, even in supposedly regulated financial institutions.

(vii) Payments structured to avoid detection

Facts

Over a four year period, A and his uncle operated a money remittance service known as Company S and conducted their business as an agent of a larger money remitting business that was suspected of using it to finance terrorism later, an investigation was initiated into the accounts of Company S on the basis of a suspicious transaction report.

The investigation showed that over the four year period, A's business had received over USD4 million in cash from individuals wishing to transmit money to various countries. When A's business received cash from customers, it was deposited into multiple accounts at various banks in country X. In order to avoid reporting requirements in Country X, A and others always deposited cash with the banks in sums of less than USD10,000, sometimes making multiple deposits of less than USD10,000 in a single day.

Results

A was charged and later pleaded guilty to a conspiracy to "structure" currency transactions in order to evade financial reporting requirements.

Lessons

This case underlines the need to have mechanisms in place to monitor and link transactions (especially cash deposits) made by an individual or entity through different branches of a bank, or through different banks.

(viii) Cross border cash

Facts

Three suspicious transaction reports were received about a number of transactions which were carried out at Danish banks, whereby large amounts

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of money were deposited into accounts and then withdrawn shortly afterwards as cash. The first report concerned an account held by customer X. Initial investigation revealed that the subjects of the reports (X, Y and Z) did not figure in police databases as people with any criminal activity. However, further investigation showed that X had imported more than three tonnes of hashish into Denmark over a nine-year period. Y had assisted him on one occasion, whilst Z had assisted in laundering the money.

Most of the money was transported by Z as cash from Denmark to Luxembourg where X and Z held 16 accounts at different banks, or to Spain and subsequently Gibraltar, where they held 25 accounts. The receipts from the Danish banks for the withdrawn money were used as documentation to prove the legal origin of money when it was deposited into banks in Gibraltar and Luxembourg. It turned out that sometimes the same receipt was used at several banks, so that more cash could be deposited as "legal" than had actually been routed through the Danish bank accounts.

Results

X and Y were arrested, prosecuted and convicted for drug trafficking offences and received sentences of six and two years imprisonment respectively. A confiscation order for the equivalent of USD6mn was made against X. Z was convicted of drug money laundering involving USD1.3mn, and was sentenced to imprisonment for twenty-one months.

Lessons

Financial institutions should not accept proof of deposit in a bank account as proof of the legitimate origin of money held in that account. Carrying illegal proceeds as cash across national borders continues to be an important method of money laundering.

(ix) Bureaux de change

Facts

After exchange offices became regulated, and subjected to obligations to prevent money laundering, one bureau ("The Counter") had been doing business in a small town near the German border for a number of years. The Counter often had a surplus of bank notes of high denomination, and the owner (Peter) knew that because these notes were not preferred by his clients, he changed them into smaller denomination notes at a nearby bank. Prior to the coming into effect of the new legislation, persons acting on behalf of The Counter regularly exchanged amounts in excess of the equivalent to

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USD 50,000, but immediately after the legislation took effect, the transactions were reduced to amounts between USD 15,000 and 30,000 per transaction. The employees of the bank branch soon noticed that the dubious nature of the exchanges did not have any sound economic reason, and the transactions were reported.

Peter had a record with the police relating to fencing and dealing in soft drugs, and because of this he transferred the ownership of The Counter to a new owner with no police record (Andre). Andre applied for the registration of The Counter to the Central Bank as an exchange office, which was accepted on a temporary basis. The financial intelligence unit consulted various police files and established that the police had been observing this exchange office for some time. The suspect's transactions were passed on to the crime squad in the town where The Counter had its office, and it started an investigation. A few months later, the crime squad arrested Andre, searched his house, where expensive objects and an amount equivalent to more than USD250,000 in cash were seized. The records of The Counter showed that many transactions were kept out of its official books and records. For example, over a period of thirteen months The Counter changed the equivalent of more than USD50mn at a foreign bank without registering these exchange transactions in its official books and records. The investigation showed that The Counter and its owners were working with a group of drug traffickers, who used the exchange office to launder their proceeds, and this formed a substantial part of the turnover of the business.

Results

The drug traffickers were prosecuted and convicted and are now serving long prison sentences. Andre was sentenced to six years in prison for laundering the proceeds of crime and forgery. Peter moved abroad with his family. A separate legal action is still pending to take away Andre's profits, the confiscated objects and cash. The Counter has been closed and its registration as an exchange office cancelled.

Lessons

This case shows the need for banks and large legitimate bureaux de change to pay attention to their business relations with smaller bureaux, particularly when supplying or exchanging currency with them.

(x) Alternative remittance systems use of retail outlets

Facts

This case involved a number of overseas remittance services. What was common to them was that they operated from retail shops selling clothes or fabrics and arranged the transfer of money to Country A (for a fee).

The largest remittance service 'Servicio Uno', was an incorporated company and had an annual turnover in excess of USD3.3mn. It accepted money from individual customers and received funds from smaller remittance services locally and regionally. These smaller services channelled money through Servicio Uno because it had an extensive family-based delivery network in Country A.

The general method used by Servicio Uno was as follows:

Cash was received from customers and sub-agents; a portion of it was deposited in a bank, and some was kept in hand.

Funds were transferred to Country A either by telegraphic transfer purchased with cash or cheque or by sending money to a trading company, 'Trans-Expedición SA', in Country B. The company did business in Country A and had associates there that owed it money. Once Trans-Expedición received the money in Country B from Servicio Uno, it advised its debtors in Country A to pay a specified amount direct to another remittance business, Remesas-X, in Country A.

Twice a week, Servicio Uno faxed a list of required deliveries to a company it owned and operated in Country A, including details of the sender, the recipients and their address, and the amount and type of currency or gold bars to be delivered. A fee of 5-10% was charged by Servicio Uno.

There was also evidence of substantial amounts of money flowing from Country A back to Servicio Uno. A fax was sent from Country A to Servicio Uno instructing it to provide a specific amount of money to an individual in Servicio Uno's country or to deposit the money into a particular bank account there. No funds were actually transferred from Country A. Instead, a method was used whereby the remittance services at either end of the operation paid off each other's liability with their own assets.

Results

Investigations revealed that several legitimate businesses in Servicio Uno's country had also repatriated funds to Country A through this method. They

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also revealed that a previously convicted money launderer had at least on one occasion transferred USD60,000 to Country A through Servicio Uno. Additionally, one sub-agent of Servicio Uno transferred funds on behalf of two active drug traffickers.

Lessons

This is a classic example of an alternative remittance system. The difficulties for the investigative agency were to unravel links to the third country. It is because there is a high volume of legitimate business that uses this channel to move funds, and also by the employment of indirect settlement methods.

(xi) Alternative remittance systems laundering cash from the sale of narcotics

Facts

Cash from the sale of narcotics was brought to shops and bureaux de change (controlled by a single organisation) in a town located in an overseas territory of Country P. The shops provided specially validated coupons in return for the deposits. These were then used as bearer instruments that permitted the holder to obtain funds to purchase more drugs or to make investments. The controlling organisation also owned several real estate agencies.

The laundering network converted currency from other countries through middlemen that were paid a commission for the use of their identities for depositing these currencies in financial institutions. An employee of one of these institutions was also involved in the scheme. Other funds processed through this system originated in the local black market in consumer goods intended for smuggling operations into the neighbouring jurisdiction.

Results

The law enforcement investigation of this case brought about charges against 73 persons, and seized 10 tonnes of narcotics, 11 boats and USD4.7mn in foreign currency. Suspicious transactions submitted by local financial institutions during the scheme reported transactions totalling more than USD400mn.

Lessons

This scheme is yet another example of an alternative remittance scheme, but one in which coupons were issued to evidence the deposit of cash proceeds.

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(xii) Alternative remittance systems supported by import/export activity

Facts

A national from Country S was arrested in Country M on suspicion of unlicensed banking. The investigation revealed that this subject had been running an informal funds transfer system (hawala) for nearly four years. Three other individuals who had already left the Country M were identified as associates.

Balances were settled between countries M and S through import/export transactions relating to car parts. A company exported car parts from Country M to an importer in Country S with a specific charge. The importer from Country S paid 50% of the specific charge directly to the exporter in country M and the hawala operators paid the other half. In return, the importer in Country S put an amount equivalent to 50 % of the price in the group's account in Country S. The payment was made in local currency and at a rate advantageous to the receivers, so that the group was certain to earn profit from the transaction.

Lessons

Had the exporter's bank been alert to the source of funds for payment of the exported goods, suspicions would have been raised that the payment was being made from two different sources in respect of one transaction.

(xiii) Underground banking activity revealed through large turnover in small business

Facts

Investigations were triggered by several reports of suspected money laundering submitted by various banks over a period of three years in respect of a national of Country N born in south Asia. Although the suspect ran a small business with an annual turnover of around USD150,000, amounts ranging between USD1.7mn and 3.5 mn flowed every year through his private accounts.

Investigations revealed that the suspect's business was actually an international underground bank with headquarters in Country with branches in several Central Asian and European countries and a chain of 14 branches in Country N. In addition to being used by Asian nationals to transfer small

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amounts to support their families back home – a traditional use of the hawala system – this illegal banking system was used to transfer considerable sums for human trafficking into Europe.

Result

The suspect and the manager of one branch were arrested. A number of properties were searched throughout Country N. A forfeiture notice amounting to approximately USD350,000 was issued against the suspect and around USD140,000 in cash was confiscated in preparation for forfeiture. The suspect and the manager were sentenced for human trafficking and the accused voluntarily renounced his claim to the confiscated cash.

Lessons

This is a classic case where KYC information relating to the size of the business activities of the account holder demonstrated that the legitimate business activity could not possibly generate the funds available to the owner of the business.

(xiv) The derivatives market: a typology

Facts

In the following example of how funds could be laundered using the derivatives market, the broker must be willing to allocate genuinely losing trades to the account in which criminal proceeds are deposited. Instead of relying on misleading or false documentation, the broker allocates genuine loss-making documentation to the detriment of the 'dirty money' account holder.

As an example, a broker uses two accounts, one called 'A' into which the client regularly deposits money which needs laundering, and the other called 'B,' which is meant to receive the laundered funds. The broker enters the trading market and 'goes long' (purchases) 100 derivative contracts of a commodity, trading at an offer price of USD85.02, with a tick size of \$25. This is how future market and transactions take place At the same time he 'goes short' (sells) 100 contracts of the same commodity at the bid price of \$85.00. At that moment, he has two legitimate contracts which have been cleared through the floor of the exchange.

Later in the trading day, the contract price has changed to \$84.72 bid and \$84.74 offered. The broker returns to the market, closing both open positions

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at the prevailing prices. Now, the broker, in his own books assigns the original purchase at \$85.02 and the subsequent sale at \$84.72 to account A. The percentage difference between the two prices is 30 points or ticks (the difference between \$84.72 and \$85.02). To calculate the loss on this contract, the tick size of \$25 is multiplied by the number of contracts, 100, multiplied by the price movement, 30. Thus: $\$25 \times 100 \times 30 = \$75,000$ (loss).

The other trades are allocated to the B account, which, following the same calculation theory, results in a profit as follows: $\$25 \times 100 \times 26 = \$65,000$ (profit). The account containing the money to be laundered has just paid out \$75,000 for the privilege of receiving a profit of \$65,000 on the other side. In other words, the launderer has paid \$10,000 for the privilege of successfully laundering \$75,000. Such a sum is well within the premium amount that professional launderers are prepared to pay for the privilege of cleaning up such money. As a transaction, it is perfectly lawful from the point of view of the broker. He has not taken the risk of creating false documentation, which could be discovered, and done everything in full sight of the market.

(xv) Criminal cash proceeds placed through margin trading

Facts

This case involved the theft of approximately USD384mn from a bank in country T over a ten-year period. Initial investigations revealed that the money was sent to country G and laundered through 550 bank accounts in the name of 80 companies. Much of the money was invested in property and stock markets in Country G and ultimately used at will by the four principal thieves. During this time, one of the thieves was reported to be the largest margin stock investor in the Country G market, with a huge turnover in stocks and shares through some of Country G companies, as well as dividends from long term investments. Initial investigations indicated that a major part of the funds in Country T were stolen towards the end of the ten-year period, when a regional economic downturn adversely affected the local property and stock markets.

Results

No disclosures were ever made by stockbrokers about the dealings of these companies. Four people were charged with money laundering and warrants were issued to a number of others.

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(xvi) Investment of fraudulent funds in the securities market

Facts

A brokerage firm opened several accounts for a group of twelve linked individuals, including a non-resident account that recorded very large movements and was apparently used to centralise most of the suspected flows, totalling more than USD18mn.

The launderers used two mechanisms; the accounts of some of the parties involved were credited with large sums received from some countries, which were invested in the stocks of listed companies in Country W; and the accounts of the individuals concerned were credited with sums from these countries were transferred to the non-resident account (there is only one non resident account) the other accounts being used as screens.

The securities buy/sell mechanism was used to filter the flows through a broker and subsequently through the clearer and custodian. Once filtered, the funds were sent to locations in regions with deficient AML systems and offshore financial centres.

Investigations revealed that the co-opted broker had been used to launder the proceeds from various forms of fraud and the manager of the brokerage firm served as a relay for criminal organizations.

Lessons

Transactions with countries on the NCCT list, or with those that do not have satisfactory AML standards, should be subjected to additional scrutiny, particularly where there is no obvious business reason for a connection with the countries concerned.

(xvii) Insurance policies and real estate

Facts

An insurance company informed an FIU that it had underwritten two life insurance policies with a total value of USD268,000 in the name of two European nationals. Payment was made by a cheque drawn on the accounts of a brokerage firm in a major EU financial market and a notary in the south-eastern region of the country.

The two policies were then put up as collateral for a mortgage valued at USD1,783,000 that was provided by a company specialising in leasing transactions. As the policyholders did not pay in their own name, the issuer contacted the brokerage firm to find the exact origin of the funds deposited in

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its account. It was informed that the funds had been received in cash and that the parties concerned were occasional clients.

The parties - two brothers - were known to a law enforcement agency through a separate investigation into the illegal import and export of classic automobiles. Moreover, the two individuals with the same surname were suspected of drug trafficking and money laundering.

Lessons

This example shows the necessity for non-banking financial businesses (in this case insurance companies) to be aware of what constitutes suspicious financial activity. It also demonstrates the critical need for effective co-ordination between agencies regarding the information contained in suspicious transaction reports and law enforcement information.

(xviii) Criminal funds laundered through payment of insurance premiums

Facts

H, a director of company W, set up a money laundering scheme involving two companies, each established under two different legal systems. Both the entities were to provide financial services and financial guarantees to their clients. The companies were then used to send criminally derived funds of USD1.1 million via wire transfers to the accounts of H in country S. H also received transfers from country C. Funds were then transferred from several current and savings accounts; through one of these transfers, funds were made available from a current account to make payments on life insurance policies. Investment in these policies was the principal laundering mechanism amounting to around USD1.2 million, representing the last step in the laundering operation.

Lessons

Insurance companies should not straightaway believe that funds given to them are derived from legitimate activity merely because they are paid from an established bank account.

(xix) Company front - false loans scheme

Facts

The individual involved in this scheme was the finance director of a

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shipbuilding yard, a subsidiary company of one of the biggest companies in a country. In his capacity as finance director, he had a meeting in his office with two Russian nationals, one of whom already had business relations with the company. The director was asked to open two bank accounts in the name of the company, and to receive and deposit two amounts of money (USD65,000 and USD100,000) from the Russians, into them. He was promised a commission of 1-2%, which would be paid to him direct.

The finance director agreed to this arrangement and received the money in cash in plastic bags on two occasions: the first, in his office; and the second, at a private residence. Subsequently, he was asked to sign a fictitious loan contract with the Russians on behalf of the company. According to the contract, the Russians would receive loans against the amounts that had been deposited into the accounts opened by him.

After receiving additional instructions from the Russian, the finance director wrote a letter - using the company letterhead - stating that the loans had been transferred to another company by the name of Verimer International SA and that payment should (take place to Verimer International SA Verimer was registered in the Bahamas; however, the company had the same address as that of finance director and also a local bank account in his name. One of the Russians was the owner of Verimer; he had bought the company through a company formation agent in Moscow.

Results

Investigation established that USD100,000 were the proceeds of a gross breach of trust committed by two or three Russian nationals in Murmansk. The second sum could not be linked to a specific crime; however, it was established that the sum did represent criminal proceeds of some kind. The finance director was sentenced to two years for money laundering.

Lessons

This example illustrates that a legitimate business may be used as a cover for a laundering operation.

(xx) Shell corporations Facts

A drug trafficker used his proceeds to purchase a property, for which payment was made partly in cash and partly through a mortgage. He then sold the property to a shell corporation controlled by him. The corporation sold the property to a third party for the original purchase price. By this

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means the drug trafficker concealed his proceeds of crime in a shell corporation, and thereby attempted to disguise the origin of the original purchase funds.

Results

The Property, which was part of the money laundering scheme, was forfeited and disposed of by the authorities.

Lessons

This case illustrates the need to trace the ownership history of a property carefully to identify possible links between owners, and any suspicious transfers that may indicate attempts to co-mingle assets. There is also a need for law enforcement agencies to be familiar with the general rules and practices regarding the purchase of property in relevant jurisdictions, and to be aware that transfers involving nominal amounts can be easily structured in some jurisdictions.

(xxi) Shell companies and Corporate Service Providers

Facts

During a two-year period, financial institutions in a European country made suspicious transaction reports to the relevant financial intelligence unit. The reports identified large cash deposits made to the banks, which were exchanged for bank drafts made payable to a shell corporation based and operated from an Asian jurisdiction. The reports identified transfers totalling approximately USD1.6mn to an account held by a shell corporation in a financial institution within Asian jurisdiction.

Around the same time, police had been investigating a group in that country which was involved in importing drugs. Soon after, the police arrested several persons of the group, including the principal, who controlled the company in the Asian jurisdiction. They were charged with conspiring to import a large amount of cannabis. Investigation revealed that the principal had made sizeable profits. A large percentage of this was traced and restrained. A total of approximately USD2mn was sent from the European country to the Asian jurisdiction, and then transferred back to bank accounts in Europe, where it was restrained.

Two methods were used to launder the money. The principal purchased a shell company in the Asian jurisdiction which was operated there by a

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secretarial company on his instructions. The shell company opened a bank account, which was used to receive pay orders and bank drafts which had been purchased for cash in the country of origin. The principal was also assisted by another person who controlled (through the same secretarial company) several companies, which were operated for both legitimate reasons and otherwise. This person laundered part of the proceeds by selling the funds in several other jurisdictions, and used non face-to-face banking (computer instructions from the original country) to do so.

Results

Seven persons including the principal were put on trial in the European country on charges of drug trafficking, and the principal and three other persons faced money laundering charges.

Lessons

This example shows how attractive and easy it is for criminals (even if not a part of international organised crime) to use corporate entities in other jurisdictions, and to transfer illegal proceeds through several other jurisdictions in the hope of disguising the origin of their money.

It demonstrates the ease with which company incorporation services can be obtained, and shows that many of the companies which sell shell companies, as well as the secretarial companies which operate them, are not concerned about the purpose for which the shell company is used.

It highlights the need for financial institutions to have a system which identifies both suspicious transactions at the front counter and transactions that are also non face-to-face transactions such as those conducted through the internet or over phone.

Since conducting international financial investigations to trace the proceeds of crime transferred through several jurisdictions can take time, there is a risk that the funds might get dissipated during the investigation. .

(xxii) Front companies, insurance and bureaux de change

Facts

An FIU received a suspicious transaction report from a life assurance company. The report referred to H, born and resident in a latin American country, as having recently taken out two single premium life insurance policies for a total amount of USD702,800. Subsequent information provided to the FIU indicated that the premiums had been paid with two personal

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cheques made out by a third party and drawn against a major bank. The third party, K, was also a resident in the same country, but not its national. Further checks at K's bank revealed that both he and H had signature authority on two business accounts, Sam Ltd and Dim Ltd.

Examination of the accounts showed that transactions, especially in K's account, were carried out on behalf of H. Thus, the account had received funds from abroad and had also been used for other financial transactions besides the life insurance policies. Indeed, ten cheques in US dollars, totalling USD1,054,200, drawn against American banks and issued by two bureaux de change operating out of the latin American country where the two men resided, had been deposited into Mr K's account.

This activity appeared to show that the funds had been used to pay the insurance premiums on H's life and to acquire stakes in investment funds (also for H) amounting to another USD210,840. There were also other related transactions in the accounts of the two companies and H's personal account. Cash or cheque transactions for amounts between USD14,000 and USD70,000 were among the related transactions. In one instance, a cheque was drawn on the Sam Ltd account for USD63,300 on the day following the deposit of USD70,280 in cheques into K's account.

Checks into the backgrounds of H and K revealed that H was suspected of being involved in cocaine trafficking in latin America. K had committed some minor violations (issuing bad cheques etc.); but he had no serious criminal background. The business activities and backgrounds of Sam Ltd and Dim Ltd were looked into. In each instance, the companies had been incorporated with a stock capital of USD36,400 in which H and K had a 50% interest and were joint directors. Queries made at the "Balance of Payments Office", as to foreign collection and payment, revealed a total absence of operations in the previous two financial years.

Results

It appeared that K was being used as the front man for H's efforts to move funds out of his country of residence. For greater security of the scheme, they established firms under their control, but they did not perform any corporate or commercial activity. H received the funds deposited into K's account through single premium insurance policies and shares in investment funds that had been paid for by that account, as well as through indirect income from the companies mentioned. In this case, the FIU believed that there were sufficient indications of money laundering and therefore passed the matter on to prosecutorial authorities.

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Lessons

This operation shows that payment instruments or third party involvement, having no apparent economic relationship to the transaction, are often a key indicator of suspicious activity. It is worth noting that to minimise suspicion, K was used for his lack of prior criminal record and his nationality. The activities of the front companies were also conducted in such a way as to give the appearance of transactions from corporate activities. The case also highlights the potential value of suspicious transaction reporting by insurance companies.

(xxiii) Front companies

Facts

An FIU in Country B received a report about a series of suspicious transactions involving the bank accounts of a West African citizen and his businesses, which specialised in industrial fishing. These accounts were opened in banks located in Country B and consisted primarily of money changing operations. The businessman also owned several residences in his home country and in the capital region of Country B.

All the companies that he jointly managed had the same address in his home country.

The personal account of the West African businessman received a number of transfers from accounts in another European country and in his home country (over USD2 million in a two-year period). The companies' accounts received transfers from several business entities based in Europe, ostensibly linked to fishing related activities (over USD7 million over a three-year period). The transfers out of the account (estimated at nearly USD4 million over the same period) were made to various companies whose business was (according to official records) connected with maritime activity and to other individuals.

The FIU's analysis showed that the income of these West African companies was grossly disproportionate to reported sales. In fact, the account transactions seemed to have little to do with industrial fishing (i.e., foreign currency sales, transfers from the bank accounts of European residents, transfers between the personal account of the West African businessman and his businesses, transfers between these businesses and those of Europe-based partners).

Furthermore, according to additional information received by the FIU, one of the business partners of the West African businessman, a co-manager of one

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of the companies, was suspected of being involved in several financial offences in Italy. This individual reportedly had a close association with two Italian organised criminals, and his Italian businesses had become the target of an investigation into money laundering in that country. Yet another business partner of the West African businessman was suspected of being involved in financial and fiscal offences.

Lessons

The unusual nature of the transactions and the lack of a clear economic purpose or connection for some of the business activities, very likely constitute a money laundering scheme to conceal the illegal sources of proceeds derived from various criminal activities. This case gives further support to the need for analysis of information from a variety of sources (suspicious transaction reports, financial institutions, company registries, police records, etc.) in order to gain a full picture of the complex laundering scheme.

(xxiv) Silver and gold smuggling

Facts

Cross-jurisdictional investigations permitted the detection of a silver and gold smuggling system aimed at VAT evasion and the laundering of the illicit profits of several local, regional and global criminal organisations. The banking and financial systems were used to process large-value transactions made for the fictitious payment of precious metals. The laundering was primarily undertaken through:

1. The creation of a network of companies, including financial, throughout the region, with the task of "filtering" money.
2. The use of criminal proceeds derived from cigarette smuggling, drug trafficking, illegal arms trafficking and the smuggling of oil products, to purchase silver and gold, which was in turn smuggled into the markets of Country J and other European countries.
3. The reinvestment of the profits of illicit trafficking of silver into smuggling activities.
4. The use of false invoices in respect of the importation of precious metals which never actually reached country J.
5. The use of bearer savings deposit passbooks and false Treasury certificates of deposit offered as guarantees to the banks for the purchase of precious metals.

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Result

Fifteen suspects were arrested for criminal conspiracy aimed at money laundering and smuggling, and four suspects were charged with money laundering offences. The total amount of funds involved was USD101mn (with the consequent) evasion of export duties amounting to USD72mn, VAT evasion totalling USD37mn and the laundering of over USD31mn.

Lessons

Enquiries should always be undertaken to ascertain the purpose and beneficial ownership of companies that are formed in offshore jurisdictions with lax corporate registration requirements. The source of the activity that created funds for transfer should be established. Where the sale of precious metals is involved, checks should be made that the precious metals exist and that excise duty and VAT has been paid.

(xxv) Laundering the proceeds of fraud through the diamond market

Facts

A known criminal who had benefited financially from a fraud in an overseas jurisdiction attempted to transfer USD8.2mn to a jeweller in Country A for purchasing precious stones. The bankers in Country A had already submitted various suspicion reports about the individual; on this occasion the bank made an enlarged suspicion report and decided to freeze the account. Investigation into the matter revealed that the objective of purchasing precious stones was to launder the proceeds of the fraud.

Lessons

Suspicious transactions reports will not always bring immediate results and where a series of suspicion reports have been made to suggest a significant concern, it may be necessary to freeze the account, pending an investigation. Confidential discussions with the local FIU will normally confirm whether a criminal known to the FIU is involved.

(xxvi) Accounting firm

Facts

Two alleged narcotics traffickers used an accounting firm to launder criminal proceeds generated from amphetamine sales. The "clients" of the firm would, on a regular basis, hand their accountant cash in brown envelopes or shoe

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boxes for which no receipt was issued. The funds were then stored in the accountant's office until he decided how they could be introduced into the financial system and laundered. At any one time, amounts varying between USD38,000 to USD63,000 were stored in the accountant's office.

The law enforcement agency investigating the matter found that the accountant established company and trust accounts on behalf of his clients and opened personal bank accounts in the names of his relatives. He then made structured deposits to those accounts with the funds received from the alleged traffickers. Additionally, he transferred approximately USD114,000 overseas - again, using structured transactions - to purchase truck parts, which were later brought back into the country and sold at a profit. He also used some funds to purchase properties. The accountant and three of his colleagues (who were also implicated in the scheme) reportedly laundered approximately USD633,900 and received a 10% commission for their services.

Results

The accountant and his colleagues are believed to have suspected from the very beginning that the clients were involved in illegal activities. Even after obtaining further specific knowledge of their clients' involvement in narcotics trafficking, they continued to facilitate money laundering.

Lessons

This case highlights the key role that financial experts can play in the laundering of criminal proceeds. Many of the services provided (establishment of specialised accounts or business entities, making real estate investments) are potential money laundering mechanisms that may be beyond the abilities of the less sophisticated criminals.

(xxvii) Lawyers

Facts

A prominent attorney operated a money laundering network which used sixteen domestic and international financial institutions, many in offshore jurisdictions. Although most of his clients were law abiding citizens, a number of them were engaged in various types of fraud and tax evasion; one client had committed USD80mn insurance fraud. He charged his clients a flat fee to launder their money and to set up annuity packages to hide the laundering activity. In the event of any inquiries by regulators or law enforcement

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officials, the attorney gave the appearance of legitimacy to any withdrawals from the "annuities".

One of the methods of laundering used by him was to transfer funds from a client into one of his general accounts in the Caribbean. The account was linked to the attorney in name only, and he used it to commingle various client funds, before moving portions of the funds accumulated in the general account via wire transfers to accounts in other countries in the Caribbean. When a client needed funds, they could be transferred from these accounts to a U.S. account in the attorney's name or the client's name. The attorney indicated to his clients that to escape investigation, they could "hide" behind the attorney-client privilege.

Another method of laundering funds was through the use of credit cards. The attorney arranged credit cards in false names for his clients. When funds were needed, the client could use the credit card to make cash withdrawals at any automated teller machine in the United States. Once a month the Caribbean bank would debit the attorney's account in order to recover the charges incurred by his clients. The attorney knew the holders of the credit cards.

Results

The attorney pleaded guilty to money laundering.

Lessons

Banks and their employees should be alert to "layered" wire transfers which utilise instructions such as "for further credit to some third account". This may occur more frequently with correspondent accounts of offshore banks. Suspicious transactions can then be identified and reported.

Banks should follow "know your customer" procedures for issuing credit cards. In this case, the banks issued credit cards to the attorney, for onward issuance to his clients.

Investigators should be aware that in a number of countries lawyer/ attorney-client privilege is not applicable if the lawyer/attorney and his client are directly involved in criminal activity, and they should consult prosecutors if such an issue arises.

(xxviii) Lawyers, real estate

Facts

A financial Intelligence unit received information that a previously convicted drug trafficker had made several investments in real estate and was planning

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to buy a hotel. An assessment of his financial situation did not reveal any legitimate source of income, and he was arrested on a charge of money laundering. Further investigation revealed that part of the invested funds were proceeds of drug trafficking. He was charged with drug trafficking and drug money laundering.

In the same case, the criminal's lawyer received the equivalent of approximately USD70,000 cash from his client, placed this money in his client's bank account and later made payments and investments on his instructions. He was charged with money laundering in these transactions. Another part of the drug proceeds was laundered by the director of an art museum in a foreign country who received USD15,000 for producing forged documents for the fictitious sale of artworks.

Results

The drug trafficker was convicted of drug trafficking, sentenced to seven and a half years' imprisonment, and a confiscation order for US\$450,000 was passed against him. The lawyer was convicted and sentenced to imprisonment for ten months. The art museum director could not be prosecuted as there was insufficient evidence to show that he knew the money came from drug trafficking.

Lessons

Real estate is commonly purchased during the last stage of money laundering (integration). It gives the criminal an investment that promises financial stability, especially the purchase of a hotel, a cash generating business.

The value of a money laundering offence with (a lower degree of mens rea requirement) is shown in the prosecution of the lawyer in this case. There was insufficient evidence to prove that the lawyer knew the money was illegal drug proceeds, but sufficient evidence to show that he "should have known" on the basis of facts available to him.

(xxix) Terrorists collect funds from lawful sources

Facts

A number of individuals known to belong to religious extremist groups established in the south-east of Country C (a FATF country) convinced some wealthy foreign nationals, living for unspecified reasons in Country C, to

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finance the construction of a place of worship. The wealthy individuals were suspected of assisting a terrorist group to conceal their activities. It was later established that S, a businessman in the building sector, had bought a building to house the place of worship and renovated it by using funds from one of his companies. He then transferred its ownership for a large profit, to Group Y belonging to the wealthy foreigners mentioned above. The place of worship, though intended for the local community, also served to lodge "travellers" from extremist circles. .

Soon after the work was completed, it was noticed that the place of worship received large donations (millions of dollars) from other wealthy foreign businessmen. When a Group Y worker convinced his employers that a "foundation" would be more suitable for collecting and using large funds without attracting the attention of local authorities, a foundation was reportedly established.

It was also believed that a part of S's activities as the head of a multipurpose international financial network (for which investments allegedly stood at USD53mn for Country C in one particular year alone) was to provide support to a terrorist network.

S had made a number of trips to Afghanistan and the United States. Amongst his assets were several companies registered in Country C and elsewhere. One of the companies, located in the capital of Country C, was allegedly a cover for collecting funds. S also purchased several buildings in the south of Country C in collusion with a notary and a financial institution.

When the authorities of Country C blocked a property transaction on the basis of the foreign investment Regulations, the director of the financial institutions stepped in to support his client's transaction and the notary presented a purchase document for the building, thus ensuring that the relevant authorisation was delivered. The company's funds held by the bank were then transferred to another account in a bank in an NCCT jurisdiction to conceal their origin, but they were ultimately used in Country C.

Results

Even though a formal link was not incontrovertibly established between the (more or less) legal activities of the various parties in Country C and other countries as well as the financing of terrorist activities carried out by a specific terrorist network, the investigators suspected that at least a part of the proceeds from these activities had been used for the purpose.

Lessons

The scale and complexity of the corporate and business arrangements and the amounts involved, should not deter applying proper checks and subsequent monitoring.

(xxx) Simple transactions found to be suspect

Facts

The financial intelligence unit (FIU) of Country E forwarded to its judicial authorities ten files related to money laundering from terrorism. The files dealt with instances of simple operations (retail foreign exchange operations and international transfer of funds), which revealed links with other countries. Some customers had criminal involvement, particularly in trafficking in narcotics and weapons, and were linked with foreign terrorist groups.

In one of the files submitted by the FIU about terrorism, the customer held a current account and a savings account with the reporting financial institution. Moreover, he purchased securities, and a single premium life insurance contract in the same institution. He executed several transfers from his current account to beneficiaries in different countries. The bank became suspicious because his name was (the same as or similar to the one which appeared on the consolidated list of persons and/or entities included in the UN Security Council Committee on Afghanistan (S/RES/1333(2000)) and Regulation 1354/2001 of the European Commission.

The suspicion of the bank was strengthened when it found that the customer had been progressively withdrawing funds since the end of April 2001. Subsequently, he cleared out his savings account, sold the securities he had purchased (before their maturity date), surrendered his life insurance policy and transferred his remaining funds to the European Country where he resided. The last operation was performed at the end of August 2001, that is, about two weeks before the terrorist attacks in the United States on September 11th 2001.

Results

The bank had no contact with the customer after August 2001.

Lessons

Timely identification and reporting of suspicions matters by firms is important, even if the authorities are not able to react effectively and in good time.

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(xxxi) Front for individual with suspected terrorist links revealed by a suspicious transaction report.

Facts

The financial Intelligence unit (FIU) in Country D received a suspicious transaction report from a domestic financial institution regarding an account held by an individual from a neighbouring country. He managed European-based companies and had filed two loan applications for several millions USD on their behalf with the reporting institution. These were ostensibly intended for the purchase of luxury hotels in Country D. The bank did not grant the loans.

Results

The analysis by the FIU revealed that the funds for the purchase of hotels were to be channelled through the accounts of the companies managed by an individual. The company purchasing these hotels was then to be taken over by an individual from another country. This second person represented a group of companies whose activities focused on hotel and leisure sectors, though he gave the impression of being the buyer of the property. On the basis of the analysis within the FIU, it appeared that the person mentioned in the suspicious transaction report was acting as a front for the second person. The latter, as well as his family, was suspected of being linked to terrorism.

Lessons

The investigation vindicated the bank's decision not to grant loans to the said individual. The case shows that even with a satisfactory KYC, there can be problems about assessing the use of funds taken as loans. It is therefore wise to relate the possible use of funds for business activity with the client's known profile of legitimate ventures.

(xxxii) High account turnover indicates fraud allegedly used to finance terrorist organisation

Facts

A financial institution in Country B reported that an individual who allegedly earned a salary of just over USD17,000 per annum had a turnover in his account of nearly USD356,000. Investigators found that this individual did not even exist. The account had been opened fraudulently.

Further investigation revealed that the account was linked to a foreign charity and was used to facilitate funds collection for a terrorist organisation through a fraudulent scheme. In Country B, the government would provide matching funds to charities, equivalent to 42% of the donations received. Donations to

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this charity were paid into the account under investigation, in which the government matching funds were claimed by the charity. The original donations were then returned to the donor and the charity retained only the matching funds. Thus more than USD1.14 million were fraudulently acquired by it.

Lessons

This case illustrates how connected accounts may be used to finance illegal activity. It also shows the importance of robust identity verification procedures, and how monitoring accounts for unusual activity outside normal expectations can help to identify potential acts of money laundering and terrorist financing.

(xxxiii) Charity used to finance terrorism

Facts

One UK investigation started because of a suspicious transaction report. A bank disclosed that an individual who allegedly earned a salary of £12,000 per annum had a turnover in his account to the tune of £250,000. Investigation revealed that he did not exist; the account that had been fraudulently opened was linked to a Middle East charity. A fraud was being perpetrated for the purpose of raising funds for a terrorist organisation. Donations were paid into an account and additional Charitable payment was being claimed from the government. After that the donation amount was returned to the donor. This resulted in a fraud of over £800,000. .

Lessons

Even charities in UK can be used to raise funds for terrorist purposes.

(xxxiv) Correspondent banking, wire transfers facilitate transactions by shell companies

Facts

Company Q, a suspected shell company registered in Country F (a FATF member country), was reportedly involved in the transportation of oil and other raw materials (metal, timber, gas). The Company was the customer of a bank in Country G that maintained a correspondent account in a bank in Country F. The Company received several wire transfers from another, company located offshore. At the request of the bank in Country F, the Country G bank asked Company Q to provide copies of the business contract that would justify the financial activity. The bank in Country F bank submitted a STR about these transactions.

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Results

Instead of providing the requested documents to the bank, Company Q closed its account.

Lessons

Sometimes there is a need to look into transactions through correspondent banks.). Due diligence can reveal situations shown by this case that warrant reporting to the relevant authorities.

(xxxv) Private banker helps conceal suspect's illegal proceeds

Facts

This example relates to a bank whose services included institutional brokering, retail brokering, private client services, global equity derivatives, securities, futures and margin lending. Its clients could enter into a private client agreement, which enabled them to perform transactions by telephone or facsimile. During the course of an investigation, difficulty was encountered in matching money coming into a suspect's trust account with funds sent out of the country by a co-offender. Upon reconstructing the money trail through bank deposit and withdrawal records, it was found that the co-offender had sent an equivalent amount of funds out of the country through international telegraphic transfers but the transfer documentation did not record him as the ordering customer brought to a new line.

This provided a way to disguise the remittance of funds (offshore. Yes).

Lessons

Inadequate transaction records can preclude "matching up" of connected transactions; when matched, they can lead to suspicion.

(xxxvi) Failure of due diligence aids a potentially corrupt PEP

Facts

An institution was established in Country A. Its chairman was the ruler of that country. The institution was the ordering customer in a payment transaction. Both the ordering customer and the beneficiaries were established in different parts of the world. A bank in Country B was affiliated to the national bank of Country A and was charged with a large part of that country's external payments. Neither the ordering customer nor the beneficiaries were customers of the bank in Country B. Payment was made through the bank in

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Country B, which acted solely as a correspondent bank for the banks of the ordering customer and the beneficiaries.

Due to inadequate monitoring of customers' transactions by the ordering institution in Country B (only the respondent has been monitored), the nature, motivation and precise purpose of the transaction could only be guessed. . These could be either legitimate (many external payments are performed through the Country A bank) or related to illegal proceeds. The precise role of Country A's ruler and the beneficiaries of the transactions, and the basis for the payment, were not available.

Results

This lack of information means that the bank in Country B would not normally be able to determine the significance of these transactions.

Lessons

The scale of money laundering and the role of some of the parties involved could not be determined. Inadequate care can actually facilitate illegal activities.

Chapter 16

Summary of Some Important Supreme Court Decisions

1. IN THE SUPREME COURT OF INDIA

SLP (Cri.) No. 6795/2013

Decided On: 04.09.2014

Kailash Ramkishan Gupta v. State of Gujarat

Brief Facts

In this case, the Supreme Court refused to grant bail in a case involving Prevention of Money Laundering Act. The Forward Markets Commission (the Commission), a regulatory authority set up by the Government of India received a complaint on 28-11-2010 wherein various irregularities alleged to have been committed by the National Multi Commodity Exchange ("the NMCE") were mentioned and the Commission's intervention was sought.

The complaint pertained to trading irregularities and abuse of its position in NMCE by M/s. Neptune Overseas Limited (NOL), the anchor Promotor of NMCE. The Report of the Auditors appointed by the Commission pointed out irregularities committed by NMCE. A show cause notice under Section 4(b) of the relevant Act was issued to the Petitioner, who was the Vice-Chairman and Managing Director of the NMCE.

The Commission directed the NMCE to file FIR against the Petitioner as a result of which FIR was registered against the Petitioner being C.R. I No. 027/2012 dated 27-4-2012 Under Sections 406, 408, 409, 420, 465, 466, 467, 468, 471, 477(A) read with Sections 120B and 34 of the Indian Penal Code with DCB Police Station, Ahmedabad.

The Directorate of Enforcement, Department of Revenue also registered a case under the Prevention of Money Laundering Act against the Petitioner on 31-3-2013 and the Petitioner was arrested.

The High Court declined bail to the Petitioner. In Special Leave Petition, the Supreme Court declined to interfere and granted a week's time to the Petitioner (who was on bail) to surrender before the Additional Chief Metropolitan Magistrate, Court No. 11, Ghee Kanta, Ahmedabad City.

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2. IN THE SUPREME COURT OF INDIA

Contempt Petition (Civil) No. 224 of 2011 in Civil Appeal No. 10660 of 2010

Decided On: 09.12.2013

Rajeshwar Singh v. Subrata Roy Sahara and Ors.

Brief Note:

This is very interesting case relating to contempt of the Supreme Court. We are reproducing a few relevant paragraphs.

"We may, at the outset, point out that, at this stage, we are only examining the maintainability of this contempt petition, on which arguments have been advanced by the learned Senior Counsels on either side. This contempt petition has been preferred under Article 129, 142 of the Constitution of India, read with Section 12 of the Contempt of Courts Act, 1971 (for short 'the Act') and Rule 12 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975.

"Article 142 of the Constitution also confers powers on this Court to pass such orders as is necessary for doing complete justice in any cause or matter pending before it.

"Article 142 is conceived to meet situations which cannot be effectively and appropriately tackled by existing provisions of law. In *Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and Anr.* MANU/SC/0497/1996 : (1996) 4 SCC 622, this Court has held that the very fact that the power is conferred only upon the Supreme Court, and on no one else, is itself an assurance that it will be used with due restraint and circumspection; keeping in view the ultimate object of doing complete justice between parties and the Court's power to do complete justice is not confined by any statutory provision.

Any interference, by anybody, to scuttle a court monitored investigation would amount to interfering with the administration of justice. Courts, if they are to serve the cause of justice, must have the power to secure obedience to its orders to prevent interference with the proceedings and to protect the reputation of the legal system, its components and its personnel, who on its behest carry on a court monitored investigation. The court is duty bound to protect the dignity and authority of this Court, at any cost, or else, the entire administration of justice will crumble and law and order would be a casualty.

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"We are, therefore, of the view that the petition filed under the above mentioned provisions is perfectly maintainable and this Court has got a constitutional obligation to examine the truth of the allegations as to whether the Respondents are attempting to derail the investigation which is being monitored by this Court. We, therefore, issue notice to the Respondents to show cause why proceedings be not initiated against them for interfering with the court monitored criminal investigation..."

3. IN THE SUPREME COURT OF INDIA

Writ Petition (C) Nos. 548, 550, 551, 552 of 2012 and 17 of 2013 and I.A. Nos. 59, 61, 63 and 68 in Civil Appeal No. 10660 of 2010 (Under Article 32 of the Constitution of India)

Decided On: 03.09.2013

Shahid Balwa v. Union of India (UOI) and Ors.

Note:

This is a case relating to 2G Scam investigations where the Supreme Court held that the conduct of a trial is the business of the trial judge and not of the court monitoring the investigation.

In these cases, the Supreme Court was called upon to examine the question whether two orders passed by the Supreme Court Court on 11.04.2011 and 09.11.2012 in Civil Appeal No. 10660 of 2010, in exercise of powers conferred under Articles 136 and 142 of the Constitution of India, while monitoring the investigation of 2G related cases, are liable to be recalled, de hors the rights guaranteed to the Petitioners to invoke the jurisdiction of this Court under Articles 32 and 136 of the Constitution of India, if aggrieved by the orders passed by the Special Court dealing with 2G Spectrum case.

The Court held as follows: "We also find no reason to lay down any guidelines as prayed for by the Petitioners in a Court monitored investigation. In a Court monitored investigation, as already pointed out the Court is not expected to interfere with the trial proceedings. The conduct of the trial is the business of the trial judge and not the court monitoring the investigation. A superior court exercising the appellate power or constitutional power, if gives a direction to conduct the trial on day-to-day basis or complete the trial in a specific time by giving direction is not interfering with the trial proceedings but only facilitating the speedy trial, which is a facet of Article 21 of the Constitution of India. That being the factual situation in these cases, the

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principle laid down by this Court in Rajiv Ranjan Singh "Lalan" VI and Anr. v. Union of India and Ors. MANU/SC/3568/2006 : (2006) 1 SCC 356, Brij Narain Singh v. Adya Prasad MANU/SC/1141/2008 : (2008) 11 SCC 558 and Ankul Chandra Pradhan (supra), are not applicable.

"We, therefore, find no good reason either to frame guidelines to be followed by a constitutional court in relation to monitoring of criminal investigation or any legal infirmity in the orders passed by this Court on 11.04.2011 or 09.04.2012. Writ Petitions lack merits and they are accordingly dismissed, so also IA Nos. 59, 61, 63 and 68 in Civil Appeal No. 10660 of 2010."

4. IN THE SUPREME COURT OF INDIA

Writ Petition (C) No. 57 of 2012 (Under Article 32 of the Constitution of India)

Decided On: 01.07.2013

Essar Teleholdings Ltd

v.

Registrar General, Delhi High Court and Ors.

[Alongwith Writ Petition (C) Nos. 59 and 96 of 2012]

Brief Note: This is case relating to the trial of 2G cases. The petitioners had challenged the appointment of the Special Judge. The Supreme Court dismissed the petition by observing as under:

"In the present case there is nothing on the record to suggest that the Petitioners will not get fair trial and may face miscarriage of justice. In absence of any such threat & miscarriage of justice, no interference is called for against the impugned order taking cognizance of the offence against the Petitioners.

"On 11th April, 2001, this Court has given directions for establishing a separate Special Court to try this case and pursuant to such direction, a Special Court has been constituted after following the due procedure.

"We also make it clear that any objection about appointment of Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the progress of the Trial can be made only before this Court and no other court shall entertain the same. The trial must proceed on a day-today basis.

"All these directions are given by this Court in exercise of its power under Article 136 read with Article 142 of the Constitution and in the interest of holding a fair prosecution of the case.

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"In *Rupa Ashok Hurra v. Ashok Hurra and Anr.* MANU/SC/0910/2002 : (2002) 4 SCC 388, this Court held that a final judgment or order passed by this Court cannot be assailed in an application under Article 32 of the Constitution by an aggrieved person, whether he was a party to the case or not. For the said reason also, it is not open to the Petitioner to indirectly assail the order passed by this Court in 2G Scam case.

Power to appoint or promote or post a District Judge of a State was vested with Governor of State under Article 233 of Constitution, which could be exercised only in consultation with High Court.

"We find no merit in these writ petitions, they are accordingly dismissed. The Special Court is expected to proceed with the trial on day-to-day basis to ensure early disposal of the trial. There shall be no order as to costs."

5. IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1883 of 2011 (Arising out of SLP (Crl.) No. 6114 of 2011)

Decided On: 30.09.2011

Union of India (UOI)

v.

Hassan Ali Khan and Anr.

Brief Note

This is a direct case under the PMLA. The Supreme Court cancelled the bail granted to the Respondent by the Bombay High Court.

The allegation against the Respondent No. 1 and the other accused is that they have committed an offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002, hereinafter referred to as 'the PML Act'. The said case has been registered on the basis of a complaint filed by the Deputy Director, Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India, on 8th January, 2007, on the basis of Enforcement Case Information Report No. 02/MZO/07 based on certain information and documents received from the Income Tax Department. On the said date, the Income Tax Department carried out a search in the premises owned and/or possessed by the Respondent No. 1 and a sum of Rs. 88,05,000/in cash was found in his residence at Peddar Road, Mumbai, and was seized. A number of imported watches and some jewellery were also found and seized during the search.

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"When a person is accused of having committed the offence under Section 3, the burden of proving that proceeds of crime are in tainted property shall be on the accused.

"Taking a different view of the circumstances which are peculiar to this case and in the light of what has been indicated hereinabove, we are of the view that the order of the High Court needs to be interfered with. We, accordingly, allow the appeal and set aside the judgment and order of the High Court impugned in this appeal and cancel the bail granted to the Respondent No. 1."

6. IN THE SUPREME COURT OF INDIA

Civil Appeal No. 2689 of 2011 (Arising out of SLP (Civil) No. 24211 of 2010)

Decided On: 29.03.2011

Binod Kumar

Vs.

State of Jharkhand and Ors.

Brief Facts:

This case involving investigation by the Jharkhand Govt. is basically under the Prevention of Corruption Act because investigation under PML Act can be done by the Enforcement Directorate. The Supreme Court refused to interfere stating thus:-

"According to the learned Counsel for the Respondents, the High Court in the impugned order has recorded cogent reasons for directing the investigation by the Central Bureau of Investigation. Even this Court while issuing notice vide order dated 01.09.2010 has directed the CBI to continue to investigate as directed by the High Court. Under the circumstances, the Appellant is not entitled to any relief as contended.

"Mr. Raval informed the Court that the charge sheet in fact has been filed on 12.11.2010 before the Court of Competent Jurisdiction alleging inter alia commission of offence under Section 120B IPC, Section 9, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against various accused including the Appellant Shri Binod Kumar Sinha. It is further submitted that the investigation is still on and subsequent charge sheets may be filed as and when during investigation sufficient material surfaces on other aspects.

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"In written submission it is categorically stated that the Central Bureau of Investigation is investigating into the commission of these offences alone and presently is not investigating any offence under the PML Act as the investigation under the PML Act is solely and exclusively within the jurisdiction and domain of the Enforcement Directorate, which is of course subject to the exercise of powers by the Central Government under Section 45(1A) of the said Act.

"We have heard the learned Counsel for the parties at length and perused the written submissions filed by them. On consideration of the totality of the facts and circumstances, we are clearly of the view that no interference is called for."

7. IN THE SUPREME COURT OF INDIA

Writ Petition No. 634 of 2007

Decided On: 30.09.2008

Pareena Swarup

v.

Union of India (UOI)

Brief Facts:

This PIL was filed to declare certain sections of the Prevention of Money Laundering Act, 2002 unconstitutional.. The Govt. made certain changes in the Rules which were accepted by the Supreme Court.

"Ms. Pareena Swarup, member of the Bar, has filed this writ petition under Article 32 of the Constitution of India by way of Public Interest Litigation seeking to declare various sections of the Prevention of Money Laundering Act, 2002 such as Section 6 which deals with adjudicating authorities, composition, powers etc., Section 25 which deals with the establishment of Appellate Tribunal, Section 27 which deals with composition etc. of the Appellate Tribunal, Section 28 which deals with qualifications for appointment of Chairperson and Members of the Appellate Tribunal, Section 32 which deals with resignation and removal, Section 40 which deals with members etc. as ultra vires of Articles 14, 19(1)(g), 21, 50, 323B of the Constitution of India. It is also pleaded that these provisions are in breach of scheme of the Constitutional provisions and power of judiciary.

"Brief facts in a nutshell are: The Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the Act") was introduced for providing punishment for offence of Money Laundering. The Act also provides measures of

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prevention of money laundering. The object sought to be achieved is by provisional attachment of the proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds under the Act. The Act also casts obligations on banking companies, financial institutions and intermediaries to maintain record of the transactions and to furnish information of such transactions within the prescribed time. In exercise of powers conferred by Clause (s) of Sub-section (2) of Section 73 read with Section 30 of the Prevention of Money- Laundering Act, 2002 (15 of 2003), the Central Government framed rules regulating the appointment and conditions of service of persons appointed as Chairperson and Members of the Appellate Tribunal. These rules are the Prevention of Money-Laundering (Appointment and Conditions of Service of Chairperson and Members of Appellate Tribunal) Rules, 2007. The Central Government has also framed rules called the Prevention of Money Laundering (Appointment and Conditions of Service of Chairperson and Members of Adjudicating Authorities) Rules, 2007.

"Mr. Gopal Subramaniam has informed this Court that the suggested actions have been completed by amending the Rules. Even otherwise, according to him, the proposed suggestions formulated by Mr. K.K. Venugopal would be incorporated on disposal of the above writ petition. For convenience, let us refer the doubts raised by the petitioner and amended/proposed provisions as well as the remarks of the department in complying with the same.

"Inasmuch as the amended/proposed provisions, as mentioned in para 9, are in tune with the scheme of the Constitution as well as the principles laid down by this Court, we approve the same and direct the respondent-Union of India to implement the above provisions, if not so far amended as suggested, as expeditiously as possible but not later than six months from the date of receipt of copy of this judgment. The writ petition is disposed of accordingly. No costs..."

Chapter 17

Amendments by the Prevention of Money Laundering (Amendment) Act, 2009 (21 of 2009) and (Amendment) Act, 2012 (2 of 2013)

Government of India vide the Prevention of Money Laundering (Amendment) Act, 2009 (21 of 2009) has amended the PMLA and the amendments have come into force with effect from June 1, 2009. The amendments, inter alia, have brought authorized persons within the definition of "Financial Institutions" under Section 2(L) of the Act. Accordingly, in terms of Section 12 of the Act and the rules made there under, authorized persons are required to furnish information to Financial Intelligence Unit-India (FIU-IND) in the prescribed format.

By the amendment, the non profit organisations have also been brought under the purview of the PMLA 2002. Charitable trusts, whether temples, churches or mosques, non-government organisations (NGOs), educational institutions or societies, if registered as non-profit organisations will not only have to disclose the source of their funds, but also be scrutinised for large monetary transactions.

Government of India vide its Notification No.13/2009/F.No.6/8/2009-ES dated November 12, 2009, has also amended Prevention of Money-Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial institutions and Intermediaries) Rules, 2005.

Changes made by the PREVENTION OF MONEY LAUNDERING (AMENDMENT) ACT 2009:

1. Definitions – Four definitions inserted
 - authorised person

Amendments by the Prevention of Money Laundering (Amendment) ...

- designated business or profession
 - offence of cross border implications
 - payment system operator.
2. Changes made in three definitions
 - financial institution
 - non-banking financial company
 - Scheduled offence
 3. Attachment of property involved in Money-Laundering- Sec 5(1)
 4. Search and seizure (Proviso to Sec 17(1))
 5. Adjudicating authorities

The age of retirement of Chairperson and Members of the Adjudicating Authority increased from 62 years to 65 years [proviso to Sec 6 (8)]

6. Resignation and Removal

The Amended Act seeks to provide mandatory consultation with the Chief Justice of India before removal of the Chairperson or a Member of the Appellate Tribunal [proviso to sec 32 (2)]

7. Attachment, seizure and confiscation, etc., of property in a contracting State or India

The Amended Act seeks to enable the Central Government to return the confiscated property to the requesting country in order to implement the provisions of the United Nations Convention against Corruption – [Sec 60(7)]

8. Schedule

- (1) Certain offences added in Part A and Part B of the Schedule to the Act- Offences added include those pertaining to insider trading and market manipulation as well as smuggling of antiques, terrorism funding, human trafficking other than prostitution, and a wider range of environmental crimes
- (2) A new category of offences which have cross-border implications introduced – Part C

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Changes made by PREVENTION OF MONEY LAUNDERING (AMENDMENT) ACT 2012 (2 OF 2013) (W.E.F. 15-2-2013) :

In June 2010, after a stringent evaluation by them, India was admitted as the 34th country member of the Financial Action Task Force ("FATF"). This membership has helped Indian enforcement agencies to exchange information and financial institutions to gain much better access to markets of other member countries by portraying that Indian financial institutions are very comparative in terms of risk management standards. As a result of this, financial institutions have increasingly started evaluating the inherent AML risks in their products and services and taking steps to mitigate the same.

In order to bring the Act in line with the standards of FATF for combating money laundering and terror financing, a Bill was drafted and scrutinized by the Standing Committee on Finance (2011-12), headed by Shri Yashwant Sinha, which suggested various changes for better implementation of the new law.

These recommendations became part of the Prevention of Money-Laundering (Amendment) Bill, 2012 which was passed by the Lok Sabha on November 29, 2012 and by the Rajya Sabha on December 17, 2012.

Also, vide Notification No. SO 343 (E) [F.NO.P.12011/3/2009-S.O. (E.S. CEII)], dated February 8, 2013, the Central Government has appointed February 15, 2013 as the date on which the provisions of the 2012 Act have come into force.

Major changes made by the Amendment Act, 2012 are the following :

1. The definition of Offence of Money-Laundering has been expanded [Section 3]

The Principal Act stated that whoever indulges in any activity connected with proceeds of crime and projects it as untainted property shall be guilty.

Therefore, the Principal Act does not criminalize concealment, possession, acquisition and use of the proceeds of crime, a fact which was revealed by FATF during mutual evaluation of India. Also, Article 6 of Palermo Convention (United Nations Convention against Transnational Organized Crime) requires that such activities should also be criminalized in order to better control money laundering. Hence by the 2012 Amendment, the definition of the offence of money laundering has been expanded to include the abovementioned activities as well. By this amendment, the actions of

Amendments by the Prevention of Money Laundering (Amendment) ...

placement, layering and integration that are usually assumed to constitute money laundering are included within the scope of the definition.

2. Upper limit for fine has been removed [Section 4]

The Principal Act provided for a fine which may extend to five lakh rupees as punishment for Money-Laundering. Given the gravity of the offence of money laundering, this amount was disproportionately low. Therefore, the 2012 Amendment has removed the upper limit of the fine of Rs.5 lakh. After the amendment, the quantum of fine proportionate to the gravity of the offence can be determined by the court on a case to case basis.

3. Scope and duration of Attachment of property expanded [Section 5]

The Principal Act provided that the person from whom property is attached must have been charged of having committed a scheduled offence. It was felt that this provision should be deleted as property may come to rest with someone, who has nothing to do with the scheduled offence or even the Money-Laundering offence. The 2012 Amendment has expanded the scope of attachment by stating that any proceeds of crime which are even likely to be concealed or transferred can be attached. The 2012 Amendment further provides that if any proceeds are to be used for any purpose which will frustrate the confiscation of proceeds of crime, then such property will also be attached.

Further, the Principal Act provided for attachment of property for 150 days. The 2012 Amendment has increased the same to 180 days.

4. The concept of Reporting Entity and Beneficial Owner introduced [Section 12]

The Principal Act provided for banking companies, financial institutions and intermediaries to maintain records of the transactions they sanction. The 2012 Amendment has introduced a new concept of "reporting entity" which would maintain records of various transactions sanctioned by banking companies and financial institutions etc. These entities are also required to identify their clients and the client's beneficial owners [Clause 2 (1) (c) and (d)]. For this purpose, reporting entity has been defined in 2012 Amendment to include banking companies, financial institutions, intermediaries and persons carrying on designated business or profession [Clause (wa) of

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Section 2]. Further, persons carrying on designated business or profession have also been defined to include persons carrying on activities for playing games of chance, real estate agents and dealers of precious metal and precious stones etc. [Clause (sa) of Section 2]

This clearly shows that the 2012 Amendment mandates many other categories of persons to maintain records, unlike the mandate in the Principal Act. This expansion to other categories of persons would ensure reporting of many such transactions which earlier would have gone unnoticed.

The 2012 Amendment Act has not only expanded the categories of persons required to maintain records but also the kind of records that have to be maintained i.e. the maintenance of records of beneficial owner.

The, 2012 Amendment Act also requires that a reporting entity should identify and maintain records of the "beneficial owner" of their clients. It can therefore be clearly noticed that if beneficial owners are identified and their records are maintained, the chances of money laundering would be strictly reduced.

Further, the 2012 Amendment Act require the reporting entity to report even an attempted transaction to cut down suspicious transactions from the very beginning.

5. Director's power to call for records and conduct inquiries [Section 12A]

In order to make sure that reporting entities comply with Section 12 requirements, the 2012 Amendment Act has given the Director the power to call for any records from reporting entities and to make inquiries for non-compliance of reporting entities to the obligations cast upon them.

6. Penalty for non-compliance by reporting entity, its designated director or any of its employees (Section 13)

If a reporting entity or its designated director on the Board or any of its employees does not comply with the obligations under the 2012 Amendment Act, a monetary penalty extending upto one lakh rupees for each failure can be imposed upon them.

7. Freezing of property [Section 8 and Section 17A]

The Principal Act provided for attachment of property after the charge sheet u/s 173 CrPC has been filed in scheduled offence case and seizure of

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property after FIR u/s 157 CrPC has been filed in scheduled offence case. However, in a number of situations it may not be practicable to file charge sheet or FIR to attach or seize property as this may happen after a prolonged gap and chances of disappearance of proceeds of crime cannot be ruled out. To obviate this problem, the 2012 Amendment Act provides for freezing such property, so that it can be seized or attached and confiscated later.

8. Burden of Proof on accused [Section 24]

The 2012 Amendment Act states that in the proceedings relating to money laundering, the funds shall be presumed to be involved in the offence, unless proven otherwise by the person charged with the offence.

9. Release of the property by special court in case of decision by foreign court [Section 58A]

The Principal Act did not have any provision regarding release of property by a special court. The 2012 Amendment Act has expanded the powers of special courts by incorporating that where on conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of Money-Laundering has not taken place or the property in India is not involved in Money-Laundering, the designated Special Court may on an application moved by a concerned person order release of such property. This power is purely discretionary due to the presence of the word "may" suggesting that the local court in India will still have power to decide matters on its merits, even when the person is acquitted by an overseas court. For this purpose, the 2012 Amendment Act has introduced the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries [Clause (ia) of Section 2].

10. Clarification that prosecution extends to Companies as well [Section 70]

The Principal Act did not clearly provide for the prosecution of companies and in order to remove doubts, the 2012 Amendment Act has added an explanation to Section 70 that a company can be prosecuted irrespective of whether an individual has been prosecuted or not. Hence, prosecution or conviction of legal juridical person is not contingent on prosecution of any individual.

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11. Monetary threshold does not apply to the offence of Money-Laundering [Schedule I]

Part B of the Schedule in the Principal Act included only those crimes that are above Rs. 30 lakh or more whereas Part A did not specify any monetary limit of the offence. The 2012 Amendment Act has included all the offences under Part A of the Schedule to ensure that the monetary thresholds do not apply to the offence of money laundering.

Conclusion

The 2012 Amendment Act has brought the PML Act at par with similar legislations of the advanced countries of the world.

Chapter 18

Frequently Asked Questions (FAQs)

Frequently Asked Questions (FAQs) on the Prevention of Money Laundering Act, 2002 and The Prevention of Money Laundering (Maintenance of Records) Rules, 2005

1. What is PMLA?

PMLA refers to the Prevention of Money Laundering Act, 2002.

2. When did the Prevention of Money Laundering Act, 2002 come into force?

The Prevention of Money Laundering Act, 2002 came into force with effect from 1st July, 2005. The Act was amended by the Prevention of Money Laundering (Amendment) Act 2009 w.e.f. 01.06.2009. The Act was further amended by the Prevention of Money- Laundering (Amendment) Act, 2012 w.e.f. 15-02-2013.

3. Does the Act extend to the whole of India?

Yes, it extends to the whole of India including the state of Jammu & Kashmir.

4. What is the object of Prevention of Money Laundering Act, 2002?

As stated in the Preamble to the Act, it is an Act to prevent Money-Laundering and to provide for confiscation of property derived from, or involved in, Money-Laundering and to punish those who commit the offence of money laundering.

5. Which agency administers the Prevention of Money Laundering Act, 2002?

The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under Prevention of Money Laundering Act, 2002.

The Financial Intelligence Unit - India (FIU-IND) under the Department of Revenue, Ministry of Finance, set by the Government of India vide O.M. dated 18th November 2004, as the central national agency responsible for receiving information pursuant to country's anti-money laundering laws,

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processing, analyzing and disseminating information relating to cash/suspect financial transactions to enforcement agencies and foreign FIUs. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering, related crimes and terrorist financing. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

6. Is FIU-IND another regulatory authority?

No. FIU-IND is not a regulatory authority. Its prime responsibility is to gather and share financial intelligence in close cooperation with the regulatory authorities including RBI, SEBI and IRDA.

7. Is PMLA a special law or a general law and what will happen if there is conflict between the provisions of PMLA, 2002 and other Acts / laws?

Special Law is a law which is applicable to a particular subject or a special subject. PMLA is special law because it relates to a particular subject.

In the event of conflicts between the provisions of general law and provisions of special law, the general law will be overridden by the provisions of special law. Section 71 of the PMLA provides that provisions of PMLA, 2002 shall have over-riding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Under general law, bail is the rule and jail is an exception, whereas under the PMLA which is a special law, jail is the rule and bail is an exception.

8. What is Money Laundering?

The objective of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin.

Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amounts of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to "legitimize" the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of 'dirty money'. Money Laundering is the process of conversion of such proceeds of crime, the 'dirty money', to make it appear as 'legitimate' money.

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In the PMLA, 2002, money laundering has been defined as “any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property”.

9. How does Money Laundering take place?

The process of money laundering generally involve the following three stages:

(a) Placement:- The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as cheques, Bank drafts etc., which are then collected and deposited into one or more accounts at another location.

(b) Layering:- The second stage of money laundering is layering. In this stage, the money launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The money launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti money laundering investigations.

(c) Integration:- Having successfully processed his criminal profits through the first two stages of money laundering, the launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The money launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

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10. What has been the international response to tackle Money Laundering?

In response to mounting concern over money laundering, the Financial Action Task Force (FATF) on Money Laundering was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations, which set out the measures national governments should take to implement effective anti-money laundering programmes. India is an active member of the FATF.

11. What steps have been taken by the Government of India to tackle the menace of Money Laundering?

Government of India is committed to tackle the menace of Money Laundering and has always been part of the global efforts in this direction. India is signatory to the following UN Conventions, which deal with Anti Money Laundering / Countering the Financing of Terrorism :

1. International Convention for the Suppression of the Financing of Terrorism (1999);
2. UN Convention against Transnational Organized Crime (2000); and
3. UN Convention against Corruption (2003).

In pursuance to the political Declaration adopted by the special session of the United Nations General Assembly (UNGASS) held on 8th to 10th June 1998 (of which India is one of the signatories) calling upon member States to adopt Anti Money Laundering Legislation & Programme, the Parliament has enacted a special law called the 'Prevention of Money Laundering Act, 2002' (PMLA 2002). This Act has been substantially amended, by way of enlarging its scope, in 2009 (w.e.f. 01.06.2009), by enactment of Prevention of Money Laundering (Amendment) Act, 2009. The Act was further amended by Prevention of Money-Laundering (Amendment) Act, 2012 w.e.f. 15-02-2013.

12. What is the offence of money laundering?

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering (Section 3).

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13. What are proceeds of crime?

"Proceeds of crime" (POC) means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [Section2(1)(u)].

POC derived from Scheduled Offences would be subject matter of money laundering and subject matter of investigation so far as Enforcement Director is concerned.

14. What is a 'scheduled offence'?

The offences listed in the Schedule to the Prevention of Money Laundering Act, 2002 are scheduled offences in terms of Section 2(1)(y) of the Act. The scheduled offences are divided into two parts - Part A & Part C.

In part A, offences to the Schedule have been listed in 28 paragraphs and it comprises of offences under various Acts as detailed below :

| Paragraph No. | Name of the Act | No of Offences |
|----------------------|--|-----------------------|
| 1 | The Indian Penal Code (45 Of 1860) | 60 |
| 2 | Narcotic Drugs And Psychotropic Substances Act, 1985 | 13 |
| 3 | Explosive Substances Act, 1908 | 3 |
| 4 | Unlawful Activities (Prevention) Act, 1967 | 15 |
| 5 | Arms Act, 1959 | 6 |
| 6 | Wildlife (Protection) Act, 1972 | 6 |
| 7 | Immoral Traffic (Prevention) Act, 1956 | 4 |
| 8 | Prevention Of Corruption Act, 1988 | 5 |
| 9 | Explosives Act, 1884 | 2 |
| 10 | Antiquities And Arts Treasures Act, 1972 | 2 |
| 11 | Securities And Exchange Board Of India Act, 1992 | 2 |
| 12 | Customs Act, 1962 | 1 |
| 13 | Bonded Labour System (Abolition) Act, 1976 | 3 |
| 14 | Child Labour (Prohibition And Regulation) Act, 1986 | 1 |
| 15 | Transplantation Of Human Organs Act, 1994 | 3 |

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| Paragraph No. | Name of the Act | No of Offences |
|---------------|---|----------------|
| 16 | Juvenile Justice (Care And Protection Of Children Act, 2000 | 4 |
| 17 | Emigration Act, 1983 | 1 |
| 18 | Passports Act, 1967 | 1 |
| 19 | Foreigners Act, 1946 | 3 |
| 20 | Copyright Act, 1957 | 4 |
| 21 | Trade Marks Act, 1999 | 5 |
| 22 | Information Technology Act, 2000 | 2 |
| 23 | Biological Diversity Act, 2002 | 1 |
| 24 | Protection Of Plant Varieties And Farmers' Rights Act, 2001 | 4 |
| 25 | Environment Protection Act, 1986 | 2 |
| 26 | Water (Prevention And Control Of Pollution) Act, 1974 | 2 |
| 27 | Air (Prevention And Control Of Pollution) Act, 1981 | 1 |
| 28 | Suppression Of Unlawful Acts Against Safety Of Maritime Navigation And Fixed Platforms On Continental Shelf Act, 2002 | 1 |
| Total | | 157 |

The offences under Income Tax Act or the Sales Tax/ VAT Acts are not covered under PMLA.

Part 'C' deals with trans-border crimes, and is a vital step in tackling Money Laundering across International Boundaries.

Prior to 15 th February, 2013, i.e., the date of notification of the amendments carried out in PMLA, the Schedule also had Part B for scheduled offences where the monetary threshold of rupees thirty lakhs was relevant for initiating investigations for the offence of money laundering. However, all these scheduled offences, hitherto in Part B of the Schedule, have now been included in Part A of Schedule w.e.f 15.02.2013. Consequently, there is no monetary threshold to initiate investigations under PMLA.

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15. What is a Predicate Offence?

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering.

16. Who investigates Predicate/Scheduled Offences?

Predicate Offences are investigated by agencies such as Police, Customs, SEBI, NCB and CBI, etc. under their respective Acts.

17. Who can investigate a case of Money Laundering ?

As per Sections 48 & 49 of the PMLA, the officers of the Directorate of Enforcement have been given powers to investigate cases of Money Laundering. The officers have also been authorised to initiate proceedings for attachment of property and to launch prosecution in the designated Special Court for the offence of money laundering.

18. What are the possible actions which can be taken against persons / properties involved in money laundering?

Following actions can be taken against the persons involved in money laundering:-

- (a) Attachment of property under Section 5, seizure/ freezing of property and records under Section 17 or Section 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.
- (b) Persons found guilty of the offence of money laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine [Section 4].
- (c) When a scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to ten years and shall also be liable to fine.
- (d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

19. What are the powers available to the Investigating Officers under the Act?

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The Investigating Officers have the following powers:-

- (a) to provisionally attach any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [Section 5];
- (b) to conduct survey of a place [Section 16];
- (c) to conduct search of building, place, vessel, vehicle or aircraft & seize/freeze records & property [Section 17];
- (d) to conduct personal search [Section 18];
- (e) to arrest persons accused of committing the offence of Money Laundering [Section 19];
- (f) to summon and record the statements of persons concerned [Section 50].

20. What are the powers of authority during survey?

An authority during the survey may—

- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom;
- (ii) make an inventory of any property checked or verified by him; and
- (iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act [Section 16].

21. What are the powers of officers / authority during search and seizure?

An Authorised officer may —

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or properties if required or make or cause to be made extracts or copies therefrom;

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- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act; and
- (g) where it is not practicable to seize such record or property, the officer authorized may make an order to freeze such property, whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order [Section 17].

22. What is an Adjudicating Authority and what is its role ?

The Adjudicating Authority of PMLA, which is a quasi-judicial body has been appointed/ constituted by the Central Government in terms of sub-section (1) of section 6 of PMLA to exercise jurisdiction, powers and authority conferred by or under the Prevention of Money Laundering Act, 2002. The Adjudicating Authority shall consist of a Chairperson and two members and shall function within the Department of Revenue, Ministry of Finance of the Central Government with Headquarters at Delhi.

Where the Adjudicating Authority decides that any property is involved in Money-Laundering, Adjudicating Authority shall, by an order in writing confirm the attachment of the property made or retention of property or record seized (as under sec. 5 of PMLA).

The Adjudicating Authority is guided by the principles of natural justice.

23. What is the time limit for retention of records or property seized during search & seizure? What is the time limit for continuation of the order of freezing of property/records frozen during search and seizure?

The property / record may, if seized be retained or if frozen may continue to remain frozen for a period not exceeding 180 days from the day on which such property or record were seized or frozen, unless the Adjudicating Authority under PMLA permits retention of such record or property beyond the period of 180 days [Sections 20 & 21].

24. What are the rights of persons being searched during search?

- (i) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate.

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- (ii) If the requisition is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section.
- (iii) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.
- (iv) Search shall be made in the presence of two or more persons.
- (v) No female shall be searched by any one except a female [Section 18].

25. What are the rights of persons during arrest?

- (i) The Authorized Officer making arrest shall, as soon as may be, inform the arrestee of the grounds for such arrest.
- (ii) Every person so arrested shall, within twenty- four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction [Section 19].

26. What are the powers of Authorities regarding issuing summons, enforcing production of documents and to give evidence etc.?

- (i) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director of the Directorate of Enforcement have the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.
- (ii) All the persons so summoned are bound to attend in person or through authorised agents, as such officer may direct, and are bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
- (iii) Such proceedings are deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860) [Section 50].

27. What is the time limit for retention of record impounded during the proceedings conducted under the PMLA, 2002?

The Authorities empowered to issue summons may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act :

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Provided that an Assistant Director or a Deputy Director cannot—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director [Section 50]

28. What are the presumptions in interconnected transactions?

Where Money-Laundering involves two or more inter-connected transactions and one or more such transactions is proved to be involved in money-laundering, then for the purposes of adjudication or confiscation or for the trial offence of money laundering, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court, be presumed that the remaining transactions form part of such inter-connected transactions [Section 23].

29. Whether the statement recorded before the Investigating Officer under PMLA is admissible evidence under the Law?

Yes, the statement recorded before the Investigating Officer under PMLA is admissible evidence in the Court as such a proceeding under Section 50(2) and 50(3) of the Act is a judicial proceeding within the meaning of Section 193 and 228 of IPC.

30. What are the presumptions in any proceedings relating to proceeds of crime under PMLA, 2002?

- (a) In the case of a person charged with the offence of Money-Laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in Money-Laundering; and
- (b) In the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in Money-Laundering [Section 24].

31. What is meant by the term “Property” in the Prevention of Money Laundering Act, 2002?

“Property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such

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property or assets, wherever located. Further, property includes, property of any kind used in the commission of an offence under this Act or any of the scheduled offences [Section 2(1)(v)].

32. What is “attachment”?

“Attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act [Section 2(1)(d)].

33. What are the circumstances under which properties can be provisionally attached under PMLA?

- (i) Where the Director, or any other officer not below the rank of Deputy Director authorised by the Director has reasons to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—
 - (a) any person is in possession of any proceeds of crime and
 - (b) such proceeds of crime or likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime he may, by an order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.
- (ii) No such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorized to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be or a similar report or complaint has been made or filed under the corresponding law of any other country.
- (iii) Further any property of any person may be attached, if the Director or any other officer not below the rank of Deputy Director authorized by him has reason to believe (reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately the non-attachment of the property is likely to frustrate any proceedings under this Act [Section 5].

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34. How long this order of provisional attachment of property will remain in force?

Every order of provisional attachment under Section 5(1) (called PAO i.e. Provisional Attachment Order) shall cease to have effect after 180 days from the date of the order, if no order is passed by the Adjudicating Authority under PMLA that the said property is involved in money- laundering and PAO dies its own legal death.

However, within said 180 days, if the Adjudicating Authority, by an order, records a finding that properties are not involved in money laundering, the order of provisional attachment shall cease to have effect from the date of such order of the Adjudicating Authority [Section 5(3)].

In case, the PAO is confirmed by the adjudicating authority under Section 8(3) then its validity continues or lasts till the order of confiscation under Section 8(5) by the judge of the Special court on conclusion of trial.

35. Whether the persons claiming or entitled to claim any interest in the enjoyment of immovable property can enjoy the property during the period of provisional attachment?

Yes. [Section 5(4)]

36. What is the remedy available to an aggrieved person, where the property is provisionally attached?

It has been provided in the Act that before recording the finding that all or any of the properties are involved in money laundering, the Adjudicating Authority has to issue a show cause notice of not less than thirty days to the aggrieved person. The aggrieved person at this stage can submit his reply and attend the hearing before the Adjudicating Authority to present his defence [Section 8(1)].

37. What will happen if the Adjudicating Authority records the finding that the all or any of the properties are involved in money laundering?

Where the Adjudicating Authority decides that any property is involved in Money-Laundering, he shall, by an order in writing, confirm the attachment of the property. Such attachment shall—

- (a) continue during the pendency of the proceedings relating to any offences under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and
- (b) becomes final after an order of confiscation is passed [Section 8(3)].

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38. What will happen if the Adjudicating Authority records the finding that all or any of the attached/ seized/ frozen properties are not involved in money laundering?

In such cases, the Adjudicating Authority shall direct the release of all properties other than the properties involved in Money-Laundering to the person from whom such properties were seized or the person entitled to receive it [Section 20(5)].

However, the Director or any other officer authorised by him in this behalf, may withhold the release of any such property for a period of ninety days if he (Director of Enforcement) is of the opinion that such property is relevant for the appeal proceedings under this Act [Section 20(6)].

39. What will happen to the seized/frozen records after confiscation of property involved in money laundering or used for the commission of the offence of the money laundering under Section 8 of PMLA?

After an order of confiscation of properties under Section 8 has been passed, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

However, the Director or any other officer authorised by him in this behalf, may withhold the release of any such record for a period of ninety days if he (Director of Enforcement) is of the opinion that such property is relevant for the appeal proceedings under this Act [Section 21(5 & 6)].

40. What will happen to the attached properties after conclusion of Trial for the offence of money laundering?

- (i) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of Money-Laundering has been committed, it shall order that such property involved in the Money-Laundering or which has been used for commission of the offence of Money-Laundering shall stand confiscated to the Central Government.
- (ii) Where on conclusion of a trial under this Act, the Special Court finds that the offence of Money-Laundering has not taken place or the properties not involved in Money-Laundering, it may order release of such property to the person entitled to receive it.
- (iii) Where the trial under this Act cannot be conducted, by reason of the death of the accused or the accused having been declared a

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proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been issued by the Adjudicating Authority confirming the provisional attachment of the property, pass appropriate orders regarding confiscation or release of the property, as the case may be, after having regard to the material before it [Sub-sections (5) (6) & (7) of Section 8].

- (iv) After an order of confiscation is passed, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances [Section 9].

41. Which is the Appellate Authority against the order passed by Adjudicating Authority and what is the time limit to file appeal? What are the remedies available to the aggrieved person

The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period [Section 26].

Thereafter if he or she still feels aggrieved by the order of Tribunal then he or she can avail statutory remedy available u/s 42 and appeal can be filed in the High Court.

Thereafter if it involves an important question of law, though it is not a statutory remedy but a remedy provided in Constitution of India under Article 137 of Constitution of India, the petition can be filed in the Supreme Court.

42. Who is the Appellate Authority against the order passed by Appellate Tribunal and what is the time limit to file appeal?

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. Thus an appeal can be filed before High Court on any question of law or fact.

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High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days [Section 42].

43. How do you describe the expression, “person” appearing in the Prevention of Money Laundering Act,2002?

“Person” includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.

Thus, besides the natural person, even legal entities are also covered under the expression “person” as per the Act [Section 2(1)(s)].

44. What is an “offence of cross border implication”?

- (1) Any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to India; or
- (2) Any offence specified in Part A or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India [Section 2(1) (ra)].

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OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

45. What is the scope of Chapter IV i.e. Obligations Of Banking Companies, Financial institutions And Intermediaries of PMLA ?

The ambit of Chapter IV is :

- (a) Section 12 : Reporting entities to maintain records
- (b) Section 12A : Access to information
- (c) Section 13 : Power of Director to impose fine
- (d) Section 14 : No civil or criminal proceedings against reporting entities, its directors and employees in certain cases
- (e) The Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereafter called the PMLMR Rules)
- (f) Definition of terms – Director (of FIU), Principal Officer and Designated Director (of Reporting Entities).

46. Who is the Director ?

“Director” means the Director appointed under sub-section (1) of section 49 of the Act for the purposes of sections 12, 12A and 13 of the Act.

The Central Government, in exercise of the powers conferred by sub-section (1) of section 49 of the Prevention of Money-Laundering Act, 2002, has appointed, with effect from 1st day of July 2005, the Director, Financial Intelligence Unit, India, under the Ministry of Finance Department of Revenue, as the Director to exercise the exclusive powers conferred under clause (b) of sub-section (2) of section 12 and its proviso, section 13, sub-section (2) of section 26 and sub-section (1) of section 50 of the Act and the said Director Intelligence Unit, India, shall also concurrently exercise powers conferred by sub-section (3) and sub-section (5) of section 26, section 39, section 40, section 41, section 42, section 48, sub-section (2) of section 49, section 66 and section 69 of the Act. [Notification No. 5/2005 dated 1st July 2005]

47. Who are reporting entities?

“Reporting Entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession [Section 2(1)(wa)]. The financial institution includes a non banking financial company (NBFC).

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48. Who are covered within the expression “Persons carrying on designated business or profession”?

Persons carrying on Designated Business or Profession means:-

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) a Registrar or Sub-Registrar appointed under Section 6 of the Registration Act, 1908, as may be notified by the Central Government.
- (iii) real estate agent, as may be notified by the Central Government.
- (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government.
- (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time [Section 2(1)(sa)].

49. What are the obligations of reporting entity in terms of the provisions of PMLA, 2002?

Section 12(1)(a) : Every reporting entity have to maintain a record of all transactions covered as per the nature and value of which may be prescribed, in such manner as to enable it to reconstruct individual transactions (Refer Rule 3,4 & 5 of PMLMR Rules) ;

Section 12(1)(b) : They shall furnish to the Director (FIU) within such time as may be prescribed information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed (Refer Rule 7 & 8 of PMLMR Rules) ;

Section 12(1)(c) : They shall verify the identity of its clients in such manner and subject to such conditions as may be prescribed (Refer Rule 9 of PMLMR Rules) ;

Section 12(1)(d) :They shall identify the beneficial owner, if any, of such of its clients, as may be prescribed (Refer Rule 9 of PMLMR Rules) ;

Section 12(1)(e) : They shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients for a period of five years in

Frequently Asked Questions (FAQs)

case of record and information relating to transactions (Refer Rule 10 of PMLMR Rules)

Section 12(3): They shall maintain the same for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

50. Who is a principal Officer, process of his appointment and registration and what is his role ?

Principal Officer means an officer designated by a reporting entity. (Rule 2(1)(f) of PMLMR Rules.

Every *reporting entity* shall communicate *to the FIU-Director* the name, designation and address of the Principal Officer. Rule 7(1).

Process of Registration of Principal Officer : Every Reporting entity will need to do the registration of principal officer online at the portal of FinancialIntelligence Unit - India (FIU-IND) (web site fiuindia@gov.in) which can be accessed at <https://finnet.gov.in>. For this, first, reporting entity registration will need to be done online and then you get FIU Reporting Entity ID (FIUREID) after few days. Then you can move on for online registration of the principal officer. After online registration, a FINnet registration request with "user registration request number" is generated. The FINnet registration request form should be printed and signed by the principal officer and the supervisor to the principal officer along with the official stamp. The signed and scanned copy of the request form need to be then sent to ctrcell@fiuindia.gov.in. Paper/ hard copy may be posted to Director, FinancialIntelligence Unit-India, 6th Floor, Hotel Samrat, New Delhi 110021. Envelope containing the Registration request should be superscribed as "PO Registration Request".

Online registration is now must. If Reporting Entity has already communicated *FIU-Director* the name, designation and address of the Principal Officer., they need to do online registration again.

Role of Principal Officer : The role of Principle Officer is limited to furnishing of information to Director (FIU-IND) under Rule 7 and 8 as given below:

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| Report | Rule | Description | Monetary Threshold | Due Date |
|--------|---------------|--|-----------------------|----------------------------------|
| CTR | Rule 3(1)(A) | All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency. | Above Rs. 10 lacs | 15th day of the succeeding month |
| | Rule 3(1)(B) | All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month | Above Rs. 10 lacs | 15th day of the succeeding month |
| CCR | Rule 3(1)(C) | All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions | No monetary threshold | 15th day of the succeeding month |
| NTR | Rule 3(1)(BA) | All transactions involving receipts by non profit organizations of value more than Rs. Ten lakhs or, its equivalent in foreign currency | Above Rs. 10 lacs | 15th day of the succeeding month |
| CBWTR | Rule 3(1)(E) | All cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India. | Above Rs. 5 lacs | 15th day of the succeeding month |

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| | | | | |
|-----|--------------|--|-----------------------|--|
| IPR | Rule 3(1)(F) | All purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity*, as the case may be. | Rs. 50 lacs or above | 15th day of the month succeeding the quarter. |
| STR | Rule 3(1)(D) | All suspicious transactions whether or not made in cash | No monetary threshold | Not later than seven working days on being satisfied that the transaction is suspicious. |

51. Which records need to be maintained as per PMLA?

As per Rule 3 of the Rules every reporting entity shall maintain a record of transactions as mentioned in answer to above question.

52. What constitutes a suspicious transaction under PMLA?

Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith -

- (a) gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or
- (b) appears to be made in circumstances of unusual or unjustified complexity; or
- (c) appears to have no economic rationale or bonafide purpose; or
- (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

53. Whether a transaction can be reported both under CTR and STR?

Yes, in case it is a cash transaction falling within the prescribed rules and has also an element of suspicious transaction.

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54. Who is a Designated Director and what is his role ?

The term Designated Director was included in Section 13 of the amended PMLA in order to comply with the FATF requirement (formerly Recommendation 17, now Recommendation 35) which reads as follows :

“Sanctions should be applicable not only to financial institutions and the DNFBPs but also to their Directors and Senior Management”.

Designated Director means a person designated by the reporting entity to ensure overall compliance with the obligations imposed under chapter IV (consisting of Section 12, 12A, 13, 14 and 15) of the Act and the PMLMR Rules, 2005.

Who can be a Designated Director ?

- **Company-** Managing Director or a whole-time Director
- **Partnership Firm-** Managing partner
- **Proprietorship concern-** Proprietor
- **Trust -** Managing Trustee
- **AOP/BOI-** a person or individual, as the case may be, who controls and manages the affairs of AOP/BOI
- **Any other Category-** such other person or class of persons as may be notified by the Government. [Rule 2(1)(ba)]

Furnishing of Information Rule 7 :

(1) Every reporting entity shall communicate to the Director the name, designation and address of the Designated Director and the Principal Officer. Rule 7(1)

(3) It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of furnishing information as specified by its regulator. Rule 7(3)

Personal Responsibility :

It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of maintaining information as specified by its regulator under sub-rule 5(1). Rule 5(3)

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It makes designated director, officers and employees accountable for observing the procedure and manner of maintaining information as specified by the regulators.

For failure to comply with the obligation under section 12, sanctions including penalty can be imposed on them.

55. What is the difference between the role of a Principal officer and that of a Designated Director ?

The role of Principle Officer is limited to furnishing of information to Director(FIU-IND) under Rule 7 and 8 whereas the role of Designated Director is much larger and includes all the obligations as per Section 12 of the Act .

56. Is it mandatory to implement a client due diligence programme?

Yes. Every reporting entity is required to formulate and implement a client due diligence programme approved by the senior management.(Rule 9).

57. When should the verification of identity of clients be undertaken?

Every reporting entity is required to verify the identity and address of the client, the nature of business of the client and his financialstatus at the time of opening an account or executing any transaction equal to or above Rs.50,000/- where there is no account-based relationship or where any international money transfer operation is carried out.[Rule 9]

58. What is an Officially Valid Document?

Officially valid document includes a passport, a driving licence, Permanent Account Number (PAN) Card, Voter's Identity Card issued by the Election Commission of India, job card issued by NREGA, Aadhaar Card/ letter or any other document notified by the Central Government.

59. Which documents need to be verified and maintained when the client is an individual?

Following document need to be verified and maintained when the client is an individual:

- One certified copy of an officially valid document containing details of his identity and address; and
- One recent photograph; and

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- Such other documents including those in respect of the nature of business and financial status of the client as may be required by the reporting entity. [Rule 9]

60. Which documents need to be verified and maintained when the client is a company?

Following document need to be verified and maintained when the client is an individual:

- Certificate of incorporation;
- Memorandum and Articles of Association;
- A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and
- An officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf. [Rule 9]

61. Which documents needs to be verified and maintained when the client is a partnership firm?

Following document need to be verified and maintained when the client is an individual:

- Registration certificate;
- Partnership deed; and
- An officially valid document in respect of the person holding an attorney to transact on its behalf. [Rule 9]

62. What documents needs to be verified and maintained if the client is a trust?

Following document need to be verified and maintained when the client is an individual:

- Registration certificate;
- Trust deed; and
- An officially valid document in respect of the person holding an attorney to transact on its behalf. [Rule 9]

63. What documents needs to be verified and maintained if the client is an unincorporated association or a body of individuals?

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Following document need to be verified and maintained when the client is an individual:

- Resolution of the managing body of such association or body of individuals;
- Power of attorney granted to him to transact on its behalf;
- An officially valid document in respect of the person holding an attorney to transact on its behalf; [Rule 9]and
- Such information as may be required by the banking company or the financial institution or the intermediary to collectively establish the legal existence of such an association or body of individuals.

64. Who is a beneficial owner?

Beneficial owner is an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person. [Rule 9]

65. What are a reporting entity's obligations with regard to the beneficial ownership verification?

All reporting entities should, at the time of commencement of an account-based relationship with a client, determine whether the client is acting on behalf of a beneficial owner, and identify the beneficial owner and take all steps to verify the identity of the beneficial owner. [Rule 9]

66. How the beneficial owner is to be determined ?

In terms of Rule 9(3), beneficial owner can be determined as follows :

| S No. | Client | Beneficial Owner |
|--------------|------------------|--|
| (a) | Company | Natural person(s) whether acting alone or together having a controlling ownership interest (having more than 25% shares or capital or profits of the company) or who exercises control (right to appoint majority of directors or policy decisions). |
| (b) | Partnership firm | Natural person(s) whether acting alone or together or one or more juridical person |

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| S No. | Client | Beneficial Owner |
|-------|---|--|
| | | (having more than 15% of capital or profits of the partnership. |
| (c) | Body of Individuals or Unincorporated Association | Natural person(s) whether acting alone or together, or one or more juridical person (having more than 15% of the property or capital or profits of such association or body of individuals. |
| (d) | Trust | The author of the trust, the trustee or trustees (with 15% or more interest in the trust) and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership. |
| (e) | Company ((listed on a stock exchange) or a subsidiary of company. | Not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies. |

67. What is the role of Sector Regulators?

Regulator has been defined as "a person or an authority or a Government which is vested with the power to license, authorize, register, regulate or supervise the activity of 3[reporting entities or the Director as may be notified by the Government for a specific reporting entity or a class of reporting entities or for a specific purpose." [Rule 2(fa) of PMLMR Rules, 2005].

Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority, National Housing Bank are the sector regulators.

As per PMLMR Rules, 2005, the role of regulator is as follows :

- (a) Records maintained under Rule 3 shall also contain information specified by regulator.
- (b) Every reporting entity shall maintain information in respect of transactions with its client referred to in Rule 3 in accordance with the procedure and manner as may be specified by its regulator.

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- (c) Every reporting entity shall evolve an internal mechanism for maintaining (Rule 3, 4 & 5) and furnishing such information (Rule 7 & 8) in such form or manner as may be specified or directed by its regulator.
- (d) It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of maintaining and furnishing information as specified by its regulator.
- (e) The regulator shall issue guidelines incorporating the requirements of Rule 9 in respect of Client Due Diligence and may prescribe measures to verify the client's identity.
- (f) The records of the identity of clients (obtained in accordance with Rule 9) shall be maintained in a manner as may be specified by its regulators.

68. What are the sanctions or monetary penalties that can be imposed on reporting entity for non maintenance of records or non submission of aforesaid information?

Section 13 of the Prevention of Money Laundering Act, 2002, empowers the Director, FIU-IND to impose fine on any reporting entity, its designated director on the board or any of its employees for failure to comply with the obligations of maintenance of records, furnishing information and verifying the identity of clients. The sanctions include both administrative action and monetary fine, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

69. Who is the appellate authority against the order passed by Director (FIU)?

Any reporting entity aggrieved by any order of the Director (FIU) made under sub-section (2) of Section 13, may prefer an appeal to the Appellate Tribunal [Section 26]. And if the person feels aggrieved by that order of the Appellate Tribunal, then the second Appellate Authority will be the High Court (under Section 42 of PMLA).

70. Whether any civil or criminal proceedings can be initiated for furnishing information?

No. It is provided in section 14 of the Prevention of Money Laundering Act, 2002, that the reporting entities and their officers shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.

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71. Can civil court grant injunction against any action taken by the Director, FIU-IND?

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter with which the Director is empowered and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

72. Can Director, FIU-IND issue summons for discovery and production?

The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, such as discovery and inspection, enforcing the attendance of any person, examining on oath, compelling the production of records, receiving evidence on affidavits and issuing commissions

SPECIAL COURTS

73. Which Courts are designated as Special Courts under PMLA, 2002?

For trial of offence punishable under section 4 of PMLA, 2002, the Central Government, in consultation with the Chief Justice of the respective High Courts, by notification, has designated one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as specified in the notifications.

While trying an offence of money laundering under PMLA,2002, a Special Court has also to try the offences, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial [Section 43].

74. What are offences triable by special Courts under PMLA, 2002?

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence of money laundering punishable under Section 4 of PMLA,2002 and any scheduled offence connected to the offence of money laundering, shall be triable by the Special Court constituted for the area in which the offence has been committed.

75. What will happen if the Court, which has taken cognizance of the scheduled offence is other than the Special Courts under PMLA (which has taken cognizance of the complaint of the offence of money laundering) ?

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In such cases, on an Application by the authority authorized to file a complaint under PMLA, the trial court (which has taken cognizance of the scheduled offence) shall commit the case relating to the scheduled offence to the Special Courts under PMLA. The Special Court, PMLA, on receipt of such case committed to it, shall proceed to deal with it from the stage at which it is committed [Section 44(1)(c)].

76. Which is the Appellate Authority against the order passed by Special Court?

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court [Section 47].

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

77. What is meant by the term “Contracting State”?

“Contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise [Section 55].

78. What is the mechanism to obtain evidence required in connection with investigation into an offence or proceedings under the Act if such evidence may be available in any place in a contracting State?

An application is to be made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer and the Special Court, on being satisfied, may issue a Letter of Request to a court or an authority in the contracting State competent to deal with such request to—

- (i) examine facts and circumstances of the case,
- (ii) take such steps as the Special Court may specify in such letter of request, and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

Every statement recorded or document or thing received from a Contracting State shall be deemed to be the evidence collected during the course of investigation [Section 57].

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79. What is the mechanism to provide assistance to a Contracting State?

Where a Letter of Request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under PMLA, 2002 and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such Letter of Request to the Special Court or to any authority under the Act for execution of such request [Section 58].

80. Whether the properties involved in money laundering located in India can be confiscated, where the offence of money laundering has been committed outside India?

Where the offence of money laundering has been committed outside India, the properties involved in money laundering located in India, can be ordered to be confiscated by the Special Court/Adjudicating Authority on an application moved to the Special Court/ Adjudicating Authority [Section 58B].

If the property is located in India, then its order of attachment, confirmation order and confiscation order has to be in accordance with the provision of domestic law which means section 5(1), section 8(3) and section 8(5) of PMLA, 2002.

81. What are the reciprocal arrangements for processes and assistance for transfer of accused persons?

(1) A Special Court, in relation to an offence punishable under section 4 for the service or execution of a summons, a warrant or a search warrant in a Contracting State shall send such summons or warrant, in duplicate, in prescribed form to the Court, Judge or Magistrate through specified Authorities.

(2) Similarly, a summons, a warrant or a search warrant in relation to an offence punishable under section 4, received for service or execution from a Contracting State, shall be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution.

After execution of summons or search warrant received from a Contracting State, the documents or other things produced or things found during search shall be forwarded to the Court issuing the summons or search-warrant through the specified Authority [Section 59].

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82. Whether the property involved in money laundering and located in the Contracting State can also be attached or seized?

Yes. In such cases, after issue of an order for attachment of any property made under Section 5 or freezing under Section 17(1A) or confirmation of attachment by Adjudicating Authority under Section 8 or confiscation by Special Court under Section 8, the Special Court, on an application by the Director or the Administrator may issue a Letter of Request to a court or an authority in the Contracting State for execution of such order as per the provisions of corresponding law of that country [Section 60(1)].

MISCELLANEOUS

83. What is the punishment for vexatious search?

Imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both [Section 62].

84. What is the punishment for giving false information or failure to give information, etc.?

Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall, on conviction, be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both [Section 63(1)].

85. What is the punishment if a person being legally bound to state the truth of any matter refuses to answer any question put to him, refuses to sign any statement made by him, or omits to attend or produce books of account or documents at the place or time in compliance of summon issued under section 50?

Penalty – A sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure, can be imposed. Further, a person who intentionally disobeys any direction issued under Section 50 shall also be liable to be proceeded against under Section 174 of the Indian Penal Code, 1860 [(Section 63 (3 & 4)].

86. Whether a suit can be brought in civil court to set aside or modify any proceedings taken or made under PMLA, 2002?

PMLA is a special law. Jurisdiction of civil courts is barred. Writ jurisdiction of High Courts is available under Article 226 and of the Supreme Court under Article 32 of Constitution.

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No suit can be brought in any civil court to set aside or modify any proceeding taken or order made under PMLA, 2002 and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under the PMLA, 2002 [Section 67].

87. What is the mechanism to recover the fine or penalty imposed on any person under Section 13 or Section 63?

Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director, FIU- Ind or Director of Enforcement or any other officer authorised by them in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 (43 of 1961) for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose [Section 69].

88. What are the provisions when the offence of money laundering is committed by companies?

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

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(3) Further, a company may be prosecuted notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual [Section 70].

89. What will happen to the proceedings initiated under PMLA, 2002 in the event of death or insolvency of the person?

If the accused dies, the proceedings stand abated (same as in case of criminal law). But if there is order of attachment then that liability will be satisfied from the property (because it is the property which is involved in the money laundering) which will be decided on its final outcome when the confiscation order is passed. In the event of order of confiscation, even if the accused dies, the property involved in money laundering will vest in the hands of Central Government under section 9 of PMLA. Legal heirs will not enjoy the fruit of that property being tainted property, then it is has to confiscated in the Central Government.

In cases where any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred, then, the legal representatives or the official assignee or the official receiver may prefer an appeal to the Appellate Tribunal / High Court or to continue the appeal before the Appellate Tribunal / High Court, in place of such person [Section 72].

90. If there is no Proceeds of Crime (POC) then how can PMLA apply ?

If POC is not available, or has been consumed or thrown in sea or concealed, the Enforcement Director can still attach under Section 5(1) the other proceeds/property of the accused even if lawfully or legitimately acquired by him but of equivalent value. The guiding principle is that it can not exceed the equivalent value of the property involved in money laundering. Further prosecution can go on and the accused can also be sent to jail for consuming or throwing in sea or concealing the POC and prosecution complaint can be filed under Section 45 of PMLA.

91. What are the addresses under the ACT and Rules ?

(a) Enforcement Director :

Head Office:
Joint Director (Admn)
Enforcement Directorate

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6th Floor , Lok Nayak Bhawan
Khan Market,
New Delhi – 110 003
Phone: 24611989, 24692055
Fax: 24631847
e-mail: ed-del-rev@nic.in
Website : <http://www.enforcementdirector.gov.in>

(b) FIN-IND Director :

Director, FIU-IND
Financial Intelligence Unit - India
6th Floor, Hotel Samrat
Kautilya Marg, Chanakyapuri
New Delhi -110021, India
Telephone
91-11-26874429, 26874349 (PABX)
91-11-24109792/93 (Helpdesk)
91-11-24672138 (For Reporting Entity / Principal Officer registration
related inquiry)
FAX 91-11-26874459
Email
helpdesk@fiuindia.gov.in (For Finnet and general queries)
ctrcell@fiuindia.gov.in (For Reporting Entity / Principal Officer
registration related queries.
Website : <http://fiuindia.gov.in>

(c) Appellate Tribunal Under Prevention Of Money Laundering Act :

Lok Nayak Bhawan,
'A' Wing, 4th Floor, Khan Market,
New Delhi-110003.

(d) Adjudicating Authority, Prevention Of Money Laundering Act :

Room No. 26, 4th Floor, Jeevan Deep Building
Parliament Street, New Delhi-110001
Telephone: 011-23363620

Chapter 19

Notifications/Guidelines Issued by Various Authorities

1. Reserve Bank of India

CIRCULARS ISSUED BY RBI TO ALL SCHEDULED COMMERCIAL BANKS (EXCLUDING RRBS)/ ALL INDIA FINANCIAL INSTITUTIONS/ LOCAL AREA BANKS

All these circulars are available at the following site:

http://rbi.org.in/scripts/BS_CircularIndexDisplay.aspx

| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|--|
| 1 | RBI/ 2014-15/70 / DBOD. AML. BC. No.22/14.01.001/2014-15 | 01.07.2014 | Master Circular- Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002 |
| 2 | DBOD.AML.BC. No.124 /14.01.001/2013-14 | 26.06.2014 | Unique Customer Identification Code (UCIC) for banks' customers in India |
| 3 | DBOD.AML.BC.No. 119/14.01.001/2013-14 | 09.06.2014 | Clarification on Proof of Address |
| 4 | DBOD.AML.BC.No.103 /14.01.001/2013-14 | 03.04.2014 | Harmonization of KYC norms for Foreign Portfolio Investors (FPIs) |
| 5 | DBOD. AML. No. 16415 /14.01.001/2013-14 | 28.03.2014 | Reporting of Cross Border Wire Transfer Report on FINnet Gateway |
| 6 | DBOD.AML.BC.No. | 04.03.2014 | Recognising e-Aadhaar as |

A Study on Prevention of Money Laundering Act, 2002

| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|--|
| | 100/14.01.001/2013-14 | | an 'Officially Valid Document' under PML Rules |
| 7 | DBOD.AML.BC. No.80/14.01.001/2013-14 | 31.12.2013 | Amendment to Section 13(2) of PML Act |
| 8 | DBOD.AML.BC.No.63/14.01.001/2013-14 | 29.10.2013 | Due diligence in correspondent banking relationship |
| 9 | DBOD.AML.BC. No. 50/14.01.001/2013-14 | 03.09.2013 | Circular regarding Information sought by banks from customers |
| 10 | DBOD.AML.BC.No.44/14.01.001/2013-14 | 02.09.2013 | e-KYC Service of UIDAI – Recognising on-line Aadhaar authentication (electronic verification process) to be accepted as an 'Officially Valid Document' under PML Rules |
| 11 | DBOD.AML.BC.No.45/14.01.001/2013-14 | 02.09.2013 | Foreign students studying in India – KYC procedure for opening of bank accounts |
| 12 | DBOD.AML.BC.No. 34/14.01.001/2013-14 | 23.07.2013 | Simplifying norms for Periodical Updation of KYC |
| 13 | DBOD.AML.BC.No.29 /14.01.001/2013-14 | 12.07.2013 | To reiterate and strengthen certain existing guidelines on KYC/AML/CFT for strict compliance. |
| 14 | DBOD.AML.BC. No.101 /14.01.001/2011-12 | 31.05.2013 | Extending time period for allotting Unique Customer Identification Code (UCIC) for banks' customers in India |
| 15 | RBI/2012-13/459 DBOD.AML.BC. | 28.03.2013 | Simplifying norms for Self Help Groups |

Notifications/Guidelines Issued By Various Authorities

| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|---|
| | No.87/14.01.001/2012-13 | | |
| 16 | DBOD.AML.BC. No. 78 /14.01.001/2012-13 | 29.01.2013 | Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under Prevention of Money Laundering Act (PMLA), 2002 |
| 17 | DBOD.AML.BC. No.71/14.01.001/2012-13 | 18.01.2013 | Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under Prevention of Money Laundering Act (PMLA), 2002 |
| 18 | DBOD.AML.BC.No. 65/14.01.001/2012-13 | 10.12.2012 | Know Your Customer (KYC) norms /Anti-Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under Prevention of Money Laundering Act (PMLA), 2002 |
| 19 | DBOD.AML.BC.No. 39/14.01.001/2012-13 | 07.09.2012 | Uploading of Reports in 'Test Mode' on FINnet Gateway |
| 20 | DBOD.AML.BC. No. 49/14.01.001/2012-13 | 07.09.2012 | Uploading of Reports in 'Test Mode' on FINnet Gateway |

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| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|---|
| 21 | DBOD.AML.BC. No 109 /14.01.001/2011-12 | 08.06.2012 | Know your Customer (KYC) guidelines- Unique Customer Identification Code for bank customers in India |
| 22 | DBOD.AML.BC. No 110/14.01.001/2011-12 | 08.06.2012 | Know your Customer (KYC) guidelines - Risk Categorization and updation of Customer Profile |
| 23 | DBOD.AML.BC. No 93/ 14.01.001/2011-12 | 17.04.2012 | Know your Customer (KYC) guidelines - accounts of proprietary concerns |
| 24 | DBOD AML BC No. 70/ 14.01.001/2011-12 | 30.12.2011 | splitting of UNSC 1267 Committee's list of individuals and entities linked to Al-Qaida and Taliban |
| 25 | DBOD.AML.BC. No.65/ 14.01.001/2011-12 | 19.12.2011 | Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under Prevention of Money Laundering Act (PMLA), 2002- Assessment and Monitoring of Risk |
| 26 | DBOD.AML BC.No.47/ 14.01.001/2011-12 | 04.11.2011 | Payment of Cheques/Drafts/ Pay Orders/ Banker's Cheques |
| 27 | DBOD.AML.BC. No.36/ 14.01.001/2011-12 | 28.09.2011 | Know Your Customer Norms – Letter issued by Unique Identification Authority of India (UIDAI) containing details of name, address and Aadhaar number |

Notifications/Guidelines Issued By Various Authorities

| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|---|
| 28 | DBOD.AML.BC.No.77/ 14.01.001/2010-11 | 27.01.2011 | Opening of "Small Account" |
| 29 | DBOD.AML.BC.No.70/ 14.01.001/2010-11 | 30.12.2010 | Accounts of bullion dealers (including sub-dealers) & jewelers should be categorized by banks as 'high risk'. |
| 30 | DBOD.AML.BC.No.65/ 14.01.001/2010-11 | 07.12.2010 | Operation of bank accounts & money mules |
| 31 | DBOD.AML.BC.No.50/ 14.01.001/2010-11 | 26.10.2010 | Opening of bank accounts - salaried employees |
| 32 | DBOD.AML.BC.No.38/ 14.01.001/2010-11 | 31.08.2010 | Accounts of proprietary concerns |
| 33 | DBOD.AML.BC.No.113 /14.01.001/2009-10 | 29.06.2010 | Prevention of Money Laundering (Maintenance of records of the ...Intermediaries) Second Amendment Rules 2010 |
| 34 | DBOD.AML.BC.No.111 /14.01.001/2009-10 | 15.06.2010 | KYC norms/AML standards/CFT/Obligation of banks under PMLA, 2002 |
| 35 | DBOD.AML.BC.No.109 /14.01.001/2009-10 | 10.06.2010 | KYC norms/AML standards/CFT/Obligation of banks under PMLA, 2002 |
| 36 | DBOD.AML.BC.No.108 /14.01.001/2009-10 | 09.06.2010 | KYC norms/AML standards/CFT/Obligation of banks under PMLA, 2002 |
| 37 | DBOD.AML.BC.No.95/ 14.01.001/2009-10 | 23.04.2010 | Prevention of Money Laundering (Maintenance of records of the Intermediaries) Amendment Rules, 2010 - Obligation of banks |
| 38 | DBOD.AML.BC.No.80/ 14.01.001/2009-10 | 26.03.2010 | Know Your Customer (KYC) |

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| Sr. No. | Circular No. | Date | Subject |
|---------|---|------------|--|
| | 14.01.001/2009-10 | | guidelines- accounts of proprietary concerns |
| 39 | DBOD.AML.BC.No.68/ 14.01.001/2009-10 | 12.01.2009 | Prevention of Money laundering (Amendment) Rules 2009- Obligation of banks /Financial institutions |
| 40 | DBOD.AML.BC.No.44/ 14.01.001/2009-10 | 17.09.2009 | Combating Financing of Terrorism-Unlawful Activities (Prevention) Act,(UAPA) 1967- Obligation of banks |
| 41 | DBOD.AML.BC.No.43/ 14.01.001/2009-10 | 11.09.2009 | KYC norms/AML standards/CFT/ Obligation of banks under PMLA, 2002 |
| 42 | DBS.CO.FrMC. No. 2605/23.04.001/ 2009- 10 | 18.08.2009 | Adherence to KYC/AML Guidelines while opening & conducting accounts of MLM Companies |
| 43 | DBOD.AML.BC.No.2/1 4.01.001/2009-10 | 01.07.2009 | Master Circular –KYC norms/AML Standards/CFT/ Obligation of Banks under PMLA, 2002 |
| 44 | DBOD.AML.BC.No.12/ 14.01.001/2008-09 | 01.07.2008 | Master Circular –KYC norms/AML Standards/CFT/ Obligation of Banks under PMLA, 2002 |
| 45 | DBOD.AML.BC.No. 85/ 14.01.001/ 2007 -08 | 22.05.2008 | Prevention of Money Laundering Act, 2002 – Obligation of banks in terms of Rules notified thereunder. |
| 46 | DBOD.AML.BC.No. 63/ 14.01.001/2007-08 | 18.02.2008 | Know Your Customer (KYC) Norms/Anti Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT) |

Notifications/Guidelines Issued By Various Authorities

| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|--|
| 47 | DBOD.AML.BC. No.77/ 14.01.001 / 2006-07 | 13.04.2007 | Wire transfers |
| 48 | DBOD.NO.AML.BC.63/ 14.01.001/2005-06 | 15.02.2006 | Prevention of Money Laundering Act, 2002 – Obligation of banks in terms of Rules notified thereunder |
| 49 | DBOD.NO.AML.BC.28 /14.01.001/2005-06 | 23.08.2005 | Know Your Customer Guidelines- Anti-Money Laundering Standards |
| 50 | DBOD.NO.AML.BC.58/ 14.01.001/2004-05 | 29.11.2004 | Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards |
| 51 | DBOD.AML.BC.18/14. 01.001/2002-03 | 16.08.2002 | Guidelines on "Know Your Customer" norms and "Cash transactions" |
| 52 | DBOD.AML.BC.No.102 /14.01.001/2001-02 | 10.05.2002 | Monitoring of accounts - compliance with instructions. |
| 53 | DBOD.AML.BC.89/14. 01.001/2001-02 | 15.04.2002 | Freezing of funds pursuant to United Nations Security Council Resolution, 1390. |
| 54 | DBOD.BP.52/21.01.00 1/2001-02 | 05.12.2001 | Prevention of Terrorism Ordinance, 2001-Implementation thereof. |
| 55 | DBOD.COMP.BC.No.1 30/07.03.23/2000-01 | 14.06.2001 | Internet Banking in India-Guidelines. |
| 56 | DBS.FGV.BC.56.23.04 .001/98-99 | 21.06.1999 | Report of the Study Group on Large Value Bank Frauds. |
| 57 | DBOD.No.BP.BC.12/2 1.01.023/98 | 11.02.1998 | Furnishing of data-violation of secrecy obligations. |
| 58 | DBOD.BP.BC.42/21.01 .001/96 | 06.04.1996 | Monitoring cash deposits and withdrawals of Rs.10 lakh and above in deposit/other accounts. |

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| Sr. No. | Circular No. | Date | Subject |
|---------|-------------------------------------|------------|--|
| 59 | DBOD.BP.BC.102/21.0 1.001/95 | 20.09.1995 | Monitoring of Deposit Accounts. |
| 60 | DBOD.BP.BC.57/21.01 .001/95 | 04.05.1995 | Frauds in banks – Monitoring of deposit accounts. |
| 61 | DBOD.BP.BC.106/21.0 1.001/94 | 23.09.1994 | Fraudulent operations in deposit accounts-opening and collection of cheques/pay orders etc. |
| 62 | DBOD.No.GC.BC.46/1 7.04.001 | 22.04.1994 | The Committee to enquire into various aspects relating to frauds and malpractices in banks. |
| 63 | DBOD.GC.BC.202/17. 04.001/93 | 06.12.1993 | The Committee to enquire into various aspects relating to frauds and malpractices in banks. |
| 64 | DBOD.GC.BC.193/17. 04.001/93 | 18.11.1993 | Frauds in banks – Encashment of Interest/Dividend Warrants, Refund Orders etc. |
| 65 | DBOD.FMC.No.153/27 .01.003/93-94 | 01.09.1993 | Monitoring of flow of funds. |
| 66 | DBOD.BP.BC.60/21.01 .023/92 | 21.12.1992 | Diversion of working capital funds. |
| 67 | DBOD.BC.20/17.04.00 1/92 | 25.08.1992 | Committee to enquire into various aspects relating to frauds and malpractices in banks. |
| 68 | DBOD.BP.BC.114/C.4 69 (81)-91 | 19.04.1991 | Misuse of banking channels for violation of fiscal laws and evasion of taxes – Issue and payment of demand drafts for Rs.50,000 and above. |

Notifications/Guidelines Issued By Various Authorities

| Sr. No. | Circular No. | Date | Subject |
|---------|----------------------------|------------|--|
| 69 | DBOD.GC.BC.62/c.408 (A)/87 | 11.11.1987 | Frauds in banks-opening of new accounts. |
| 70 | DBOD.BP.BC.92/C.46 9-76 | 12.08.1976 | Issue of DDs/TTs in excess of Rs.5000/- |

CIRCULARS ISSUED BY RBI TO ALL PRIMARY (URBAN) CO-OPERATIVE BANKS

| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|--|
| 1 | RBI/2014-15/27 UBD.BPD. (PCB).MC.No.16/12.05. 001/2014-15 | 01.07.2014 | Master Circular on Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Measures/Combating of Financing of Terrorism (CFT) / Obligations of banks under Prevention of Money Laundering Act (PMLA), 2002. It consolidates and updates all the instructions / guidelines on the subject issued up to June 30, 2014 |

CIRCULARS ISSUED BY RBI TO ALL NON-BANKING FINANCIAL COMPANIES (NBFCs), MISCELLANEOUS NON-BANKING COMPANIES (MNBCs), AND RESIDUARY NON-BANKING COMPANIES (RNBCs)

| Sr. No. | Circular No. | Date | Subject |
|---------|---|------------|---|
| | List of PMLA Circulars | | |
| 1 | RBI/2014-15/56/DNBS (PD) CC No. 387/03.10.42/ 2014-15 | 01.07.2014 | Master Circular – 'Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards (AML) -'Prevention of Money Laundering Act, |

A Study on Prevention of Money Laundering Act, 2002

| Sr. No. | Circular No. | Date | Subject |
|---------|---|------------|--|
| | | | 2002 - Obligations of NBFCs in terms of Rules notified thereunder |
| 2 | DNBS(PD).CC. No 378 /03.10.42 /2013-14 | 29.05.2014 | Know Your Customer (KYC) Norms / Anti-Money Laundering (AML) Standards /Combating of Financing of Terrorism (CFT) / Obligation of NBFCs under Prevention of Money Laundering Act (PMLA), 2002 - Amendment to Section 13(2) |
| 3 | DNBS(PD).CC.No.307/0 3.10.42/2012-13 | 16.10.2012 | NBFCs/RNBCs - Uploading of Reports in 'Test Mode' on FINnet Gateway Reporting |
| 4 | DNBS(PD).CC. No 247 /03.10.42 /2011-12 | 28.10.2011 | KYC Guidelines – AML Standards -Prevention of Money Laundering Act, 2002 - Obligations of NBFCs – Revised Reporting Format |
| 5 | DNBS(PD)CC.No 198 /03.10.42/2010-11 | 26.08.2010 | NBFCs – Prevention of Money Laundering Amendment Rules, 2010 |
| 6 | DNBS(PD)CC.No 175/03.10.42/2009-10 | 26.05.2010 | NBFCs - Prevention of Money Laundering Amendment Rules, 2009 – Obligation of Banks/FIs |
| 7 | DNBS(PD).CC. No. 172 /03.10.42 /2009-10 | 30.04.2010 | Know Your Customer (KYC) Norms/ Anti- Money Laundering (AML) Standards/Combating of |

Notifications/Guidelines Issued By Various Authorities

| Sr. No. | Circular No. | Date | Subject |
|---------|---|------------|--|
| | | | Financing of Terrorism (CFT) |
| 9 | DNBS(PD).CC. No 170 /03.10.42 /2009-10 | 23.04.2010 | List of Terrorist Individuals / Organisations- under UNSCR 1267 (1999) and 1822(2008) on Taliban /Al-Qaida Organisation |
| 8 | DNBS(PD)CC.No 171/03.10.42/2009-10 | 23.04.2010 | NBFCs - Prevention of Money-Laundering Amendment Rules, 2009 – Obligation of Banks/FIs |
| 10 | DNBS(PD). CC 164/03.10.042/ 2009- 10 | 13.11.2009 | NBFCs – PMLA, 2002 – Obligations of NBFCs |
| 11 | DNBS(PD). CC 126/03.10.042/ 2008- 09 | 05.08.2008 | PMLA,2002 - Obligation of NBFCs |
| 12 | DNBS(PD). CC 68 /03.10.042/2005-06 | 05.04.2006 | PMLA, 2002 - Obligations of NBFCs |
| | List of KYC Circulars | | |
| 1 | DNBS(PD).CC.No.375/0 3.10.42/2013-14 | 22.04.2014 | Reporting of information / data relating to Cash and Suspicious Transactions to the Director, FinancialIntelligence Unit-India (FIU-IND) |
| 2 | DNBS (PD).CC. No 370 /03.10.42 /2013-14 | 19.03.2014 | Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards |
| 3 | DNBS(PD).CC.No.366 /03.10.42/2013-14 | 10.01.2014 | Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List and Consolidated List |

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| Sr. No. | Circular No. | Date | Subject |
|---------|---|------------|--|
| 4 | DNBS(PD).CC.No.364/0 3.10.42/2013-14 | 01.01.2014 | Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards |
| 5 | DNBS(PD).CC NO 358/03.10.42/2013-14 | 03.10.2013 | Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List and Consolidated List |
| 6 | DNBS(PD).CC.No 357/03.10.42/2013-14 | 03.10.2013 | Implementation of Section 51-A of UAPA, 1967- Updates of the UNSCR 1988 (2011) Sanctions List |
| 7 | DNBS(PD).CC. No 352/03.10.42 /2013-14 | 23.07.2013 | Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards |
| 8 | DNBS(PD).CC.No.351/0 3.10.42/2013-14 | 04.07.2013 | Know Your Customer Norms/Anti-Money Laundering Standards/Combating Financing of Terrorism - Unique Customer Identification Code for Banks Customers in India |
| 9 | DNBS(PD).CC. No 325 /03.10.42 /2012-13 | 03.05.2013 | KYC Norms/AML Standards/Combating Financing of Terrorism - Unique Customer Identification Code for NBFC Customers in India |
| 10 | DNBS(PD).CC. No 324 /03.10.42 /2012-13 | 02.05.2013 | NBFCs/RNBCs - Implementation of Section 51-A of UAPA, 1967 - |

Notifications/Guidelines Issued By Various Authorities

| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|--|
| | | | Updates of the UNSCR 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List and Consolidated List |
| 11 | DNBS(PD).CC. No 323 /03.10.42 /2012-13 | 18.04.2013 | Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards |
| 12 | DNBS(PD).CC. No 321 /03.10.42 /2012-13 | 27.02.2013 | KYC norms /AML Standards/CFT/Obligation of banks under PMLA, 2002 |
| 13 | DNBS(PD).CC. No 319 /03.10.42 /2012-13 | 28.12.2012 | Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards |
| 14 | DNBS(PD).CC. No 318 /03.10.42 /2012-13 | 28.12.2012 | Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR Committee's Sanctions List |
| 15 | DNBS(PD).CC. No 313 /03.10.42 /2012-13 | 10.12.2012 | Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List |
| 16 | DNBS(PD).CC. No 310 /03.10.42 /2012-13 | 22.11.2012 | NBFCs/RNBCs - Implementation of Section 51-A of UAPA, 1967- Updates of the UNSCR 1988 (2011) Sanctions List |
| 17 | DNBS(PD).CC. No 306 /03.10.42 /2012-13 | 03.10.2012 | Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR |

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| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|--|
| | | | 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List |
| 18 | DNBS(PD).CC. No 305 /03.10.42 /2012-13 | 03.10.2012 | Implementation of Section 51-A of UAPA, 1967- Updates of the UNSCR 1988 (2011) Sanctions List |
| 19 | DNBS(PD).CC. No 304 /03.10.42 /2012-13 | 17.09.2012 | NBFCs/RNBCs - Anti-Money Laundering/Combating of Financing of Terrorism - Standards |
| 20 | DNBS(PD).CC. No 302 /03.10.42 /2012-13 | 07.09.2012 | Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR Committee's Al Qaida Sanctions List |
| 21 | DNBS(PD).CC. No 298 /03.10.42 /2012-13 | 26.07.2012 | KYC Norms/AML Standards/Combating Financing of Terrorism - Risk Categorisation and Updation of Customer Profiles |
| 22 | DNBS(PD).CC. No 296 /03.10.42 /2012-13 | 11.07.2012 | Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR Committee's Al Qaida Sanctions List |
| 23 | DNBS(PD).CC. No 295 /03.10.42 /2012-13 | 11.07.2012 | Implementation of Section 51-A of UAPA, 1967- Updates of the UNSCR 1988 (2011) Sanctions List |
| 24 | DNBS(PD).CC. No 294 /03.10.42 /2012-13 | 05.07.2012 | Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR |

Notifications/Guidelines Issued By Various Authorities

| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|---|
| | | | 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List |
| 25 | DNBS(PD).CC. No 275 /03.10.42 /2011-12 | 29.05.2012 | Know Your Customer (KYC) guidelines - accounts of proprietary concerns |
| 26 | DNBS(PD).CC. No.270/03.10.42 /2011-12 | 04.04.2012 | Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards |
| 27 | DNBS(PD).CC. No 264/03.10.42/2011-12 | 21.03.2012 | NBFCs - KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002-Assessment and Monitoring of Risk |
| 28 | DNBS(PD).CC. No 257 /03.10.42 /2011-12 | 14.03.2012 | Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards |
| 29 | DNBS(PD).CC. No 251 /03.10.42 /2011-12 | 26.12.2011 | KYC Norms – Letter issued by UIDAI containing name, address and Aadhaar number |
| 30 | DNBS(PD).CC. No 244 /03.10.42 /2011-12 | 22.09.2011 | Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) Standards |
| 31 | DNBS(PD).CC. No 242 /03.10.42 /2011-12 | 15.09.2011 | Know Your Customer (KYC) Norms/ Anti- Money Laundering (AML) Standards/ Combating the Financing of Terrorism (CFT) |

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| Sr. No. | Circular No. | Date | Subject |
|---------|--|------------|--|
| 32 | DNBS.(PD)CC No215/03.10.42/2010-11 | 05.04.2011 | Operation of deposit account with NBFCs and money mules |
| 33 | DNBS(PD).CC.No218/0 3.10.42/2010-11 | 04.05.2011 | NBFCs/RNBCs - Anti-Money Laundering/Combating Financing of Terrorism Standards |
| 34 | DNBS(PD).CC. No.216 /03.10.42 /2010-11 | 02.05.2011 | KYC Norms/Anti- Money Laundering Standards/Combating Financing of Terrorism - NBFCs/RNBCs |
| 35 | DNBS.(PD)CCNo212/03 .10.42/2010-11 | 08.03.2011 | Know Your Customer (KYC) norms /Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT) Obligation of NBFCs under PMLA, 2002 |
| 36 | DNBS(PD).CC.No210/0 3.10.42/2010-11 | 14.02.2011 | Know Your Customer (KYC) Norms/ Anti- Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT) |
| 37 | DNBS(PD).CC.No209/0 3.10.42/2010- | 28.01.2011 | NBFCs/RNBCs - Anti-Money Laundering/Combating Financing of Terrorism Standards |
| 38 | DNBS(PD).CC. No 202 /03.10.42 /2010-11 | 04.10.2010 | Know Your Customer (KYC) Norms/ Anti- Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT) |

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| Sr. No. | Circular No. | Date | Subject |
|--|---|------------|---|
| 39 | DNBS(PD).CC. No 201/03.10.42 /2010-11 | 22.09.2010 | NBFCs - KYC Norms/AML Standards/Combating Financing of Terrorism |
| 40 | DNBS. (PD) CC No 193 /03.10.42/2010-11 | 09.08.2011 | NBFCs - KYC Norms/Anti-Money Laundering Standards |
| 41 | DNBS. (PD) CC No 192 /03.10.42/2010-11 | 09.08.2010 | NBFCs - KYC Norms/Anti-Money Laundering Standards |
| 42 | DNBS(PD).CC. No 166 /03.10.42 /2009-10 | 02.12.2009 | NBFCs - KYC Norms/AML Standards/Combating Financing of Terrorism |
| 43 | DNBS(PD). CC 163/03.10.042/ 2009- 10 | 13.11.2009 | NBFCs – KYC/AML Standards |
| 44 | DNBS(PD). CC 113 /03.10.042/ 2007- 08 | 23.04.2008 | Know Your Customer (KYC) Norms / Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT) |
| 45 | DNBS.PD. CC No. 64 /03.10.042/2005-06 | 07.03.2006 | Know Your Customer Guidelines- Anti-Money Laundering Standards |
| 46 | DNBS(PD).CC No. 58/ 10.42 /2005-06 | 11.10.2005 | NBFCs advised to apply KYC Norms to their Brokers/Agents |
| 47 | DNBS(PD). CC 48 /10.42/2004-05 | 21.02.2005 | NBFCs/MNBCs/RNBCs - KYC Guidelines/Anti-Money Laundering Standards |
| 48 | DNBS (PD) CC.No.46/02.02(RNBC)/ 2004-05 | 30.12.2004 | Road Map for Residuary Non-Banking Companies |
| 2.Securities and Exchange Board of India | | | |

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CIRCULARS ISSUED BY SEBI TO INTERMEDIARIES

All these circulars are available at the following site:

<http://www.sebi.gov.in/sebiweb/home/list/1/6/0/0/Master-Circulars>

| Sr. No. | Circular No. | Date | Subject |
|---------|--------------------------|------------|---|
| 1 | CIR/MIRSD/1/2014 | 12.03.2014 | Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT). Obligations of Securities Market Intermediaries under the Prevention of Moneylaundering Act, 2002 and Rules framed there under |
| 2 | CIR/ISD/AML/3/2010 | 31.12.2010 | Master Circular on-AML/CFT |
| 3 | CIR/MRD/DP/37/2010 | 14.12.2010 | Acceptance of third party address as correspondence address |
| 4 | CIR/MRD/DMS/13/2010 | 31.08.2010 | Guidelines on the Execution of Power of Attorney by the Client in favour of Stock Broker/ DP |
| 5 | CIR/MRD/DMS/13/2010 | 23.04.2010 | Guidelines on the Execution of Power of Attorney by the Client in favour of Stock Broker/ DP |
| 6 | CIR/MRD/DP/11/2010 | 06.04.2010 | Master Circulars for Depositories |
| 7 | CIR/ISD/AML/2/2010 | 14.06.2010 | Additional Requirements for AML/CFT |
| 8 | CIR/ISD/AML/1/2010 | 12.02.2010 | Master Circular –AML/CFT |
| 9 | SEBI/MIRSD/CirNo.02/2010 | 18.01.2010 | Mandatory Requirement of inperson verification of clients. |
| 10 | SEBI / IMD / MC No.1 | 01.01.2010 | Master Circular for Mutual |

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| Sr. No. | Circular No. | Date | Subject |
|---------|----------------------------------|------------|---|
| | /189241/ 2010 | | Funds |
| 11 | SEBI/IMD/CIR No.12 /186868 /2009 | 11.12.2009 | Transactions through some mutual fund distributors and compliance with the SEBI circular on AML |
| 12 | ISD/AML/CIR- 2 2009 | 23.10.2009 | Directives on CFT under Unlawful Activities (Prevention) Act,14967 |
| 13 | ISD/AML/CIR-1/2009 | 01.09.2009 | Additional AML/ CFT obligations of Intermediaries under PMLA, 2002 and rules framed |
| 14 | ISD/AML/CIR-1/2008 | 19.12.2008 | Master Circular on AML/CFT directives |
| 15 | MIRSD/DPSIII/130466/2008 | 02.07.2008 | In-Person verification of clients by stock-brokers |
| 16 | MRD/DoP/Cir-20/2008 | 30.06.2008 | Mandatory Requirement of PAN |
| 17 | F.No.47/2006/ISD/SR/122539 | 04.04.2008 | In-person verification of BO's when opening DEMAT accounts |
| 18 | MRD/DoP/Cir-20/2008 | 03.04.2008 | Exemption from Mandatory requirement of PAN |
| 19 | F.No.47-2006/ISD/SR/118153/2008 | 22.02.2008 | In-Person verification of clients by depositories |
| 20 | MRD/DoP/Dep/Cir-12/2007 | 07.09.2007 | KYC Norms for Depositories |
| 21 | MRD/DoP/Cir- 5/2007 | 27.04.2007 | PAN to be the sole identification number for all transactions in the securities market |

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| Sr. No. | Circular No. | Date | Subject |
|---------|-------------------------------|------------|--|
| 22 | ISD/CIR/RR/AML/2/06 | 20.03.2006 | PMLAObligations of intermediaries in terms of Rules notified there under |
| 23 | ISD/CIR/RR/AML/1/ 06 | 18.01.2006 | Directives on AML Standards |
| 24 | SEBI/MIRSD/DPS-1/Cir-31/2004 | 26.08.2004 | Uniform Documentary Requirements for trading |
| 25 | MRD/DoP/Dep/Cir-29/2004 | 24.08.2004 | Proof of Identity (POI) and Proof of Address (POA) for opening a Beneficiary Owner |
| 26 | SEBI/MRD/SE/Cir-33/2003/27/08 | 27.08.2003 | Mode of payment and delivery |
| 27 | SMDRP/Policy/Cir-36/2000 | 04.08.2000 | KYC Norms for Depositories |
| 28 | SMD/POLICY/CIRCULARS/5-97 | 11.04.1997 | Client Registration Form |
| 29 | SMD-1/23341 | 18.11.1993 | Regulation of transaction between clients and members |

3. Insurance Regulatory and Development Authorities

CIRCULARS ISSUED BY IRDA ON AML PROGRAMME FOR INSURERS

All these circulars are available at the following site:

https://www.irda.gov.in/ADMINCMS/cms/Search_Results.aspx

| Sr. No. | Circular No. | Date | Subject |
|---------|------------------------------|------------|--|
| 1 | IRDA/F&I/CIR/AML/028/01/2012 | 27.01.2012 | AML/CFL Guidences |
| 2 | IRDA/F&I/CIR/AML/231/10/2011 | 05.10.2011 | AML/CFT Guidelines-Cash Acceptance Threshold |
| 3 | IRDA/F&I/CIR/AML/151/07/2011 | 05.07.2011 | Prevention of Money Laundering |

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| Sr. No. | Circular No. | Date | Subject |
|---------|-------------------------------------|------------|---|
| 4 | IRDA/F&I/CIR/AML/ 145 /07/2011 | 04.07.2011 | Reporting Formats under clause 3.2 of Master Circular 2010 on AML/CFT guide |
| 5 | IRDA/F&I/CIR/AML/180/ 11/2010 | 12.11.2010 | Anti Money Laundering/Counter-Financing of Terrorism (AML/CFT) Guidelines |
| 6 | IRDA/F&I/CIR/AML/158/ 09/2010 | 24.09.2010 | Master Circular on Anti-Money Laundering / Counter-Financing of Terrorism |
| 7 | IRDA/F&I/CIR/AML/99/0 6/2010 | 16.06.2010 | Anti Money Laundering (AML) Guidelines |
| 8 | IRDA/F&I/CIR/AML/ 80 /05/2010 | 13.05.2010 | Prevention of Money Laundering |
| 9 | IRDA/F&I/CIR/AML/16/0 2/2010 | 04.02.2010 | The Prevention of Money Laundering (Maintenance of Records of the Nature an |
| 10 | IRDA/ F&I/CIR/AML/ 33 /09/2009 | 09.09.2009 | The Prevention of Money Laundering (Amendment) Act, 2009 |
| 11 | 30/IRDA/AML/CIR/AUG- 09 | 24.08.2009 | Anti Money Laundering (AML) guidelines |
| 12 | 018/AML-CIR/IRDA/E- Payments/Jul-09 | 09.07.2009 | E-Payments |
| 13 | 39/IRDA/AML/CIR/FEB- 09 | 04.03.2009 | Cash Acceptance Threshold for Premium/Proposal Deposit Remittances |
| 14 | 022/IRDA/MasterAML/N ov-08 | 02.12.2008 | Master Circular on Anti-Money Laundering Programme for Insurers |

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| Sr. No. | Circular No. | Date | Subject |
|---------|-------------------------|------------|--|
| 15 | 022/CIR/IRDA/AML/JUL-07 | 09.07.2007 | Guidelines on Anti-Money Laundering Programme for Insurers |
| 16 | 057/IRDA/AML/MAR-07 | 02.03.2007 | Anti-Money Laundering Programme for Insurers |
| 17 | 030/IRDA/AML/Nov-06 | 20.11.2006 | Guidelines on Anti Money Laundering programme for Insurers |
| 18 | 019/IRDA/LIFE/ SEP-06 | 26.09.2006 | Guidelines on Anti Money Laundering programme for Insurers |
| 19 | 013/IRDA/LIFE/ JUL-06 | 27.07.2006 | Guidelines on Anti Money Laundering programme for Insurers |
| 20 | 026/IRDA/AML/Nov-06 | 09.11.2006 | Guidelines of Anti-Money Laundering programme for Insurers |
| 21 | 9a/LIFE/AML/2005-06 | 31.03.2006 | Guidelines on Anti Money Laundering programme for Insurers |

Chapter 20

Useful References

| | | |
|----|--|---|
| 1 | Financial Intelligence Unit- India | http://www.fiindia.gov.in/ |
| 2 | Enforcement Directorate | http://www.enforcementdirectorate.gov.in/ |
| 3 | Ministry of Finance | http://www.finmin.nic.in/ |
| 4 | Insurance Regulatory and Development Authority | http://www.irdaindia.org/ |
| 5 | Reserve Bank of India | http://www.rbi.org.in/ |
| 6 | Securities and Exchange Board of India | http://www.sebi.gov.in/ |
| 7 | Asia/Pacific Group on Money Laundering (APG) | http://www.apgml.org/ |
| 8 | Bank for International Settlements | http://www.bis.org/ |
| 9 | Caribbean Financial Action Task Force on Money Laundering (CFATF) | http://www.cfatf.org/eng/ |
| 10 | Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) | http://www.esaamlg.org/ |
| 11 | Egmont group | http://www.egmontgroup.org/ |
| 12 | Eurasian Group on Combating Money Laundering and Financing Terrorism | http://www.eurasiangroup.org/ |
| 13 | European Union | http://europa.eu/pol/fraud/index_en.htm |

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| | | |
|----|---|---|
| 14 | Financial Action Task Force on Money Laundering (FATF) | http://www.fatf-gafi.org |
| 15 | International Monetary Fund | http://www.imf.org/ |
| 16 | International Money Laundering Information Network (IMoLIN) | http://www.imolin.org/imolin/index.html |
| 17 | Interpol - International Criminal Police Organisation | http://www.interpol.com/ |
| 18 | Middle East & North Africa Financial Action Task Force (MENAFATF) | http://www.menafatf.org/ |
| 19 | Organisation for Economic Co-operation and Development (OECD) | http://www.oecd.org/ |
| 20 | United Nations International Drug Control Programme | http://www.unodc.org/ |
| 21 | World Bank | http://web.worldbank.org/ |

Chapter 21

Abbreviations

1. AML- Anti Money Laundering
2. AOP- Association of Persons
3. APG- Asia/Pacific Group
4. BOI- Body of Individuals
5. CDD- Customer Due Diligence
6. CEGAT- Central Excise and Gold Control Appellate Tribunal
7. CFT- Combating the Financing of Terrorism
8. CIP- Customer Identification Procedure
9. COSO- Committee of Sponsoring Organizations
10. CTR- Cash transaction Reports
11. CTRs- Cash Transaction Reports
12. EIC- Economic Intelligence Council
13. FATF- Financial Action Task Force
14. FEMA- Foreign Exchange Management Act
15. FII- Foreign Institutional Investors
16. FIU-IND- Financial Intelligence Unit – India
17. FSRBs - FATF-Style Regional Bodies
18. IMF- International Monetary Fund
19. ITAT - Income Tax Appellate Tribunal
20. KYC- Know Your Client
21. MAS- Management Advisory service
22. OECD- Organisation for Economic Co-operation and Development
23. PAN- Permanent Account Number

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- 24. RAS- Risk Advisory Services
- 25. SARs- Suspicious Activity Reports
- 26. SEC- Securities and Exchange Commission
- 27. SOCA- Serious and Organized Crime Agency
- 28. STRs- Suspicious Transaction Reports

Annexure-I

THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

INTRODUCTION

Money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. To obviate such threats international community has taken some initiatives. It has been felt that to prevent money-laundering and connected activities a comprehensive legislation is urgently needed. To achieve this objective the Prevention of Money-laundering Bill, 1998 was introduced in the Parliament. The Bill was referred to the Standing Committee on Finance, which presented its report on 4th March, 1999 to the Lok Sabha. The Central Government broadly accepted the recommendation of the Standing Committee and incorporated them in the said Bill along with some other desired changes.

STATEMENT OF OBJECTS AND REASONS

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

- (a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.
- (b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.
- (c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—
 - (i) declaration of laundering of monies carried through serious crimes a criminal offence;
 - (ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;
 - (iii) confiscation of the proceeds of crime;
 - (iv) declaring money-laundering to be an extraditable offence; and
 - (v) promoting international co-operation in investigation of money-laundering.

A Study on Prevention of Money Laundering Act, 2002

- (d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, *inter alia*, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.
- (e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

2. In view of an urgent need for the enactment or a comprehensive legislation *inter alia* for preventing money-laundering and connected activities confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating measures for combating money-laundering, etc., the Prevention of Money-Laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendations of the Standing Committee accepted by the Central Government are that (a) the expressions "banking company" and "person" may be defined; (b) in Part I of the Schedule under Indian Penal Code the word offence under section 477A relating to falsification of accounts should be omitted; (c) 'knowingly' be inserted in clause 3(b) relating to the definition of money-laundering; (d) the banking companies financial institutions and intermediaries should be required to furnish information of transactions to the Director instead of Commissioner of Income-tax (e) the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries; (f) a definite time-limit of 24 hours should be provided for producing a person about to be searched or arrested person before the Gazetted Officer or Magistrate; (g) the words "unless otherwise proved to the satisfaction of the authority concerned" may be inserted in clause 22 relating to presumption on inter-connected transactions; (h) vacancy in the office of the Chairperson of an Appellate Tribunal, by reason of his death, resignation or otherwise, the senior-most member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office; (i) the appellant before the Appellate Tribunal may be authorised to engage any authorised representative as defined under section 288 of the Income-tax Act, 1961, (j) the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or fine of rupees ten thousand to fine of rupees fifty thousand or both; (k) the word 'good faith' may be incorporated in the clause relating to Bar of legal proceedings. The Central Government have broadly accepted the above recommendations and made provisions of the said recommendations in the Bill.

3. In addition to above recommendations of the standing committee the Central Government proposes to (a) relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm, (b) levy of fine for default of non-compliance of the issue of summons, etc. (c) make provisions for having reciprocal

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arrangement for assistance in certain matters and procedure for attachment and confiscation of property so as to facilitate the transfer of funds involved in money-laundering kept outside the country and extradition of the accused persons from abroad.

4. The Bill seeks to achieve the above objects.

ACT 15 OF 2003

The Prevention of Money-Laundering Bill having been passed by both the Houses of Parliament received the assent of the President on 17th January, 2003. It came on the Statute Book as THE PREVENTION OF MONEY-LAUNDERING ACT, 2002 (15 of 2003).

LIST OF AMENDING ACTS

1. The Prevention of Money-Laundering (Amendment) Act, 2005 (20 of 2005) (w.e.f. 1-7-2005).
2. The Prevention of Money-Laundering (Amendment) Act, 2009 (21 of 2009) (w.e.f. 1-6-2009).
3. The Prevention of Money-Laundering (Amendment) Act, 2012 (2 of 2013) (w.e.f. 15-2-2013).

THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

(15 of 2003)

[17th January, 2003]

An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

WHEREAS the Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;

AND WHEREAS the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme;

AND WHEREAS it is considered necessary to implement the aforesaid resolution and the Declaration;

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Prevention of Money-laundering Act, 2002.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

- (a) “Adjudicating Authority” means an Adjudicating Authority appointed under sub-section (1) of section 6;
- (b) “Appellate Tribunal” means the Appellate Tribunal established under section 25;
- (c) “Assistant Director” means an Assistant Director appointed under sub-section (1) of section 49;
- (d) “attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

1. Came into force on 1-7-2005, *vide* G.S.R. 436(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.

Annexure-I

- ¹[(da) "authorised person" means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);]
- (e) "banking company" means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;
- (f) "Bench" means a Bench of the Appellate Tribunal;
- ²[(fa) "beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;]
- (g) "Chairperson" means the Chairperson of the Appellate Tribunal;
- (h) "chit fund company" means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in section 2 of the Chit Funds Act, 1982 (40 of 1982);
- ³[(ha) "client" means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting;]
- (i) "co-operative bank" shall have the same meaning as assigned to it in clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961);
- ⁴[(ia) "corresponding law" means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;]
- ⁴[(ib) "dealer" has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956 (74 of 1956);]
- (j) "Deputy Director" means a Deputy Director appointed under sub-section (1) of section 49;
- ⁵***]
- (k) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 49;

1. Ins. by Act 21 of 2009, sec. 2(i) (w.e.f. 1-6-2009).

2. Ins. by Act 2 of 2013, sec. 2(i) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

3. Ins. by Act 2 of 2013, sec. 2(ii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

4. Ins. by Act 2 of 2013, sec. 2(iii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

5. Clause (ja) omitted by Act 2 of 2013, sec. 2(iv) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier clause (ja) was inserted by Act 21 of 2009, sec. 2(ii) (w.e.f. 1-6-2009). Clause (ja), before omission, stood as under:

'(ja) "designated business or profession" means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time.'

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- ¹[(l) “financial institution” means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India;]
- (m) “housing finance institution” shall have the meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987 (53 of 1987);
- ²[(n) “intermediary” means,—
- (i) a stock-broker, sub-broker share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992); or
- (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 (74 of 1952) or any member of such association; or
- (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
- (iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);]
- ³[(na) “investigation” includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;]
- (o) “Member” means a Member of the Appellate Tribunal and includes the Chairperson;
- (p) “money-laundering” has the meaning assigned to it in section 3;
- (q) “non-banking financial company” shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) ⁴[***];

1. Subs. by Act 2 of 2013, sec. 2(v), for clause (l) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier clause (l) was amended by Act 21 of 2009, sec. 2(iii) (w.e.f. 1-6-2009). Clause (l), before substitution, stood as under:

‘(l) “financial institution” means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a co-operative bank, a housing finance institution and an authorised person, a payment system operator and a non-banking financial company.’

2. Subs. by Act 2 of 2013, sec. 2(vi), for clause (n) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013) Clause (n), before substitution, stood as under:

‘(n) “intermediary” means a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);’

3. Ins. by Act 20 of 2005, sec. 2 (w.e.f. 1-7-2005).

4. The words “and includes a person carrying on designated business or profession” omitted by Act 2 of 2013, sec. 2(vii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier these words were inserted by Act 21 of 2009, sec. 2(iv) (w.e.f. 1-6-2009).

Annexure-I

- (r) "notification" means a notification published in the Official Gazette;
- ¹[(ra) "offence of cross border implications", means—
- (i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person ²[transfers in any manner] the proceeds of such conduct or part thereof to India; or
 - (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation.—Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2009.]

- ¹[(rb) "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

Explanation.—For the purposes of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;]

- ¹[(rc) "payment system operator" means a person who operates a payment system and such person includes his overseas principal.

Explanation.—For the purposes of this clause, "overseas principal" means,—

- (A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
- (B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
- (C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such

1. Ins. by Act 21 of 2009, sec. 2(v) (w.e.f. 1-6-2009).

2. Subs. by Act 2 of 2013, sec. 2(viii), for "remits" (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;]

- (s) "person" includes;—
 - (i) an individual,
 - (ii) a Hindu undivided family,
 - (iii) a company,
 - (iv) a firm,
 - (v) an association of persons or a body of individuals, whether incorporated or not,
 - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
 - (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;
- ¹[(sa) "person carrying on designated business or profession" means,—
 - (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
 - (ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;
 - (iii) real estate agent, as may be notified by the Central Government;
 - (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
 - (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
 - (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time-to-time;]
- ¹[(sb) "precious metal" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;]
- ¹[(sc) "precious stone" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;]
 - (t) "prescribed" means prescribed by rules made under this Act;
 - (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;
 - (v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

1. Ins. by Act 2 of 2013, sec. 2(ix) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

¹[*Explanation.*—For the removal of doubts, it is hereby clarified that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;]

¹(va) “real estate agent” means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;]

(w) “records” include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

²[(wa) “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;].

(x) “Schedule” means the Schedule to this Act;

(y) “scheduled offence” means—

(i) the offences specified under Part A of the Schedule; or

³[(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or]

³[(iii) the offences specified under Part C of the Schedule;]

(z) “Special Court” means a Court of Session designated as Special Court under sub-section (1) of section 43;

(za) “transfer” includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

(zb) “value” means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected ⁴[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

1. Ins. by Act 2 of 2013, sec. 2(x) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

2. Ins. by Act 2 of 2013, sec. 2(xi) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

3. Subs. by Act 21 of 2009, sec. 2(vi), for sub-clause (ii) (w.e.f. 1-6-2009). Sub-clause (ii), before substitution, stood as under:

“(ii) “the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more;”.

4. Subs. by Act 2 of 2013, sec. 3, for “with the proceeds of crime and projecting” (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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4. Punishment for money-laundering.—Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine ¹[***]:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.

COMMENTS

Offence of money-laundering is punishable with rigorous imprisonment for a period of not less than three years but may extend to seven years and with fine up to five lakh rupees.

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

5. Attachment of property involved in money-laundering.—²[(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

1. The words “which may extend to five lakh rupees” omitted by Act 2 of 2013, sec. 4 (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).
2. Subs. by Act 2 of 2013, sec. 5, for sub-section (1) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier sub-section (1) was amended by Act 21 of 2009, sec. 3(a) (w.e.f. 1-6-2009). Sub-section (1), before substitution by Act 2 of 2013, stood as under:

“(1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

- (a) any person is in possession of any proceeds of crime;
- (b) such person has been charged of having committed a scheduled offence; and
- (c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding [one hundred and fifty days] from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

[Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.”.

Annexure-I

(a) any person is in possession of any proceeds of crime; and
(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

COMMENTS

If any person is in possession of any proceeds of crime, he has been charged of having committed a scheduled offence and it is likely that proceeds of crime are to be concealed, transferred or dealt with in any matter which may result in frustrating any proceedings, such property is to be provisionally attached for a period not exceeding one hundred and eighty days.

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6. Adjudicating Authorities, composition, powers, etc.—(1) The Central Government shall, by notification, appoint ¹[an Adjudicating Authority] to exercise jurisdiction, powers and authority conferred by or under this Act.

(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority,—

- (a) in the field of law, unless he—
 - (i) is qualified for appointment as District Judge; or
 - (ii) has been a member of the Indian Legal Service and has held a post in Grade I of that service;
- (b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

(5) Subject to the provisions of this Act,—

- (a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;
- (b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;
- (c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and such other places as the Central Government may, in consultation with the Chairperson by notification, specify;
- (d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(6) Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

(8) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained the age of ²[sixty-five] years.

1. Subs. by Act 21 of 2009, sec. 4(i), for "one or more Adjudicating Authorities" (w.e.f. 1-6-2009).

2. Subs. by Act 21 of 2009, sec. 4(ii), for "sixty-two" (w.e.f. 1-6-2009).

Annexure-I

(9) The salary and allowances payable to and the other terms and conditions of service of the Member shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Member shall be varied to his disadvantage after appointment.

(10) If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Adjudicating Authority from the stage at which the vacancy is filled.

(11) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government or relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(12) The Chairperson or any other Members shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

(13) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(14) When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

(15) The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure.

COMMENTS

In exercise of powers conferred by sub-section 1 of section 6 the Central Government has appointed an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under the Act. The Adjudicating Authority shall consist of a Chairperson and two members and shall function within the Department of Revenue, Ministry of Finance of the Central Government with Headquarters at New Delhi.

[*Vide* G.S.R. 437(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.]

In exercise of powers conferred by clause (d) of sub-section (5) of section 6 the Central Government has specified that the New Delhi Bench of the Adjudicating

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Authority appointed under sub-section (1) of section 6 shall exercise jurisdiction, powers and authority conferred by or under the Act over the whole of India.

[Vide G.S.R. 439(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.]

7. Staff of Adjudicating Authorities.—(1) The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.

(2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Adjudicating Authority shall be such as may be prescribed.

8. Adjudication.—(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an ¹[offence under section 3 or is in possession of proceeds of crime], he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized ²[or frozen] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

- (a) considering the reply, if any, to the notice issued under sub-section (1);
- (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and
- (c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing,

1. Subs. by Act 21 of 2009, sec. 5, for "offence under section 3" (w.e.f. 1-6-2009).

2. Ins. by Act 2 of 2013, sec. 6(i) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or ¹[record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall—

(a) continue during the pendency of the proceedings relating to any ²[offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and]

³[(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority]

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the ⁴[possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.]

⁵[(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.]

⁵[(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.]

⁵[(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for

1. Subs. by Act 2 of 2013, sec. 6(ii)(a), for "record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property" (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

2. Subs. by Act 2 of 2013, sec.6(ii)(b), for "Scheduled offence before a Court and" (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

3. Subs. by Act 2 of 2013, sec. 6(ii)(c), for clause (b) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013). Clause (b), before substitution, stood as under:

"(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final."

4. Subs. by Act 2 of 2013, sec. 6(iii), for "possession of the Attached property" (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

5. Subs. by Act 2 of 2013, sec. 6(iv), for sub-sections (5) and (6) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013). Sub-sections (5) and (6), before substitution, stood as under:

"(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property."

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any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.]

9. Vesting of property in Central Government.—Where an order of confiscation has been made under ¹[sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60] in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:

Provided that where the ²[Special Court or the Adjudicating Authority, as the case may be,] after giving an opportunity of being heard to any other person interested in the property attached under this Chapter or seized ³[or frozen] under Chapter V is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrances or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

10. Management of properties confiscated under this Chapter.—(1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under ⁴[sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60] in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 9.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 10 read with section 51 of the Prevention of Money Laundering Act, 2002 (15 of 2003), the Central Government hereby appoints the Special Directors of Enforcement of the Regional Offices of the Directorate of Enforcement as Administrators to receive and manage the property confiscated under sub-section (6) of section 8 of the said Act. The Administrators so

1. Subs. by Act 2 of 2013, sec. 7(i), for "sub-section (6) of section 8" (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).
2. Subs. by Act 2 of 2013, sec. 7(ii)(a), for "Adjudicating Authority" (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).
3. Ins. by Act 2 of 2013, sec. 7(ii)(b) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).
4. Subs. by Act 2 of 2013, sec. 8, for "sub-section (6) of section 8" (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

appointed shall be governed by the provisions of the said Act and the Prevention of Money Laundering (Receipt and Management of Confiscated Properties) Rules, 2005.

[*Vide* S.O. 2127(E), dated 10th September, 2012, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), No. 1790, dated 11th September, 2012.]

11. Power regarding summons, production of documents and evidence, etc.—(1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) All the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(3) Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

CHAPTER IV

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

¹[12. Reporting entity to maintain records.—(1) Every reporting entity shall—

- (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

1. Subs. by Act 2 of 2013, sec. 9, for section 12 (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier section 12 was amended by Act 21 of 2009, sec. 6 (w.e.f. 1-6-2009). Section 12, before substitution, stood as under:

"12. Banking companies, financial institutions and intermediaries to maintain records.—(1) Every banking company, financial institution and intermediary shall—

- (a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
- (b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;
- (c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed:

Contd. on next page

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- (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
- (c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
- (d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
- (e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.]

¹[12A. Access to information.—(1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.]

13. Powers of Director to impose fine.—(1) The Director may, either of his own motion or on an application made by any authority, officer or person,

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Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

(2) (a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

(b) The records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case may be."

1. Ins. by Act 2 of 2013, sec. 10 (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

¹[make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter].

²[(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.]

²[(1B) The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the Central Government.]

³[(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

- (a) issue a warning in writing; or
- (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
- (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
- (d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.]

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

⁴[*Explanation.*—For the purpose of this section, “accountant” shall mean a chartered accountant within the meaning of the Chartered Accountant Act, 1949 (38 of 1949).]

⁵**[14. No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.**—Save as otherwise provided in section 13, the

1. Subs. by Act 2 of 2013, sec. 11(i), for “call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit” (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

2. Ins. by Act 2 of 2013, sec. 11(ii) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

3. Subs. by Act 2 of 2013, sec. 11(iii), for sub-section (2) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013). Sub-section (2), before substitution, stood as under:

“(2) If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.”

4. Ins. by Act 2 of 2013, sec. 11(iv) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

5. Subs. by Act 2 of 2013, sec.12, for section 14 (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013). Section 14, before substitution, stood as under:

“14. *No civil proceedings against banking companies, financial institutions, etc., in certain cases.*—Save as otherwise provided in section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.”

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reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.]

¹[15. **Procedure and manner of furnishing information by reporting entities.**—The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.]

CHAPTER V

SUMMONS, SEARCHES AND SEIZURES, ETC.

16. Power of survey.—(1) Notwithstanding anything contained in any other provisions of this Act, where an authority, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an offence under section 3 has been committed, he may enter any place—

- (i) within the limits of the area assigned to him; or
- (ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,—

- (i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;
- (ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and
- (iii) furnish such information as he may require as to any matter which may be useful for, or relevant, to any proceedings under this Act.

Explanation.—For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

(2) The authority referred to in sub-section (1) shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelop in the

1. Subs. by Act 2 of 2013, sec. 13, for Sec. 15. (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013) Section 15, before substitution, stood as under:

"15. Procedure and manner of furnishing information by banking company, financial institution and intermediary.—The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act."

manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed.

- (3) An authority acting under this section may—
- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom,
 - (ii) make an inventory of any property checked or verified by him, and
 - (iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.

17. Search and seizure.—(1) Where ¹[the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

- (i) has committed any act which constitutes money-laundering, or
- (ii) is in possession of any proceeds of crime involved in money-laundering, or
- (iii) is in possession of any records relating to money-laundering, ²[or]
- ³[(iv) is in possession of any property related to crime]

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or ⁴[property, if required or] make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

⁵[Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157

1. Subs. by Act 21 of 2009, sec. 7(i), for "the Director" (w.e.f. 1-6-2009).

2. Ins. by Act 2 of 2013, sec. 14(i)(a) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

3. Ins. by Act 2 of 2013, sec. 14(i)(b) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

4. Ins. by Act 2 of 2013, sec. 14(i)(c) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

5. Subs. by Act 2 of 2013, sec. 14(i)(d), for the Proviso (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier proviso was substituted by Act 21 of 2009, sec. 7(ii) (w.e.f. 1-6-2009). The Proviso, before substitution by Act 2 of 2013, stood as under:

"Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be."

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of the Code of Criminal Procedure, 1973, (2 of 1974) or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.]

¹[(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.]

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure ²[or upon issuance of a freezing order] forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

³[(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.]

1. Ins. by Act 2 of 2013, sec. 14(ii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

2. Ins. by Act 2 of 2013, sec. 14(iii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

3. Subs. by Act 2 of 2013, sec. 14(iv), for sub-section (14) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Sub-section (14), before substitution, stood as under:

“(4) The authority, seizing any record or property under this section shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the Adjudicating Authority.”.

COMMENTS

If any person has committed any act which constitutes money-laundering, or is in possession of any proceeds of crime involved in money-laundering, or is in possession of any records relating to money-laundering, then any authorised officer can (i) enter and search any building, place, vessel, vehicle or aircraft where that such records or proceeds of crime are kept; (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle where the keys thereof are not available; (iii) seize any record or property found as a result of such search, (iv) place marks of identification on such record or make or cause to be made extracts or copies therefrom; (v) make a note of an inventory or such record or property; (vi) examine on oath any person who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation.

18. Search of persons.—(1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act:

¹[Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, (2 of 1974), or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.]

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest gazetted officer, superior in rank to him, or a Magistrate:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest gazetted officer, superior in rank to him, or Magistrate's Court.

1. Subs. by Act 2 of 2013, sec. 15, for the Proviso (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier proviso was inserted by Act 21 of 2009, sec. 8(i) (w.e.f. 1-6-2009). The proviso, before substitution, stood as under:

"Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be."

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(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer, superior in rank to him, or the Magistrate's Court.

(5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(6) Before making the search under sub-section (1) or sub-section (5) the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(8) No female shall be searched by any one except a female.

(9) The Authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search:

[***]

(10) The authority seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.

COMMENTS

If any authority, which has been authorised by the Central Government in this behalf, has reason to believe that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under the Act, he can search that person and seize such record or property.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 18 of the Prevention of Money-laundering Act, 2002 (15 of 2003) (hereinafter referred to as the Act), the Central Government hereby authorizes Officers not below the rank of Assistant Directors in the Directorate of Enforcement to exercise the power to search persons and to seize such record or property which may be useful for or relevant to proceedings under the Act:

Provided that the personal search shall be exercised only during the course of search and seizure operations under section 17 of the Act and subject to the limitations and safeguards provided under section 18 of the said Act.

[Vide S.O. 2309(E), dated 26th July, 2013, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), No. 1760, dated 29th July, 2013].

19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

1. Proviso omitted by Act 21 of 2009, sec. 8(ii) (w.e.f. 1-6-2009). Proviso, before omission, stood as under:

“Provided that no search of any person shall be made unless, in relation to an offence under:

- (a) Paragraph 1 of Part A or Paragraph 1 or Paragraph 2 or Paragraph 3 or Paragraph 4 or Paragraph 5 of Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or
- (b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).”

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(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court.

[20. Retention of property.]—(1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for

1. Subs. by Act 2 of 2013, sec. 16, for section 20 (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Section 20, before substitution, stood as under:

"20. Retention of property.—(1) Where any property has been seized under section 17 or section 18, and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8 such property may be retained for a period not exceeding three months from the end of the month in which such property was seized.

(2) The officer authorised by the Director immediately after he has passed an order for retention of the property for purposes of adjudication under section 8 shall forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelop in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized unless the Adjudicating Authority permits retention of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any property until filing of appeal under section 26 or forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal."

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purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, the Court or the Adjudicating Authority, as the case may be, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.]

¹[21. Retention of records.—(1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the

1. Subs. by Act 2 of 2013, sec. 16, for sec. 21 (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Section 21, before substitution, stood as under:

"21. Retention of records.—(1) Where any records have been seized under section 17 or section 18, and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, he may retain such records for a period not exceeding three months from the end of the month in which such records were seized.

(2)The person, from whom records were seized, shall be entitled to obtain copies of records retained under sub-section (1).

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the Adjudicating Authority permits retention of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such records beyond the period mentioned in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any records until filing of appeal under section 26 or after forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal."

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Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (5) or sub-section (7) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.]

22. Presumption as to records or property in certain cases.—(1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, ¹[or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force] it shall be presumed that—

- (i) such records or property belong or belongs to such person;
- (ii) the contents of such records are true; and
- (iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—

1. Ins. by Act 2 of 2013, sec. 17 (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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- (a) presume, that the signature and every other part of such record, which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

23. Presumption in inter-connected transactions.—Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation ¹[under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court], be presumed that the remaining transactions form part of such inter-connected transactions.

²**24. Burden of Proof.**—In any proceeding relating to proceeds of crime under this Act,—

- (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
- (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.]

CHAPTER VI

APPELLATE TRIBUNAL

25. Establishment of Appellate Tribunal.—The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

COMMENTS

In exercise of the powers conferred by section 25, the Central Government has established an Appellate Tribunal at New Delhi to hear appeals against the orders of the Adjudicating Authority and the authorities under the Act.

[*Vide* G.S.R. 439(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.]

26. Appeals to Appellate Tribunal.—(1) Save as otherwise provided in subsection (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

1. Subs. by Act 2 of 2013, sec. 18, for "under section 8, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority" (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

2. Subs. by Act 2 of 2013, sec. 19, for section 14 (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Section 14, before substitution, stood as under:

"24. *Burden of Proof.*—When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused."

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(2) Any ¹[reporting entity] aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may after giving an opportunity of being heard entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

27. Composition, etc., of Appellate Tribunal.—(1) The Appellate Tribunal shall consist of a Chairperson and two other Members.

(2) Subject to the provisions of this Act,—

- (a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;
- (b) a Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit;
- (c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;
- (d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

(4) If at any stage of hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be referred to him for transfer, to such Bench as the Chairperson may deem fit.

1. Subs. by Act 2 of 2013, sec. 20, for "banking company, financial institution or intermediary" (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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28. Qualifications for appointment.—(1) A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a ¹[High Court or is qualified to be a Judge of the High Court].

(2) A person shall not be qualified for appointment as a Member unless he—²[***]

- (b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or
- (c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service for at least three years; or
- (d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years; or
- (e) has been a member of the Indian Customs and Central Excise Service and has held the post of a Joint Secretary or equivalent post in that Service for at least three years; or
- (f) has been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949) or as a registered accountant under any law for the time being in force or partly as a registered accountant and partly as a chartered accountant for at least ten years:

Provided that one of the members of the Appellate Tribunal shall be from category mentioned in clause (f); or

- (g) has been a member of the Indian Audit and Accounts Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.

(3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India.

³[(4) The Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a Member of that Tribunal, may be appointed as the Chairperson or a Member, as the case may be, of the Appellate Tribunal under this Act.]

⁴[**29. Term of office.**—[*Rep. by the Money-Laundering (Amendment) Act, 2005 (20 of 2005), sec. 4 (w.e.f. 1-7-2005).*]

1. Subs. by Act 20 of 2005, sec. 3, for "High Court" (w.e.f. 1-7-2005).
2. Clause (a) omitted by Act 21 of 2009, sec. 9 (w.e.f. 1-6-2009). Clause (a), before omission, stood as under:
"(a) is or has been a Judge of a High Court; or".
3. Ins. by Act 20 of 2005, sec. 3 (w.e.f. 1-7-2005).
4. Section 29, before repeal, stood as under:
"**29. Term of office.**—The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:
Provided that no Chairperson or other Member shall hold office as such after he has attained,—

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30. Conditions of service.—The salary and allowances payable to and the other ¹[terms and conditions of service (including tenure of office)] of the Chairperson and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other ¹[terms and conditions of service (including tenure of office)] of the Chairperson or any other Member shall be varied to his disadvantage after appointment.

31. Vacancies.—If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

32. Resignation and removal.—(1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

²[Provided that the Chief Justice of India shall be consulted before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India.]

33. Member to act as Chairperson in certain circumstances.—(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member, shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

34. Staff of Appellate Tribunal.—(1) The Central Government shall provide the Appellate Tribunal with such officers and employees as that Government may think fit.

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(a) in the case of the Chairperson, the age of sixty-eight years;

(b) in the case of any other Member, the age of sixty-five years.”

1. Subs. by Act 20 of 2005, sec. 5, for “terms and conditions of service” (w.e.f. 1-7-2005).

2. Ins. by Act 21 of 2009, sec. 10 (w.e.f. 1-6-2009).

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(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

35. Procedure and powers of Appellate Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter, which may be, prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

36. Distribution of business amongst Benches.—Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

37. Power of Chairperson to transfer cases.—On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

38. Decision to be by majority.—If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by ¹[third Member] of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

39. Right of appellant to take assistance of authorised representative and of Government to appoint presenting officers.—(1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of any authorised representative of his choice to present his case before the Appellate Tribunal.

Explanation.—For the purposes of this sub-section, the expression “authorised representative” shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income-tax Act, 1961 (43 of 1961).

(2) The Central Government or the Director may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

40. Members, etc., to be public servants.—The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

41. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

42. Appeal to High Court.—Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

1. Subs. by Act 21 of 2009, sec. 11, for “one or more of the other Members” (w.e.f. 1-6-2009).

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Explanation.—For the purposes of this section, "High Court" means—

- (i) The High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
- (ii) Where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAPTER VII

SPECIAL COURTS

43. Special Courts.—(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.—In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

COMMENTS

The Central Government has, *vide* S.O. 1901(E), dated 3rd November, 2006, designated the following Courts of Sessions as Special Courts for the specified areas mentioned against the said Courts, for the trial of offence punishable under section 4 of the Act:—

| Sl. No. | State/Union Territory | Court of Session notified as Special Court under the Prevention of Money-Laundering Act, 2002 | Area specified for trial of offence punishable under section 4 of the Prevention of Money-Laundering Act, 2002 |
|---------|-----------------------------|---|---|
| 1 | 2 | 3 | 4 |
| 1. | Andaman and Nicobar Islands | Court of District and Sessions Judge, Andaman and Nicobar Islands. | The entire Union Territory of Andaman and Nicobar Islands. |
| 2. | Andhra Pradesh | Metropolitan Sessions Court, Hyderabad. | Sessions Divisions of Hyderabad, Adilabad, Nizamabad, Karimnagar, Medak, Warrangal and Khammam. |
| | | Metropolitan Sessions Court, Vijayawada. | Sessions Divisions of Krishna, Vijayawada (Metropolitan area), Guntur, Prakasam and West Godavari. |
| | | Metropolitan Sessions Court, Visakhapatnam. | Sessions Divisions of Visakhapatnam, Metropolitan Sessions Division of Visakhapatnam, Vizianagaram, Srikakulam and East Godavari. |

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| 1 | 2 | 3 | 4 |
|----|--|--|---|
| | | Metropolitan Sessions Court, Cyberabad. | Sessions Divisions of Cyberabad, Ranga Reddy, Mahabubnagar and Nalgonda. |
| | | III Additional District and Sessions Court, Tirupathi. | Sessions Divisions of Chittoor, Anantapur, Cuddapah, Kurnool and Nellore. |
| 3. | Daman and Diu and Dadra and Nagar Haveli | District and Sessions Judge, Daman and Diu and Dadra and Nagar Haveli. | The entire Union Territory of Daman and Diu and Dadra and Nagar Haveli. |
| 4. | Goa | Additional District Judge and Additional Sessions Judge, Mapusa. | The entire State of Goa. |
| 5. | Orissa | Court of Sessions, Khurda at Bhubaneshwar. | The entire State of Orissa. |

44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

¹[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]

(b) a Special Court may, ²[***] upon a complaint made by an authority authorised in this behalf under this Act take ³[cognizance of offence under section 3, without the accused being committed to it for trial].

⁴[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.]

⁴[(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.]

1. Subs. by Act 2 of 2013, sec. 21(i), for clause (a) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013). Clause (a) before substitution, stood as under:

“(a) the scheduled offence and offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or”.

2. The words “upon perusal of police report of the facts which constitute an offence under this Act or” omitted by Act 20 of 2005, sec. 6 (w.e.f. 1-7-2005).

3. Subs. by Act 2 of 2013, sec. 21(ii), for “cognizance of the offence for which the accused is committed to it for trial” (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

4. Ins. by Act 2 of 2013, sec. 21(iii) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

45. Offences to be cognizable and non-bailable.—(1) ¹[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—]

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

- (i) the Director; or
- (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

²[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in ³[***] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

46. Application of the Code of Criminal Procedure, 1973 to proceedings before Special Court.—(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for

1. Subs. by Act 20 of 2005, sec. 7, for "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless" (w.e.f. 1-7-2005).

2. Ins. by Act 20 of 2005, sec. 7 (w.e.f. 1-7-2005).

3. The words "clause (b) of" omitted by Act 20 of 2005, sec. 7 (w.e.f. 1-7-2005).

the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.

47. Appeal and revision.—The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

CHAPTER VIII AUTHORITIES

48. Authorities under the Act.—There shall be the following classes of authorities for the purposes of this Act, namely:—

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) such other class of officers as may be appointed for the purposes of this Act.

49. Appointment and powers of authorities and other officers.—(1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.

COMMENTS

The Central Government has appointed, with effect from 1st day of July 2005, the Director, Financial Intelligence Unit, India, under the Ministry of Finance Department of Revenue, as the Director to exercise the exclusive powers conferred under clause (b) of sub-section (2) of section 12 and its proviso, section 13, sub-section (2) of section 26 and sub-section (1) of section 50 of the Act and the said Director Intelligence Unit, India, shall

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also concurrently exercise powers conferred by sub-section (3) and sub-section (5) of section 26, section 39, section 40, section 41, section 42, section 48, sub-section (2) of section 49, section 66 and section 69 of the Act.

[*Vide* G.S.R. 440(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.]

The Central Government has appointed, with effect from 1st day of July, 2005, the Director of Enforcement holding office immediately before the said date under the Foreign Exchange Management Act, 1999 (42 of 1999), as the Director to exercise the exclusive powers conferred under section 5, section 8, section 16, section 17, section 18, section 19, section 20, section 21, sub-section (1) of section 26, section 45, section 50, section 57, section 60, section 62, section 63 of the Act and the said Director shall also concurrently exercise powers conferred by sub-section (3), sub-section (4) and sub-section (5) of section 26, section 29, section 40, section 41, section 42, section 48, section 49, section 66 and section 69 of the Act.

[*Vide* G.S.R. 441(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.]

50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a ¹[reporting entity], and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

1. Subs. by Act 2 of 2013, sec. 22, for "banking company or a financial institution or a company" (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

Provided that an Assistant Director or a Deputy Director shall not—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

51. Jurisdiction of authorities.—(1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

- (a) territorial area;
- (b) classes of persons;
- (c) classes of cases; and
- (d) any other criterion specified by the Central Government in this behalf.

52. Power of Central Government to issue directions, etc.—The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government:

Provided that no such orders, instructions or directions shall be issued so as to—

- (a) require any authority to decide a particular case in a particular manner; or
- (b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

53. Empowerment of certain officers.—The Central Government may, by a special or general order, empower an officer not below the rank of Director of the Central Government or of a State Government to act as an authority under this Act:

Provided that the Central Government may empower an officer below the rank of Director if the officer of the rank of the Director or above are not available in a particular area.

54. Certain officers to assist in inquiry, etc.—The following ¹[officers and others] are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

- (a) officers of the Customs and Central Excise Departments;
- (b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

1. Subs. by Act 2 of 2013, sec. 23(i), for "officers" (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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- (c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961 (43 of 1961);
- ¹[(d) members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);]
- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) officers of police;
- (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999 (40 of 1999);
- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- ²[(ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);]
- ²[(hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);]
- ²[(hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);]
- ²[(hd) officers of the Pension Fund Regulatory and Development Authority;]
- ²[(he) officers of the Department of Posts in the Government of India;]
- ²[(hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908 (16 of 1908);]
- ²[(hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988);]
- ²[(hh) officers and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949);]
- ²[(hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959 (23 of 1959);]
- ²[(hj) officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980);]

1. Subs. by Act 2 of 2013, sec. 23(ii), for clause (d) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Clause (d), before substitution, stood as under:

“(d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);”.

2. Ins. by Act 2 of 2013, sec. 23 (iii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

- (i) officers of any other body corporate constituted or established under a Central Act or a State Act;
- (j) such other officers of the Central Government, State Government, local authorities or ¹[reporting entities] as the Central Government may, by notification, specify, in this behalf.

CHAPTER IX

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

55. Definitions.—In this Chapter, unless the context otherwise requires,—

- (a) "contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;
- (b) "identifying" includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;
- (c) "tracing" means determining the nature, source, disposition, movement, title or ownership of property.

56. Agreements with foreign countries.—(1) The Central Government may enter into an agreement with the Government of any country outside India for—

- (a) enforcing the provisions of this Act;
- (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

57. Letter of request to a contracting State in certain cases.—(1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

1. Subs. by Act 2 of 2013, sec. 23 (iv), for "banking companies" (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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- (i) examine facts and circumstances of the case,
- (ii) take such steps as the Special Court may specify in such letter of request, and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under subsection (1) shall be deemed to be the evidence collected during the course of investigation.

58. Assistance to a contracting State in certain cases.—Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or as the case may be, any other law for the time being in force.

¹[**58A. Special Court to release the property.**—Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.]

¹[**58B. Letter of request of a contracting State or authority for confiscation or release the property.**—Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.]

59. Reciprocal arrangements for processes and assistance for transfer of accused persons.—(1) Where a Special Court, in relation to an offence punishable under section 4, desires that—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce a document or other thing, or to produce it, or
- (d) a search-warrant,

1. Ins. by Act 2 of 2013, sec. 24 (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Where a Special Court, in relation to an offence punishable under section 4 has received for service or execution—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search-warrant,

issued by a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

- (i) a warrant of arrest has been executed, the person arrested shall, be dealt with in accordance with the procedure specified under section 19;
- (ii) a search warrant has been executed, the things found in this search shall, so far as possible be dealt with in accordance with the procedure specified under sections 17 and 18:

Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search warrant through such authority as the Central Government may, by notification, specify in this behalf.

(3) Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in India, the Special Court or the Central Government may impose such conditions as that Court or Government deems fit.

(4) Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

60. Attachment, seizure and confiscation, etc., of property in a contracting State or India.—(1) Where the Director has made an order for attachment of any¹ property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to

1. Subs. by Act 2 of 2013, sec. 25(i), for "property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8" (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013)

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a property under sub-section (5) or sub-section (6) of section 8], and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.

(2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting ¹[attachment, seizure, freezing or confiscation] of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under ²[a corresponding law] committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

³[(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.]

(3) The Director shall, on receipt of a letter of request under section 58 or section 59, direct any authority under this Act to take all steps necessary for tracing and identifying such property.

(4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

(6) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.

⁴[(7) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in

1. Subs. by Act 2 of 2013, sec. 25(ii)(a), for "attachment or confiscation" (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

2. Subs. by Act 2 of 2013, sec. 25(ii)(b), for "section 3" (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

3. Ins. by Act 2 of 2013, sec. 25(iii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

4. Ins. by Act 21 of 2009, sec. 12 (w.e.f. 1-6-2009).

investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.]

61. Procedure in respect of letter of request.—Every letter of request, summons or warrant, received by the Central Government from and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

CHAPTER X
MISCELLANEOUS

62. Punishment for vexatious search.—Any authority or officer exercising powers under this Act or any rules made thereunder, who without reasons recorded in writing,—

- (a) searches or causes to be searched any building or place; or
- (b) detains or searches or arrests any person,

shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

COMMENTS

Vexatious search by any authority or officer exercising powers under the Act is punishable with imprisonment up to two years or with fine up to fifty thousand rupees or with both.

63. Punishment for false information or failure to give information, etc.—
(1) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

(2) If any person,—

- (a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or
- (b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or
- (c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

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¹[(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code (45 of 1860).]

COMMENTS

Furnishing wilful and malicious false information and so causing an arrest or a search being made is punishable with imprisonment up to two years or with fine up to fifty thousand rupees or with both. If any person being legally bound to state the truth of any matter relating to an offence of money-laundering, refuses to answer any question, or refuses to sign any statement made by him in the course of proceedings, or to whom a summons is issued either to attend to give evidence or produce books of account or other documents, fails to attend or produce books of accounts or documents, he is liable to pay, by way of penalty, a sum which is not less than five hundred rupees but up to ten thousand rupees for each such default or failure.

64. Cognizance of offences.—(1) No court shall take cognizance of any offence under section 62 or sub-section (1) of section 63 except with the previous sanction of the Central Government.

(2) The Central Government shall, by an order either give sanction or refuse to give sanction within ninety days of the receipt of the request in this behalf.

65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

66. Disclosure of information.—The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—

- (i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or
- (ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

67. Bar of suits in civil courts.—No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any

1. Ins. by Act 2 of 2013, sec. 26 (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

officer of the Government for anything done or intended to be done in good faith under this Act.

COMMENTS

No civil court is empowered to set aside or modify any proceeding taken or order made under the Act and no prosecution suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith.

68. Notice, etc., not to be invalid on certain grounds.—No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

[69. Recovery of fine or penalty.—Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 (43 of 1961) for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.]

70. Offences by companies.—(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or

1. Subs. by Act 2 of 2013, sec. 27, for section 69 (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013). Section 69, before substitution, stood as under:

“69. Recovery of fines.—Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 (43 of 1961) for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.”.

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other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

¹[*Explanation 1.*]—For the purposes of this saction,—

- (i) “company” means any body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

²[*Explanation 2.*—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.]

71. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

72. Continuation of proceedings in the event of death or insolvency.—(1) Where—

- (a) any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred; or
- (b) any appeal has been preferred to the Appellate Tribunal, and—
 - (i) in a case referred to in clause (a) such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or
 - (ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply, to such appeal.

(2) Where—

- (a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 42; or
- (b) any such appeal has been preferred to the High Court,

then—

- (i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or
- (ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

1. *Explanation* renumbered as *Explanation 1* thereof by Act 2 of 2013, sec. 28 (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

2. Ins. by Act 2 of 2013, sec. 28 (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provision of section 42 shall, so far as may be, apply or continue to apply to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be.

73. Power to make rules.—(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form in which records referred to in this Act may be maintained;
- ¹[(aa) the manner of provisional attachment of property under sub-section (1) of section 5;]
- (b) the manner in which the order and the material referred to in sub-section (2) of section 5 to be maintained;
- (c) matters in respect of experience of Members under sub-section (3) of section 6;
- (d) the salaries and allowances payable to the other terms and conditions of service of Members of the Adjudicating Authority under sub-section (9) of section 6;
- (e) the salaries and allowances payable to and other terms and conditions of service of the officers and employees of the Adjudicating Authority under sub-section (3) of section 7;
- ²[(ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8;]
- (f) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 10;
- (g) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (1) of section 11;
- ³[***]
- (i) ⁴[the nature and value of transactions and the time within which] the information of transactions under clause (b) of sub-section (1) of section 12 shall be furnished;

1. Ins. by Act 2 of 2013, sec. 29(i) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

2. Ins. by Act 2 of 2013, sec. 29(ii) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

3. Clause (h) omitted by Act 2 of 2013, sec. 29(iii) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013). Clause (h), before omission, stood as under:

“(h) the nature and value of transactions in respect of which records shall be maintained under clause (a) of sub-section (1) of section 12.”

4. Subs. by Act 2 of 2013, sec. 29(iv), for “the time within which” (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013).

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- ¹[(j) the manner and the conditions in which identity of clients shall be verified by the reporting entities under clause (c) of sub-section (1) of section 12;]
- ¹[(jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;]
- ¹[(jjj) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13;]
- (k) the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 as required under section 15;
- (l) the manner in which the reasons and the material referred to in sub-section (2) of section 16 shall be maintained;
- (m) the rules relating to search and seizure under sub-section (1) of section 17;
- (n) the manner in which the reasons and the material referred to in sub-section (2) of section 17 shall be maintained;
- (o) the manner in which the reasons and the material referred to in sub-section (2) of section 18 shall be maintained;
- (p) the manner in which the order and the material referred to in sub-section (2) of section 19 shall be maintained.
- ²[(pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20;]
- (q) the manner in which records authenticated outside India may be received under sub-section (2) of section 22;
- (r) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 26;
- (s) the salary and allowances payable to and the other ³[terms and conditions of service (including tenure of office)] of the Chairperson and other Members of the Appellate Tribunal under section 30;
- (t) the salaries and allowances and the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 34;
- (u) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 35;

1. Subs. by Act 2 of 2013, sec. 29(v), for clause (j) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Clause (j), before substitution, stood as under:

“(j) the manner in which records shall be verified and maintained by banking companies, financial institutions and intermediaries under clause (c) of sub-section (1) of section 12.”

2. Ins. by Act 2 of 2013, sec. 29(vi) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

3. Subs. by Act 20 of 2005, sec. 8, “terms and conditions of service” (w.e.f. 1-7-2005).

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- ¹[(ua) conditions subject to which a police officer may be authorised to investigate into an offence under sub-section (1A) of section 45;]
- (v) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of section 50;
- (w) the rules relating to impounding and custody of records under sub-section (5) of section 50;
- (x) any other matter which is required to be, or may be, prescribed.

74. Rules to be laid before Parliament.—Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

75. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2 (y)]

²[PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

(45 of 1860)

| Section | Description of offence |
|----------------|--|
| 120B | Criminal conspiracy. |
| 121 | Waging or attempting to wage war or abetting waging of war, against the Government of India. |
| 121A | Conspiracy to commit offences punishable by section 121 against the State. |

1. Ins. by Act 20 of 2005, sec. 8 (w.e.f. 1-7-2005).

2. Subs. by Act 2 of 2013, sec. 30(i), for Part A (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier Part A was amended by Act, 21 of 2009, sec. 13 (w.e.f. 1-6-2009).

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| Section | Description of offence |
|-------------|---|
| 255 | Counterfeiting Government stamp. |
| 257 | Making or selling instrument for counterfeiting Government stamp. |
| 258 | Sale of counterfeit Government stamp. |
| 259 | Having possession of counterfeit Government stamp. |
| 260 | Using as genuine a Government stamp known to be counterfeit. |
| 302 | Murder. |
| 304 | Punishment for culpable homicide not amounting to murder. |
| 307 | Attempt to murder. |
| 308 | Attempt to commit culpable homicide. |
| 327 | Voluntarily causing hurt to extort property, or to constrain to an illegal act. |
| 329 | Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act. |
| 364A | Kidnapping for ransom, etc. |
| 384 to 389 | Offences relating to extortion. |
| 392 to 402 | Offences relating to robbery and dacoity. |
| 411 | Dishonestly receiving stolen property. |
| 412 | Dishonestly receiving property stolen in the commission of a dacoity. |
| 413 | Habitually dealing in stolen property. |
| 414 | Assisting in concealment of stolen property. |
| 417 | Punishment for cheating. |
| 418 | Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. |
| 419 | Punishment for cheating by personation. |
| 420 | Cheating and dishonestly inducing delivery of property. |
| 421 | Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors. |
| 422 | Dishonestly or fraudulently preventing debt being available for creditors. |
| 423 | Dishonest or fraudulent execution of deed of transfer containing false statement of consideration. |
| 424 | Dishonest or fraudulent removal or concealment of property. |
| 467 | Forgery of valuable security, Will, etc. |
| 471 | Using as genuine a forged document or electronic record. |
| 472 and 473 | Making or possessing counterfeit seal, etc., with intent to commit forgery. |

Annexure-I

| Section | Description of offence |
|----------------|--|
| 475 and 476 | Counterfeiting device or mark. |
| 481 | Using a false property mark. |
| 482 | Punishment for using a false property mark. |
| 483 | Counterfeiting a property mark used by another. |
| 484 | Counterfeiting a mark used by a public servant. |
| 485 | Making or possession of any instrument for counterfeiting a property mark. |
| 486 | Selling goods marked with a counterfeit property mark. |
| 487 | Making a false mark upon any receptacle containing goods. |
| 488 | Punishment for making use of any such false mark. |
| 489A | Counterfeiting currency notes or bank notes. |
| 489B | Using as genuine, forged or counterfeit currency notes or bank notes. |

PARAGRAPH 2
OFFENCES UNDER THE NARCOTIC DRUGS AND
PSYCHOTROPIC SUBSTANCES ACT, 1985

(61 of 1985)

| Section | Description of offence |
|----------------|--|
| 15 | Contravention in relation to poppy straw. |
| 16. | Contravention in relation to coca plant and coca leaves. |
| 17. | Contravention in relation to prepared opium. |
| 18. | Contravention in relation to opium poppy and opium. |
| 19. | Embezzlement of opium by cultivator. |
| 20. | Contravention in relation to cannabis plant and cannabis. |
| 21. | Contravention in relation to manufactured drugs and preparations. |
| 22. | Contravention in relation to psychotropic substances. |
| 23. | Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances. |
| 24. | External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotics Drugs and Psychotropic Substances Act, 1985. |
| 25A | Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985. |
| 27A. | Financing illicit traffic and harbouring offenders. |
| 29. | Abetment and criminal conspiracy. |

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PARAGRAPH 3
OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908
(6 of 1908)

| Section | Description of offence |
|----------------|---|
| 3 | Causing explosion likely to endanger life or property. |
| 4 | Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property. |
| 5 | Making or possessing explosives under suspicious circumstances. |

PARAGRAPH 4
OFFENCES UNDER THE UNLAWFUL ACTIVITIES
(PREVENTION) ACT, 1967
(37 of 1967)

| Section | Description of offence |
|-------------------------|--|
| 10 read with section 3 | Penalty for being member of an unlawful association, etc. |
| 11 read with section 3 | Penalty for dealing with funds of an unlawful association. |
| 13 read with section 3 | Punishment for unlawful activities. |
| 16 read with section 15 | Punishment for terrorist act. |
| 16A | Punishment for making demands of radioactive substances, nuclear devices, etc. |
| 17 | Punishment for raising fund for terrorist act. |
| 18 | Punishment for conspiracy, etc. |
| 18A | Punishment for organising of terrorist camps. |
| 18B | Punishment for recruiting of any person or persons for terrorist act. |
| 19 | Punishment for harbouring, etc. |
| 20 | Punishment for being member of terrorist gang or organisation. |
| 21 | Punishment for holding proceeds of terrorism. |
| 38 | Offence relating to membership of a terrorist organisation. |
| 39 | Offence relating to support given to a terrorist organisation. |
| 40 | Offence of raising fund for a terrorist organisation. |

PARAGRAPH 5
OFFENCES UNDER THE ARMS ACT, 1959
(54 of 1959)

| Section | Description of offence |
|----------------|---|
| 25 | To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959. |

Annexure-I

| Section | Description of offence |
|----------------|--|
| | To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959. |
| | Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc. |
| | Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas. |
| | Other offences specified in section 25. |
| 26 | To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act. |
| | To do any act in contravention of any provisions of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act. |
| | Other offences specified in section 26. |
| 27 | Use of arms or ammunition in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959. |
| 28 | Use and possession of fire arms or imitation fire arms in certain cases. |
| 29 | Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same. |
| 30 | Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder. |

PARAGRAPH 6
OFFENCES UNDER THE WILDLIFE (PROTECTION) ACT, 1972
(53 of 1972)

| Section | Description of offence |
|--------------------------|--|
| 51 read with section 9 | Hunting of wild animals. |
| 51 read with section 17A | Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants. |
| 51 read with section 39 | Contravention of provisions of section 39 relating to wild animals, etc., to be Government property. |
| 51 read with section 44 | Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited. |
| 51 read with section 48 | Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee. |
| 51 read with section 49B | Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals, articles, etc., derived from scheduled animals. |

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PARAGRAPH 7

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

(104 of 1956)

| Section | Description of offence |
|----------------|--|
| 5. | Procuring, inducing or taking person for the sake of prostitution. |
| 6. | Detaining a person in premises where prostitution is carried on. |
| 8. | Seducing or soliciting for purpose of prostitution. |
| 9. | Seduction of a person in custody. |

PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 of 1988)

| Section | Description of offence |
|----------------|---|
| 7 | Public servant taking gratification other than legal remuneration in respect of an official act. |
| 8 | Taking gratification in order, by corrupt or illegal means, to influence public servant. |
| 9 | Taking gratification for exercise of personal influence with public servant. |
| 10 | Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988. |
| 13 | Criminal misconduct by a public servant. |

PARAGRAPH 9

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

(4 of 1884)

| Section | Description of offence |
|----------------|----------------------------------|
| 9B | Punishment for certain offences. |
| 9C | Offences by companies. |

PARAGRAPH 10

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

(52 of 1972)

| Section | Description of offence |
|------------------------|---|
| 25 read with section 3 | Contravention of export trade in antiquities and art treasures. |
| 28 | Offences by companies. |

PARAGRAPH 11
OFFENCES UNDER THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992
(15 of 1992)

| Section | Description of offence |
|--------------------------|---|
| 12A read with section 24 | Prohibition of manipulative and deceptive devices, insider trading and substantial. |
| 24 | Acquisition of securities or control. |

PARAGRAPH 12
OFFENCES UNDER THE CUSTOMS ACT, 1962
(52 of 1962)

| Section | Description of offence |
|----------------|----------------------------------|
| 135 | Evasion of duty or prohibitions. |

PARAGRAPH 13
OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976
(19 of 1976)

| Section | Description of offence |
|----------------|---|
| 16 | Punishment for enforcement of bonded labour. |
| 18 | Punishment for extracting bonded labour under the bonded labour system. |
| 20 | Abetment to be an offence. |

PARAGRAPH 14
OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND
REGULATION) ACT, 1986
(61 of 1986)

| Section | Description of offence |
|----------------|---|
| 14 | Punishment for employment of any child to work in contravention of the provisions of section 3. |

PARAGRAPH 15
OFFENCES UNDER THE TRANSPLANTATION OF
HUMAN ORGANS ACT, 1994
(42 of 1994)

| Section | Description of offence |
|----------------|---|
| 18 | Punishment for removal of human organ without authority. |
| 19 | Punishment for commercial dealings in human organs. |
| 20 | Punishment for contravention of any other provisions of this Act. |

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PARAGRAPH 16
OFFENCES UNDER THE JUVENILE JUSTICE
(CARE AND PROTECTION OF CHILDREN) ACT, 2000
(56 of 2000)

| Section | Description of offence |
|---------|---|
| 23 | Punishment for cruelty to juvenile or child. |
| 24 | Employment of juvenile or child for begging. |
| 25 | Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child. |
| 26 | Exploitation of juvenile or child employee. |

PARAGRAPH 17
OFFENCES UNDER THE EMIGRATION ACT, 1983
(31 of 1983)

| Section | Description of offence |
|---------|-------------------------|
| 24 | Offences and penalties. |

PARAGRAPHS 18
OFFENCES UNDER THE PASSPORTS ACT, 1967
(15 of 1967)

| Section | Description of offence |
|---------|-------------------------|
| 12 | Offences and penalties. |

PARAGRAPH 19
OFFENCES UNDER THE FOREIGNERS ACT, 1946
(31 of 1946)

| Section | Description of offence |
|---------|--|
| 14 | Penalty for contravention of provisions of the Act, etc. |
| 14B | Penalty for using forged passport. |
| 14C | Penalty for abetment. |

PARAGRAPH 20
OFFENCES UNDER THE COPYRIGHT ACT, 1957
(14 of 1957)

| Section | Description of offence |
|---------|---|
| 63 | Offence of infringement of copyright or other rights conferred by this Act. |
| 63A. | Enhanced penalty on second and subsequent convictions. |
| 63B. | Knowing use of infringing copy of computer programme. |
| 68A. | Penalty for contravention of section 52A. |

PARAGRAPH 21
OFFENCES UNDER THE TRADE MARKS ACT, 1999
(47 OF 1999)

| Section | Description of offence |
|----------------|--|
| 103 | Penalty for applying false trade marks, trade descriptions, etc. |
| 104 | Penalty for selling goods or providing services to which false trade mark or false trade description is applied. |
| 105 | Enhanced penalty on second or subsequent conviction. |
| 107 | Penalty for falsely representing a trade mark as registered. |
| 120 | Punishment of abetment in India of acts done out of India. |

PARAGRAPH 22
OFFENCES UNDER THE INFORMATION TECHNOLOGY
ACT, 2000
(21 of 2000)

| Section | Description of offence |
|----------------|--|
| 72 | Penalty for breach of confidentiality and privacy |
| 75 | Act to apply for offence or contravention committed outside India. |

PARAGRAPH 23
OFFENCES UNDER THE BIOLOGICAL DIVERSITY
ACT, 2002
(18 of 2003)

| Section | Description of offence |
|-------------------------|--|
| 55 read with section 6. | Penalties for contravention of section 6, etc. |

PARAGRAPH 24
OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES
AND FARMERS' RIGHTS ACT, 2001
(53 of 2001)

| Section | Description of offence |
|-------------------------|---|
| 70 read with section 68 | Penalty for applying false denomination, etc. |
| 71 read with section 68 | Penalty for selling varieties to which false denomination is applied. |
| 72 read with section 68 | Penalty for falsely representing a variety as registered. |
| 73 read with section 68 | Penalty for subsequent offence. |

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PARAGRAPH 25
OFFENCES UNDER THE ENVIRONMENT PROTECTION
ACT, 1986
(29 of 1986)

| Section | Description of offence |
|------------------------|--|
| 15 read with section 7 | Penalty for discharging environmental pollutants, etc., in excess of prescribed standards. |
| 15 read with section 8 | Penalty for handling hazardous substances without complying with procedural safeguards. |

PARAGRAPH 26
OFFENCES UNDER THE WATER (PREVENTION AND
CONTROL OF POLLUTION) ACT, 1974
(6 of 1974)

| Section | Description of offence |
|---------|--|
| 41(2) | Penalty for pollution of stream or well. |
| 43 | Penalty for contravention of provisions of section 24. |

PARAGRAPH 27
OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF
POLLUTION) ACT, 1981
(14 of 1981)

| Section | Description of offence |
|---------|---|
| 37 | Failure to comply with the provisions for operating industrial plant. |

PARAGRAPH 28
OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST
SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON
CONTINENTAL SHELF ACT, 2002
(69 of 2002)

| Section | Description of offence |
|---------|---|
| 3 | Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.] |

¹[[**]]

1. Part B (Containing Para 1 to Para 25) omitted by Act 2 of 2013, sec. 30(ii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013). Earlier Part B was amended by Act, 21 of 2009, sec. 13 (w.e.f. 1-6-2009).

Annexure-I

¹[PART C

An offence which is the offence of cross border implications and is specified in,—

(1) Part A; or

²[***]

(3) the offences against property under Chapter XVII of the Indian Penal Code.]

1. Ins. by Act 21 of 2009, sec. 13(iii) (w.e.f. 1-6-2009)

2. Omitted by Act 2 of 2013, sec. 30(iii) (w.e.f. 15-2-2013, *vide* S.O. 343(E), dated 8-2-2013).

Annexure-II

THE PREVENTION OF MONEY-LAUNDERING (MAINTENANCE OF RECORDS) RULES, 2005¹

In exercise of the powers conferred by sub-section (1) read with clause (h), clause (i), clause (j) and clause (k) of sub-section (2) of section 73 of the Prevention of Money-laundering Act, 2002 (15 of 2003) the Central Government in consultation with the Reserve Bank of India, hereby makes the following rules for maintenance of records of the nature and value of transactions, the procedure and manner of maintaining and time for furnishing of information and verification of records of the identity of the clients of the banking companies, financial institutions and intermediaries, namely:—

1. Short title and commencement.—(1) These rules may be called the ²[Prevention of Money-laundering (Maintenance of Records) Rules], 2005.

(2) They shall come into force on the date³ of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the context otherwise requires,—

(a) “Act” means the Prevention of Money-laundering Act, 2002 (15 of 2003);

⁴[(b) “client due diligence” means due diligence carried out on a client referred to in clause (ha) of sub-section (1) of section 2 of the Act;]

⁵[(ba) “Designated Director” means a person designated by the reporting entity to ensure overall compliance with the obligations imposed under Chapter IV of the Act and the Rules and includes—

(i) the Managing Director or a whole-time Director duly authorized by the Board of Directors if the reporting entity is a company,

(ii) the managing partner if the reporting entity is a partnership firm,

(iii) the proprietor if the reporting entity is a proprietorship concern,

(iv) the managing trustee if the reporting entity is a trust,

1. *Vide* G.S.R. 444(E), dated 1st July, 2005, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 1st July, 2005.

2. Subs. by G.S.R. 481(E), dated 24th June, 2011, for “Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules” (w.e.f. 24-6-2011).

3. Came into force on 1-7-2005.

4. Subs. by G.S.R. 576(E), dated 27th August, 2013, for clause (b) (w.e.f. 27-8-2013). Clause (b), before substitution, stood as under:

‘(b) “client” means a person that engages in a financial transaction or activity with a banking company, or financial institution or intermediary and includes a person on whose behalf the person that engages in the transaction or activity, is acting.’

5. Ins. by G.S.R. 576(E), dated 27th August, 2013 (w.e.f. 27-8-2013).

Annexure-II

- (v) a person or individual, as the case may be, who controls and manages the affairs of the reporting entity if the reporting entity is an unincorporated association or a body of individuals, and
- (vi) such other person or class of persons as may be notified by the Government if the reporting entity does not fall in any of the categories above.

Explanation.—For the purpose of this clause, the terms “Managing Director” and “Whole-time Director” shall have the meaning assigned to them in the Companies Act, 1956 (1 of 1956);]

¹[(bb) “Designated Officer” means any officer or a class of officers authorized by a banking company, either by name or by designation, for the purpose of opening small accounts.]

(c) “Director” means the Director appointed under sub-section (1) of section 49 of the Act for the purposes of ²[sections 12, 12A and 13] of the Act;

³[(ca) “non profit organisation” means any entity or organisation that is registered as a trust or a society under the Societies Registration Act, 1860 (21 of 1860) or any similar State legislation or a company registered under section 25 of the Companies Act, 1956 (1 of 1956);]

(d) “officially valid document” means the passport, the driving licence, the Permanent Account Number (PAN) Card, the Voter’s Identity Card issued by ⁴[Election Commission of India, job card issued by NREGA duly signed by an officer of the State Government, the letter issued by the Unique Identification Authority of India containing details of name, address and Aadhaar number or any other document as notified by the Central Government in consultation with the ⁵[Regulator]:

⁶[Provided that where simplified measures are applied for verifying the identity of the clients the following documents shall be deemed to be officially valid documents:—

- (a) identity card with applicant’s Photograph issued by Central/State Government Departments, Statutory/Regulatory Authorities, Public Sector Undertakings, Scheduled Commercial Banks, and Public Financial Institutions;
- (b) letter issued by a gazetted officer, with a duly attested photograph of the person.]

. Ins. by G.S.R. 980(E), dated 16th December, 2010 (w.e.f. 16-12-2010).

. Subs. by G.S.R. 576(E), dated 27th August, 2013, for “sections 12 and 13” (w.e.f. 27-8-2013).

. Ins. by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009).

. Subs. by G.S.R. 980(E), dated 16th December, 2010, for “the Election Commission of India or any other document as may be required by the banking company, or financial institution or intermediary” (w.e.f. 16-12-2010).

. Subs. by G.S.R. 576(E), dated 27th August, 2013, for “Reserve Bank of India or any other document as may be required by the banking companies or financial institution or intermediary” (w.e.f. 27-8-2013).

. Ins. by G.S.R. 576(E), dated 27th August, 2013 (w.e.f. 27-8-2013).

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- (e) "prescribed value" means the value of transaction prescribed under these rules;
- (f) "Principal Officer" means an officer designated by a ¹[reporting entity];
- ²[(fa) "Regulator" means a person or an authority or a Government which is vested with the power to license, authorise, register, regulate or supervise the activity of ³[reporting entities or the Director as may be notified by the Government for a specific reporting entity or a class of reporting entities or for a specific purpose]];
- ⁴[(faa) "Rules" means the Prevention of Money-laundering (Maintenance of Records) Rules, 2005;]
- ⁵[(fb) "small account" means a savings account in a banking company where—
 - (i) the aggregate of all credits in a financial year does not exceed rupees one lakh,
 - (ii) the aggregate of all withdrawals and transfers in a month does not exceed rupees ten thousand, and
 - (iii) the balance at any point of time does not exceed rupees fifty thousand.]
- ⁶[(g) "suspicious transaction" means a transaction referred to in clause (h), including an attempted transaction, whether or not made in cash, which to a person acting in good faith—
 - (a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or
 - (b) appears to be made in circumstances of unusual or unjustified complexity; or
 - (c) appears to have no economic rationale or *bona fide* purpose; or
 - (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;]

1. Subs. by G.S.R. 576(E), dated 27th August, 2013, for "banking company, financial institution or intermediary, as the case may be," (w.e.f. 27-8-2013).

2. Ins. by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009).

3. Subs. by G.S.R. 576(E), dated 27th August, 2013, for "banking companies, financial institutions or intermediaries, as the case may be," (w.e.f. 27-8-2013).

4. Ins. by G.S.R. 576(E), dated 27th August, 2013 (w.e.f. 27-8-2013).

5. Ins. by G.S.R. 980(E), dated 16th December, 2010 (w.e.f. 16-12-2010).

6. Subs. by G.S.R. 816(E), dated 12th November, 2009 for clause (g) (w.e.f. 12-11-2009). Earlier clause (g) was amended by G.S.R. 389(E), dated 24th May, 2007 (w.e.f. 24-5-2007). Clause (g), before substitution by G.S.R. 816(E), stood as under:

- "(g) "suspicious transaction" means a transaction whether or not made in cash which, to a person acting in good faith—
 - (a) gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or
 - (b) appears to be made in circumstances of unusual or unjustified complexity; or
 - (c) appears to have no economic rationale or *bona fide* purpose; or
 - (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;".

¹[*Explanation.*—Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism.]

- ²(h) “transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof and includes—
- (i) opening of an account;
 - (ii) deposits, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means;
 - (iii) the use of a safety deposit box or any other form of safe deposit;
 - (iv) entering into any fiduciary relationship;
 - (v) any payment made or received in whole or in part of any contractual or other legal obligation;
 - (vi) any payment made in respect of playing games of chance for cash or kind including such activities associated with casino; and
 - (vii) establishing or creating a legal person or legal arrangement.]

(2) All other words and expressions used and not defined in these rules but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Maintenance of records of transactions (nature and value).—(1) ³[Every reporting entity shall maintain the record of all transactions including, the record of—

- (A) all cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency;
- (B) all series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place

1. Ins. by G.S.R. 508(E), dated 16th June, 2010 (w.e.f. 16-6-2010).

2. Subs. by G.S.R. 576(E), dated 27th August, 2013, for clause (h) (w.e.f. 27-8-2013). Clause (h), before substitution, stood as under:

“(h) “transaction” includes deposit, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means.”.

3. Subs. by G.S.R. 576(E), dated 27th August, 2013, for Certain words (w.e.f. 27-8-2013). Earlier these words were amended by G.S.R. 76(E), dated 12th February, 2010 (w.e.f. 12-2-2010). The words, before substitution by G.S.R. 576(E), dated 27th August, 2013, stood as under:

“Every banking company or financial institution or intermediary, as the case may be, shall maintain the record of all transactions including the record of,—

- (A) all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
- (B) all series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month.”.

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within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency;]

¹[(BA) all transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency;]

²[(C) all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions;]

(D) all suspicious transactions whether or not made in cash and by way of—

(i) deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of—

(a) cheques including third party cheques, pay orders, demand drafts, cashiers cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or

(b) travellers cheques, or

(c) transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to Nostro and Vostro accounts, or

(d) any other mode in whatsoever name it is referred to;

(ii) credits or debits into or from any non-monetary accounts such as d-mat account, security account in any currency maintained by the banking company, financial institution and intermediary, as the case may be;

(iii) money transfer or remittances in favour of own clients or non-clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following:—

(a) payment orders, or

(b) cashiers cheques, or

(c) demand drafts, or

(d) telegraphic or wire transfers or electronic remittances or transfers, or

(e) internet transfers, or

(f) Automated Clearing House remittances, or

(g) lock box driven transfers or remittances, or

1. Ins. by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009).

2. Subs. by G.S.R. 389(E), dated 24th May, 2007, for clause (C) (w.e.f. 24-5-2007). Clause (C), before substitution, stood as under:

“(C) all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security has taken place;”.

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- (h) remittances for credit or loading to electronic cards, or
- (i) any other mode of money transfer by whatsoever name it is called;
- (iv) loans and advances including credit or loan substitutes, investments and contingent liability by way of—
 - (a) subscription to debt instruments such as commercial paper, certificate of deposits, preferential shares, debentures, securitised participation, inter bank participation or any other investments in securities or the like in whatever form and name it is referred to, or
 - (b) purchase and negotiation of bills, cheques and other instruments, or
 - (c) foreign exchange contracts, currency, interest rate and commodity and any other derivative instrument in whatsoever name it is called, or
 - (d) letters of credit, standby letters of credit, guarantees, comfort letters, solvency certificates and any other instrument for settlement and/or credit support;
- (v) collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.

¹[(E) all cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India;]

¹[(F) all purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity, as the case may be.]

4. Records containing information.—The records referred to in rule 3 ²[shall contain all necessary information specified by the Regulator to permit reconstruction of individual transaction, including] the following information:—

- (a) the nature of the transactions;
- (b) the amount of the transaction and the currency in which it was denominated;
- (c) the date on which the transaction was conducted; and
- (d) the parties to the transaction.

³**[5. Procedure and manner of maintaining information.**—(1) Every reporting entity shall maintain information in respect of transactions with its client referred to in rule 3 in accordance with the procedure and manner as may be specified by its regulator from time to time.

1. Ins. by G.S.R. 576(E), dated 27th August, 2013 (w.e.f. 27-8-2013).

2. Subs. by G.S.R. 76(E), dated 12th February, 2010, for "shall contain" (w.e.f. 12-2-2010).

3. Subs. by G.S.R. 576(E), dated 27th August, 2013, for rule 5 (w.e.f. 27-8-2013). Earlier rule 5 was amended by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009) and by G.S.R. 76(E), dated 12th February, 2010 (w.e.f. 12-2-2010). Rule 5, before substitution by G.S.R. 576(E), dated 27th August, 2013, stood as under:

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(2) Every reporting entity shall evolve an internal mechanism for maintaining such information in such form and manner and at such intervals as may be specified by its regulator from time to time.

(3) It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of maintaining information as specified by its regulator under sub-rule (1).]

¹[***]

²[**7. Procedure and manner of furnishing information.**—(1) Every reporting entity shall communicate to the Director the name, designation and address of the Designated Director and the Principal Officer.

(2) The Principal Officer shall furnish the information referred to in clauses (A), (B), (BA), (C), (D), (E) and (F) of sub-rule (1) of rule 3 to the Director on the basis of information available with the reporting entity. A copy of such information shall be retained by the Principal Officer for the purposes of official record.

(3) Every reporting entity shall evolve an internal mechanism having regard to any guidelines issued by regulator, for detecting the transactions referred to in

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"5. Procedure and manner of maintaining information.—(1) Every banking company, financial institution and intermediary, as the case may be, shall maintain information in respect of transactions with its client referred to in rule 3 in accordance with the procedure and manner as may be specified by its Regulator, from time to time.

(2) Every banking company, financial institution and intermediary, shall evolve an internal mechanism for maintaining such information in such form and at such intervals as may be specified by its Regulator, from time to time.

(3) It shall be the duty of every banking company, financial institution and intermediary, as the case may be, to observe the procedure and the manner of maintaining information as specified by its Regulator, under sub-rule (1)."

1. Rule 6 omitted by G.S.R. 576(E), dated 27th August, 2013 (w.e.f. 27-8-2013). Earlier rule 6 was substituted by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009). Rule 6, before omission by G.S.R. 576(E), dated 27th August, 2013, stood as under:

"6. Retention of records of transactions.—The records referred to in rule 3 shall be maintained for a period of ten years from the date of transactions between the client and the banking company, financial institution or intermediary, as the case may be."

2. Subs. by G.S.R. 576(E), dated 27th August, 2013, for rule 7 (w.e.f. 27-8-2013). Earlier rule 7 was amended by G.S.R. 76(E), dated 12th February, 2010 (w.e.f. 12-2-2010). Rule 7, before omission by G.S.R. 576(E), dated 27th August, 2013, stood as under:

"7. Procedure and manner of furnishing information.—(1) Every banking company, financial institution and intermediary, as the case may be, shall communicate the name, designation and address of the Principal Officer to the Director.

(2) The Principal Officer shall furnish the information referred to in clauses (A), (B), (BA), (C) and (D) of sub-rule (1) of rule 3 to the Director on the basis of information available with the banking company, financial institution and intermediary, as the case may be. A copy of such information shall be retained by the Principal Officer for the purposes of official record.

(3) Every banking company, financial institution and intermediary may evolve an internal mechanism for furnishing information referred to in clauses (A), (B), (BA), (C) and (D) of sub-rule (1) of rule 3 in such form and at such intervals as may be directed by its Regulator.

(4) It shall be the duty of every banking company, financial institution and intermediary to observe the procedure and the manner of furnishing information as specified by its Regulator, under sub-rule (3)."

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clauses (A),(B),(BA),(C),(D), (E) and (F) of sub-rule (1) of rule 3 and for furnishing information about such transactions in such form as may be directed by its Regulator.

(4) It shall be the duty of every reporting entity, its designated director, officers and employees to observe the procedure and the manner of furnishing information as specified by its Regulator.]

¹**8. Furnishing of information to the Director.**—(1) The Principal Officer of a reporting entity shall furnish the information in respect of transactions referred to in clauses (A), (B), (BA), (C) and (E) of sub-rule (1) of rule 3 every month to the Director by the 15th day of the succeeding month.

(2) The Principal Officer of a reporting entity shall furnish the information promptly in writing or by fax or by electronic mail to the Director in respect of transactions referred to in clause (D) of sub-rule (1) of rule 3 not later than seven working days on being satisfied that the transaction is suspicious.

(3) The Principal Officer of a reporting entity shall furnish, the information in respect of transactions referred to in clause (F) of sub-rule (1) of rule 3, every quarter to the Director by the 15th day of the month succeeding the quarter.

(4) For the purpose of this rule, delay of each day in not reporting a transaction or delay of each day in rectifying a mis-reported transaction beyond the time limit as specified in this rule shall constitute a separate violation.]

²**9. Client Due Diligence.**—(1) Every reporting entity shall—

- (a) at the time of commencement of an account-based relationship—
 - (i) identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship; and

1. Subs. by G.S.R. 576(E), dated 27th August, 2013, for rule 8 (w.e.f. 27-8-2013). Earlier rule 8 was substituted by G.S.R. 389(E), dated 24th May, 2007 (w.e.f. 24-5-2007) and amended by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009). Rule 8, before substitution by G.S.R. 576(E), dated 27th August, 2013, stood as under:

"8. Furnishing of information to the Director.—(1) The Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, shall furnish the information in respect of transactions referred to in Clause (A), (B) and (BA) of sub-rule (1) of rule 3 every month to the Director by the 15th day of the succeeding month.

(2) The Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, shall furnish the information promptly in writing or by fax or by electronic mail to the Director in respect of transactions referred to in clause (C) of sub-rule (1) of rule 3 not later than seven working days from the date of occurrence of such transaction.

(3) The Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, shall furnish the information promptly in writing or by fax or by electronic mail to the Director in respect of transactions referred to in clause (D) of sub-rule (1) of rule 3 not later than seven working days on being satisfied that the transaction is suspicious:

Provided that a banking company, financial institution or intermediary, as the case may be, and its employees shall keep the fact of furnishing information in respect of transactions referred to in clause (D) of sub-rule (1) of rule 3 strictly confidential."

2. Subs. by G.S.R. 576(E), dated 27th August, 2013, for rule 9 (w.e.f. 27-8-2013). Earlier rule 9 was amended by G.S.R. 389(E), dated 24th May, 2007 (w.e.f. 24-5-2007), G.S.R. 816(E), dated 12th November 2009 (w.e.f. 12-11-2009), G.S.R. 76(E), dated 12th February,

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- (ii) determine whether a client is acting on behalf of a beneficial owner, and identify the beneficial owner and take all steps to verify the identity of the beneficial owner:

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2010 (w.e.f. 12-2-2010), G.S.R. 508(E), dated 16th June, 2010 (w.e.f. 16-6-2010) and G.S.R. 980(E), dated 16th December, 2010 (w.e.f. 16-12-2010). Rule 9, before substitution, by G.S.R. 576(E), dated 27th August, 2013, stood as under:

"9. Verification of the records of the identity of clients.—(1) Every banking company, financial institution and intermediary, as the case may be, shall,—

- (a) at the time of commencement of an account-based relationship, identify its clients, verify their identity and obtain information on the purpose and intended nature of the business relationship, and
- (b) in all other cases, verify identity while carrying out—
 - (i) transaction of an amount equal to or exceeding rupees fifty thousand, whether conducted as a single transaction or several transactions that appear to be connected, or
 - (ii) any international money transfer operations.

(1A) Every banking company, financial institution and intermediary, as the case may be, shall determine whether a client is acting on behalf of a beneficial owner, identify the beneficial owner and take all reasonable steps to verify his identity.

*Explanation.—*For the purposes of this sub-rule "beneficial owner" shall mean the natural person who ultimately owns or controls a client and or the person on whose behalf a transaction is being conducted, and includes a person who exercise ultimate effective control over a juridical person.

(1B) Every banking company, financial institution and intermediary, as the case may be, shall exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary, the source of funds.

(1C) No banking company, financial institution or intermediary, as the case may be, shall allow the opening of or keep any anonymous account or account in fictitious names or account on behalf of other persons whose identity has not been disclosed or cannot be verified.

(1D) When there are suspicions of money laundering or financing of the activities relating to terrorism or where there are doubts about the adequacy or veracity of previously obtained customer identification data, every banking company, financial institution and intermediary shall review the due diligence measures including verifying again the identity of the client and obtaining information on the purpose and intended nature of the business relationship, as the case may be.

(2) Where the client is an individual, he shall for the purpose of sub-rule (1), submit to the banking company, financial institution and intermediary, as the case may be, one certified copy of an 'officially valid document' containing details of his identity and address, one recent photograph and such other documents including in respect of the nature of business and financial status of the client as may be required by the banking company or the financial institution or the intermediary, as the case may be:

Provided that photograph need not be submitted by a client falling under clause (b) of sub-rule (1).

(2A) Notwithstanding anything contained in sub-rule (2), an individual who desires to open a small account in a banking company may be allowed to open such an account on production of a self-attested photograph and affixation of signature or thumb print, as the case may be, on the form for opening the account:

Provided that—

- (i) the designated officer of the banking company, while opening the small account, certifies under his signature that the person opening the account has affixed his signature or thumb print, as the case may be, in his presence;

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Provided that where the Regulator is of the view that money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business, the Regulator may permit the reporting entity to complete the verification as soon as reasonably practicable following the establishment of the relationship; and

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- (ii) a small account shall be opened only at Core Banking Solution linked banking company branches or in a branch where it is possible to manually monitor and ensure that foreign remittances are not credited to a small account and that the stipulated limits on monthly and annual aggregate of transactions and balance in such accounts are not breached, before a transaction is allowed to take place;
- (iii) a small account shall remain operational initially for a period of twelve months, and thereafter for a further period of twelve months if the holder of such an account provides evidence before the banking company of having applied for any of the officially valid documents within twelve months of the opening of the said account, with the entire relaxation provisions to be reviewed in respect of the said account after twenty-four months;
- (iv) a small account shall be monitored and when there is suspicion of money laundering or financing of terrorism or other high risk scenarios, the identity of client shall be established through the production of officially valid documents, as referred to in sub-rule (2) of rule 9; and
- (v) foreign remittance shall not be allowed to be credited into a small account unless the identity of the client is fully established through the production of officially valid documents, as referred to in sub-rule (2) of rule 9.

(3) Where the client is a company, it shall for the purposes of sub-rule (1) submit to the banking company or financial institution or intermediary, as the case may be, one certified copy of the following documents:—

- (i) Certificate of incorporation;
- (ii) Memorandum and Articles of Association;
- (iii) a resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and
- (iv) an officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf.

(4) Where the client is a partnership firm, it shall for the purposes of sub-rule (1) submit to the banking company, or the financial institution, or the intermediary one certified copy of the following documents:—

- (i) registration certificate;
- (ii) partnership deed; and
- (iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.

(5) Where the client is a trust, it shall, "for the purposes of sub-rule (1) submit to the banking company," or the financial institution, or the intermediary one certified copy of the following documents:—

- (i) registration certificate;
- (ii) trust deed; and
- (iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.

(6) Where the client is an unincorporated association or a body of individuals, it shall submit to the banking company, or the financial institution or the intermediary one certified copy of the following documents:—

- (i) resolution of the managing body of such association or body of individuals;

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- (b) in all other cases, verify identity while carrying out—
 - (i) transaction of an amount equal to or exceeding rupees fifty thousand, whether conducted as a single transaction or several transactions that appear to be connected, or
 - (ii) any international money transfer operations.
- (2) For the purpose of clause (a) of sub-rule (1), a reporting entity may rely on a third party subject to the conditions that—
 - (a) the reporting entity immediately obtains necessary information of such client due diligence carried out by the third party;
 - (b) the reporting entity takes adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to the client due diligence requirements will be made available from the third party upon request without delay;
 - (c) the reporting entity is satisfied that such third party is regulated, supervised or monitored for, and has measures in place for compliance with client due diligence and record-keeping requirements in line with the requirements and obligations under the Act;
 - (d) the third party is not based in a country or jurisdiction assessed as high risk;
 - (e) the reporting entity is ultimately responsible for client due diligence and undertaking enhanced due diligence measures, as applicable; and
 - (f) where a reporting entity relies on a third party that is part of the same financial group, the Regulator may issue guidelines to consider any relaxation in the conditions (a) to (d).
- (3) The beneficial owner for the purpose of sub-rule (1) shall be determined as under—
 - (a) where the client is a company, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

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- (ii) power of attorney granted to him to transact on its behalf;
 - (iii) an officially valid document in respect of the person holding an attorney to transact on its behalf; and
 - (iv) such information as may be required by the banking company or the financial institution or the intermediary to collectively establish the legal existence of such an association or body of individuals.
- (6A) Where the client is a juridical person, the banking company, financial institution and intermediary, as the case may be, shall verify that any person purporting to act on behalf of such client is so authorised and verify the identity of that person.
- (7) (i) The regulator shall issue guidelines incorporating the requirements of sub-rules (1) to (6A) above and may prescribe enhanced measures to verify the client's identity taking into consideration type of client, business relationship or nature and value of transactions.
- (ii) Every banking company, financial institution and intermediary as the case may be, shall formulate and implement a Client Identification Programme to determine the true identity of its clients, incorporating requirements of sub-rules (1) to (6A) and guidelines issued under clause (i) above."

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Explanation.—For the purpose of this sub-clause—

1. “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;
 2. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- (b) where the client is a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of/entitlement to more than fifteen per cent. of capital or profits of the partnership;
- (c) where the client is an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen per cent. of the property or capital or profits of such association or body of individuals;
- (d) where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- (e) where the client is a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen per cent. or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership; and
- (f) where the client or the owner of the controlling interest is a company listed on a stock exchange, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.

(4) Where the client is an individual, he shall for the purpose of sub-rule (1), submit to the reporting entity, one certified copy of an ‘officially valid document’ containing details of his identity and address, one recent photograph and such other documents including in respect of the nature of business and financial status of the client as may be required by the reporting entity:

Provided that photograph need not be submitted by a client falling under clause (b) of sub-rule (1).

(5) Notwithstanding anything contained in sub-rule (4), an individual who desires to open a small account in a banking company may be allowed to open such an account on production of a self-attested photograph and affixation of signature or thumb print, as the case may be, on the form for opening the account:

Provided that—

- (i) the designated officer of the banking company, while opening the small account, certifies under his signature that the person opening the

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account has affixed his signature or thumb print, as the case may be, in his presence;

- (ii) a small account shall be opened only at Core Banking Solution linked banking company branches or in a branch where it is possible to manually monitor and ensure that foreign remittances are not credited to a small account and that the stipulated limits on monthly and annual aggregate of transactions and balance in such accounts are not breached, before a transaction is allowed to take place;
- (iii) a small account shall remain operational initially for a period of twelve months, and thereafter for a further period of twelve months if the holder of such an account provides evidence before the banking company of having applied for any of the officially valid documents within twelve months of the opening of the said account, with the entire relaxation provisions to be reviewed in respect of the said account after twenty-four months;
- (iv) a small account shall be monitored and when there is suspicion of money laundering or financing of terrorism or other high risk scenarios, the identity of client shall be established through the production of officially valid documents, as referred to in sub-rule (4) of rule 9; and
- (v) foreign remittance shall not be allowed to be credited into a small account unless the identity of the client is fully established through the production of officially valid documents, as referred to in sub-rule (4) of rule 9.

(6) Where the client is a company, it shall for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:—

- (i) Certificate of incorporation;
- (ii) Memorandum and Articles of Association;
- (iii) A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and
- (iv) an officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf.

(7) Where the client is a partnership firm, it shall for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:—

- (i) registration certificate;
- (ii) partnership deed; and
- (iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.

(8) Where the client is a trust, it shall, for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:—

- (i) registration certificate;
- (ii) trust deed; and
- (iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.

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(9) Where the client is an unincorporated association or a body of individuals, it shall submit to the reporting entity one certified copy of the following documents:—

- (i) resolution of the managing body of such association or body of individuals;
- (ii) power of attorney granted to him to transact on its behalf;
- (iii) an officially valid document in respect of the person, holding an attorney to transact on its behalf; and
- (iv) such information as may be required by the reporting entity to collectively establish the legal existence of such an association or body of individuals.

(10) Where the client is a juridical person, the reporting entity shall verify that any person purporting to act on behalf of such client is so authorized and verify the identity of that person.

(11) No reporting entity shall allow the opening of or keep any anonymous account or account in fictitious names or account on behalf of other persons whose identity has not been disclosed or cannot be verified.

(12) (i) Every reporting entity shall exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary, the source of funds.

(ii) When there are suspicions of money laundering or financing of the activities relating to terrorism or where there are doubts about the adequacy or veracity of previously obtained client identification data, the reporting entity shall review the due diligence measures including verifying again the identity of the client and obtaining information on the purpose and intended nature of the business relationship, as the case may be.

(iii) The reporting entity shall apply client due diligence measures also to existing clients on the basis of materiality and risk, and conduct due diligence on such existing relationships at appropriate times or as may be specified by the regulator, taking into account whether and when client due diligence measures have previously been undertaken and the adequacy of data obtained.

(13) (i) Every reporting entity shall carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, and products, services, transactions or delivery channels that is consistent with any national risk assessment conducted by a body or authority duly notified by the Central Government.

(ii) The risk assessment mentioned in clause (i) shall—

- (a) be documented;
- (b) consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;
- (c) be kept up to date; and

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(d) be available to competent authorities and self-regulating bodies.

(14) (i) The regulator shall issue guidelines incorporating the requirements of sub-rules (1) to (13) above and may prescribe enhanced or simplified measures to verify the client's identity taking into consideration the type of client, business relationship, nature and value of transactions based on the overall money laundering and terrorist financing risks involved.

Explanation.—For the purpose of this clause, simplified measures are not acceptable whenever there is a suspicion of money laundering or terrorist financing, or where specific higher-risk scenarios apply or where the risk identified is not consistent with the national risk assessment.

(ii) Every reporting entity shall formulate and implement a Client Due Diligence Programme, incorporating the requirements of sub-rules (1) to (13) and guidelines issued under clause (i) above.

(iii) the Client Due Diligence Programme shall include policies, controls and procedures, approved by the senior management, to enable the reporting entity to manage and mitigate the risk that have been identified either by the reporting entity or through national risk assessment.

¹[10. Maintenance of the records of the identity of clients.—(1) Every reporting entity shall maintain the records of the identity of its clients obtained in accordance with rule 9.

(2) The records of the identity of clients shall be maintained in a manner as may be specified by its regulators from time to time.

(3) Where the reporting entity does not have records of the identity of its existing clients, it shall obtain the records within the period specified by the regulator, failing which the reporting entity shall close the account of the clients after giving due notice to the client.

Explanation.—For the purpose of this rule, the expression “records of the identity of clients” shall include updated records of the identification date, account files and business correspondence.]

1. Subs. by G.S.R. 576(E), dated 27th August, 2013, for rule 10 (w.e.f. 27-8-2013). Earlier rule 10 was amended by G.S.R. 816(E), dated 12th November, 2009 (w.e.f. 12-11-2009) and G.S.R. 508(E), dated 16th June, 2010 (w.e.f. 16-6-2010). Rule 10, before substitution by G.S.R. 576(E), dated 27th August, 2013, stood as under:

“10. Maintenance of the records of the identity of clients.—(1) Every banking company or financial institution or intermediary, as the case may be, shall maintain the records of the identity of its clients.

(2) The records of the identity of clients shall be maintained in hard and soft copies in a manner as may be specified by its Regulator, from time to time.

(3) The records of the identity of clients shall be maintained for a period of ten years from the date of cessation of the transactions between the client and the banking company or financial institution or intermediary, as the case may be.

Explanation.—For the purposes of this rule,—

(i) the expression ‘records of the identity of clients’ shall include records of the identification data, account files and business correspondence.

(ii) the expression ‘cessation of the transactions’ means termination of an account or business relationship.”.

¹[**10A. Furnishing of Report to Director.**—(1) The persons referred to in clause (c) of sub-section (2) of section 13 of the Act shall furnish reports on the measures taken to the Director every month by the 10th day of the succeeding month.

(2) The Director may relax the time interval in sub-rule (1) above to every three months on specific request made by the reporting entity based on reasonable cause.]

¹[**10B. Expenses for audit.**—(1) The expenses of, and incidental to, audit referred to in sub-section (1A) of section 13 of the Act (including the remuneration of the accountant, qualified assistants, semi-qualified and other assistants who may be engaged by such accountant) shall be paid in accordance with the amount specified in sub-rule (2) of rule 14B of the Income-tax Rules, 1962 for every hour of the period as specified by the Director.

(2) The period referred to in sub-rule (1) shall be specified in terms of the number of hours required for completing the report.

(3) The accountant referred to in sub-section (1A) of section 13 of the Act shall maintain a time sheet and submit it to the Director, along with the bill.

(4) The Director shall ensure that the number of hours claimed for billing purposes is commensurate with the size and quality of the report submitted by the accountant.]

11. Interpretation.—If any question arises relating to the interpretation of these rules, the matter shall be referred to the Central Government and the decision of the Central Government shall be final.

1. Ins. by G.S.R. 576(E), dated 27th August, 2013 (w.e.f. 27-8-2013).

Annexure-III

रजिस्ट्री सं० डी० एल—(एन)04/0007/2003—13 REGISTERED NO. DL—(N)04/0007/2003—13


भारत का राजपत्र
The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 4th January, 2013/Pausa 14, 1934 (Saka)

The following Act of Parliament received the assent of the President on the 3rd January, 2013, and is hereby published for general information.

THE PREVENTION OF MONEY-LAUNDERING
(AMENDMENT) ACT, 2012

(No. 2 OF 2013)

[3rd January, 2013.]

An Act further to amend the Prevention of Money-laundering Act, 2002.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2012.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

15 of 2003. 2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),—

(i) after clause (j), the following clause shall be inserted, namely:—

“(ja) “beneficial owner” means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;”;

(ii) after clause (h), the following clause shall be inserted, namely:—

“(ha) “client” means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting;”;

Short title and commencement.

Amendment of section 2.

(iii) after clause (i), the following clauses shall be inserted, namely:—

‘(ia) “corresponding law” means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;

(ib) “dealer” has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956;’

74 of 1956.

(iv) clause (ja) shall be omitted;

(v) for clause (l), the following clause shall be substituted, namely:—

‘(l) “financial institution” means a financial institution as defined in clause (c) of section 45-1 of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India;’

2 of 1934.

(vi) for clause (n), the following clause shall be substituted, namely:—

‘(n) “intermediary” means,—

(i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or

15 of 1992.

(ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or

74 of 1952.

(iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or

(iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;’

42 of 1956.

(vii) in clause (q), the words “and includes a person carrying on designated business or profession” shall be omitted;

(viii) in clause (ra), in sub-clause (i), for the word “remits”, the words “transfers in any manner” shall be substituted;

(ix) after clause (s), the following clauses shall be inserted, namely:—

‘(sa) “person carrying on designated business or profession” means,—

(i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;

(ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;

16 of 1908.

(iii) real estate agent, as may be notified by the Central Government;

(iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;

(v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or

(vi) person carrying on such other activities as the Central

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(sb) "precious metal" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;

(sc) "precious stone" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;";

(x) after clause (v), the following shall be inserted, namely:—

'Explanation.—For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

32 of 1994. (va) "real estate agent" means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;";

(xi) after clause (w), the following clause shall be inserted, namely:—

'(wa) "reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;'

3. In section 3 of the principal Act, for the words "proceeds of crime and projecting", the words "proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming" shall be substituted. Amendment of section 3.

4. In section 4 of the principal Act, the words "which may extend to five lakh rupees" shall be omitted. Amendment of section 4.

5. In section 5 of the principal Act, for sub-section (J), the following sub-section shall be substituted, namely:— Amendment of section 5.

"(J) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

2 of 1974. Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act."

6. In section 8 of the principal Act,— Amendment of section 8.

(i) in sub-section (J), after the words and figure "section 5, or, seized", the words "or frozen" shall be inserted;

(ii) in sub-section (3),—

(a) in the opening portion, for the words and figures “record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property”, the words and figures “record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property” shall be substituted;

(b) in clause (a), for the words “scheduled offence before a court; and”, the words “offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and” shall be substituted;

(c) for clause (b), the following clause shall be substituted, namely:—

“(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority”;

(iii) in sub-section (4), for the words “possession of the attached property”, the following shall be substituted, namely:—

“possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.”;

(iv) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.”

Amendment
of section 9.

7. In section 9 of the principal Act,—

(i) in the opening portion, for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets, figures and letter “sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60” shall be substituted;

(ii) in the first proviso,—

(a) for the words “Adjudicating Authority”, the words “Special Court or the Adjudicating Authority, as the case may be,” shall be substituted;

(b) after the words “or seized”, the words “or frozen” shall be inserted.

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8. In section 10 of the principal Act, in sub-section (2), for the words, brackets and figures "sub-section (6) of section 8", the words, brackets, figures and letters "sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60" shall be substituted.

Amendment of section 10.

9. For section 12 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 12.

"12. (1) Every reporting entity shall—

Reporting entity to maintain records.

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter."

10. After section 12 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 12A.

"12A. (1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.

Access to information.

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential."

11. In section 13 of the principal Act,—

Amendment of section 13.

(i) in sub-section (1), for the words, brackets and figures "call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit", the words "make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting

entity, under this Chapter” shall be substituted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

(1B) The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the Central Government.”;

(iii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

(a) issue a warning in writing; or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or

(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or

(d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.”;

(iv) after sub-section (3), the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purpose of this section, “accountant” shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949.”.

38 of 1949.

Substitution of new section for section 14.

12. For section 14 of the principal Act, the following section shall be substituted, namely:—

No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.

“14. Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.”.

Substitution of new section for section 15.

13. For section 15 of the principal Act, the following section shall be substituted, namely:—

Procedure and manner of furnishing information by reporting entities.

“15. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.”.

Amendment of section 17.

14. In section 17 of the principal Act,—

(i) in sub-section (1),—

(a) in clause (iii), after the word “money-laundering,”, the word “or” shall be inserted;

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(b) after clause (iii), the following clause shall be inserted, namely:—

“(iv) is in possession of any property related to crime.”;

(c) in clause (d), after the words “such record or”, the words “property, if required or” shall be inserted;

(d) for the proviso, the following proviso shall be substituted, namely:—

“Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”;

2 of 1974.

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.”;

(iii) in sub-section (2), after the words, “immediately after search and seizure” the words “or upon issuance of a freezing order” shall be inserted;

(iv) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”.

15. In section 18 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

Amendment
of section 18.

2 of 1974.

“Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”;

Substitution of new sections for section 20 and section 21.

16. For sections 20 and 21 of the principal Act, the following sections shall be substituted, namely:—

Retention of property.

“20. (1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, the Court or the Adjudicating Authority, as the case may be, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

Retention of records.

21. (1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

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(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (5) or sub-section (7) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.”

17. In section 22 of the principal Act, in sub-section (1), after the words “a survey or a search,”, the words “or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force,” shall be inserted. Amendment of section 22.

18. In section 23 of the principal Act, for the words and figure “under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority”, the words and figure “under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court” shall be substituted. Amendment of section 23.

19. For section 24 of the principal Act, the following section shall be substituted, namely:— Amendment of section 24.

“24. In any proceeding relating to proceeds of crime under this Act,—

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.” Burden of Proof.

20. In section 26 of the principal Act, in sub-section (2), for the words “banking company, financial institution or intermediary”, the words “reporting entity” shall be substituted. Amendment of section 26.

21. In section 44 of the principal Act, in sub-section (1),— Amendment of section 44.

(i) for clause (a) the following clause shall be substituted, namely:—

“(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or”;

(ii) in clause (b), for the words “cognizance of the offence for which the accused is committed to it for trial”, the words and figure “cognizance of offence under section 3, without the accused being committed to it for trial” shall be substituted;

(iii) after clause (b), the following clauses shall be inserted, namely:—

“(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the

offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.” 2 of 1974.

Amendment of section 50. 22. In section 50 of the principal Act, in sub-section (1), in clause (b), for the words “banking company or a financial institution or a company,” the words “reporting entity” shall be substituted.

Amendment of section 54. 23. In section 54 of the principal Act,—

(i) in the opening portion, for the word “officers”, the words “officers and others” shall be substituted;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956; 42 of 1956.

(iii) after clause (h), the following clauses shall be inserted, namely:—

“(ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999; 41 of 1999.

(hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952; 74 of 1952.

(hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952; 74 of 1952.

(hd) officers of the Pension Fund Regulatory and Development Authority;

(he) officers of the Department of Posts in the Government of India;

(hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908; 16 of 1908.

(hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; 59 of 1988.

(hh) officers and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949; 38 of 1949.

(hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959; 23 of 1959.

(hj) officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980;” 56 of 1980.

(iv) in clause (j), for the words “banking companies”, the words “reporting entities” shall be substituted.

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24. After section 58, the following sections shall be inserted, namely:—

Insertion of new sections 58A and 58B.

“58A. Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

Special Court to release the property.

58B. Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.”

Letter of request of a contracting State or authority for confiscation or release the property.

25. In section 60 of the principal Act,—

Amendment of section 60.

(i) in sub-section (1), for the words and figures “property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8”, the words, figures, brackets and letter “property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8” shall be substituted;

(ii) in sub-section (2),—

(a) for the words “attachment or confiscation”, the words “attachment, seizure, freezing or confiscation” shall be substituted;

(b) for the word and figure “section 3”, the words “a corresponding law” shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.”

26. In section 63 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment of section 63.

“(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.”

45 of 1860.

Substitution
of new
section for
section 69.

27. For section 69 of the principal Act, the following section shall be substituted, namely:—

Recovery of
fine or
penalty.

“69. Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.”

43 of 1961.

Amendment
of section 70.

28. In section 70 of the principal Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation 2.*—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.”

Amendment
of section 73.

29. In section 73 of the principal Act, in sub-section (2),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) the manner of provisional attachment of property under sub-section (1) of section 5;”

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8;”

(iii) clause (h) shall be omitted;

(iv) in clause (i), for the words “the time within which”, the words “the nature and value of transactions and the time within which” shall be substituted;

(v) for clause (j), the following clauses shall be substituted, namely:—

“(j) the manner and the conditions in which identity of clients shall be verified by the reporting entities under clause (c) of sub-section (1) of section 12;

(jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;

(jjj) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13;”

(vi) after clause (p), the following clause shall be inserted, namely:—

“(pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20;”

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30. In the Schedule to the principal Act,—
(i) for Part A, the following Part shall be substituted, namely:—

Amendment
of the
Schedule.

“PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

(45 OF 1860)

| Section | Description of offence |
|------------|---|
| 120B | Criminal conspiracy. |
| 121 | Waging or attempting to wage war or abetting waging of war, against the Government of India. |
| 121A | Conspiracy to commit offences punishable by section 121 against the State. |
| 255 | Counterfeiting Government stamp. |
| 257 | Making or selling instrument for counterfeiting Government stamp. |
| 258 | Sale of counterfeit Government stamp. |
| 259 | Having possession of counterfeit Government stamp. |
| 260 | Using as genuine a Government stamp known to be counterfeit. |
| 302 | Murder. |
| 304 | Punishment for culpable homicide not amounting to murder. |
| 307 | Attempt to murder. |
| 308 | Attempt to commit culpable homicide. |
| 327 | Voluntarily causing hurt to extort property, or to constrain to an illegal act. |
| 329 | Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act. |
| 364A | Kidnaping for ransom, etc. |
| 384 to 389 | Offences relating to extortion. |
| 392 to 402 | Offences relating to robbery and dacoity. |
| 411 | Dishonestly receiving stolen property. |
| 412 | Dishonestly receiving property stolen in the commission of a dacoity. |
| 413 | Habitually dealing in stolen property. |
| 414 | Assisting in concealment of stolen property. |
| 417 | Punishment for cheating. |
| 418 | Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. |
| 419 | Punishment for cheating by personation. |
| 420 | Cheating and dishonestly inducing delivery of property. |
| 421 | Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors. |

| Section | Description of offence |
|-------------|--|
| 422 | Dishonestly or fraudulently preventing debt being available for creditors. |
| 423 | Dishonest or fraudulent execution of deed of transfer containing false statement of consideration. |
| 424 | Dishonest or fraudulent removal or concealment of property. |
| 467 | Forgery of valuable security, will, etc. |
| 471 | Using as genuine a forged document or electronic record. |
| 472 and 473 | Making or possessing counterfeit seal, etc., with intent to commit forgery. |
| 475 and 476 | Counterfeiting device or mark. |
| 481 | Using a false property mark. |
| 482 | Punishment for using a false property mark. |
| 483 | Counterfeiting a property mark used by another. |
| 484 | Counterfeiting a mark used by a public servant. |
| 485 | Making or possession of any instrument for counterfeiting a property mark. |
| 486 | Selling goods marked with a counterfeit property mark. |
| 487 | Making a false mark upon any receptacle containing goods. |
| 488 | Punishment for making use of any such false mark. |
| 489A | Counterfeiting currency notes or bank notes. |
| 489B | Using as genuine, forged or counterfeit currency notes or bank notes. |

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
ACT, 1985

(61 OF 1985)

| Section | Description of offence |
|---------|---|
| 15 | Contravention in relation to poppy straw. |
| 16 | Contravention in relation to coca plant and coca leaves. |
| 17 | Contravention in relation to prepared opium. |
| 18 | Contravention in relation to opium poppy and opium. |
| 19 | Embezzlement of opium by cultivator. |
| 20 | Contravention in relation to cannabis plant and cannabis. |
| 21 | Contravention in relation to manufactured drugs and preparations. |
| 22 | Contravention in relation to psychotropic substances. |
| 23 | Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances. |
| 24 | External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985. |

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| Section | Description of offence |
|---------|--|
| 25A | Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985. |
| 27A | Financing illicit traffic and harbouring offenders. |
| 29 | Abetment and criminal conspiracy. |

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

(6 OF 1908)

| Section | Description of offence |
|---------|---|
| 3 | Causing explosion likely to endanger life or property. |
| 4 | Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property. |
| 5 | Making or possessing explosives under suspicious circumstances. |

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 OF 1967)

| Section | Description of offence |
|-------------------------|--|
| 10 read with section 3 | Penalty for being member of an unlawful association, etc. |
| 11 read with section 3 | Penalty for dealing with funds of an unlawful association. |
| 13 read with section 3 | Punishment for unlawful activities. |
| 16 read with section 15 | Punishment for terrorist act. |
| 16A | Punishment for making demands of radioactive substances, nuclear devices, etc. |
| 17 | Punishment for raising fund for terrorist act. |
| 18 | Punishment for conspiracy, etc. |
| 18A | Punishment for organising of terrorist camps. |
| 18B | Punishment for recruiting of any person or persons for terrorist act. |
| 19 | Punishment for harbouring, etc. |
| 20 | Punishment for being member of terrorist gang or organisation. |
| 21 | Punishment for holding proceeds of terrorism. |
| 38 | Offence relating to membership of a terrorist organisation. |
| 39 | Offence relating to support given to a terrorist organisation. |
| 40 | Offence of raising fund for a terrorist organisation. |

PARAGRAPH 5

OFFENCES UNDER THE ARMS ACT, 1959

(54 OF 1959)

| Section | Description of offence |
|---------|--|
| 25 | To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959. To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959. Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc. Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas. Other offences specified in section 25. |
| 26 | To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act. To do any act in contravention of any provisions of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act. Other offences specified in section 26. |
| 27 | Use of arms or ammunition in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959. |
| 28 | Use and possession of fire arms or imitation fire arms in certain cases. |
| 29 | Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same. |
| 30 | Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder. |

PARAGRAPH 6

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

(53 OF 1972)

| Section | Description of offence |
|--------------------------|--|
| 51 read with section 9 | Hunting of wild animals. |
| 51 read with section 17A | Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants. |

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| Section | Description of offence |
|--------------------------|---|
| 51 read with section 39 | Contravention of provisions of section 39 relating to wild animals, etc., to be Government property. |
| 51 read with section 44 | Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited. |
| 51 read with section 48 | Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee. |
| 51 read with section 49B | Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals. |

PARAGRAPH 7

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

(104 OF 1956)

| Section | Description of offence |
|---------|--|
| 5 | Procuring, inducing or taking person for the sake of prostitution. |
| 6 | Detaining a person in premises where prostitution is carried on. |
| 8 | Seducing or soliciting for purpose of prostitution. |
| 9 | Seduction of a person in custody. |

PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

| Section | Description of offence |
|---------|---|
| 7 | Public servant taking gratification other than legal remuneration in respect of an official act. |
| 8 | Taking gratification in order, by corrupt or illegal means, to influence public servant. |
| 9 | Taking gratification for exercise of personal influence with public servant. |
| 10 | Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988. |
| 13 | Criminal misconduct by a public servant. |

PARAGRAPH 9

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

(4 OF 1884)

| Section | Description of offence |
|---------|----------------------------------|
| 9B | Punishment for certain offences. |
| 9C | Offences by companies. |

PARAGRAPH 10

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

(52 OF 1972)

| Section | Description of offence |
|------------------------|---|
| 25 read with section 3 | Contravention of export trade in antiquities and art treasures. |
| 28 | Offences by companies. |

PARAGRAPH 11

OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

| Section | Description of offence |
|--------------------------|---|
| 12A read with section 24 | Prohibition of manipulative and deceptive devices, insider trading and substantial. |
| 24 | Acquisition of securities or control. |

PARAGRAPH 12

OFFENCES UNDER THE CUSTOMS ACT, 1962

(52 OF 1962)

| Section | Description of offence |
|---------|----------------------------------|
| 135 | Evasion of duty or prohibitions. |

PARAGRAPH 13

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

(19 OF 1976)

| Section | Description of offence |
|---------|---|
| 16 | Punishment for enforcement of bonded labour. |
| 18 | Punishment for extracting bonded labour under the bonded labour system. |
| 20 | Abetment to be an offence. |

PARAGRAPH 14

OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(61 OF 1986)

| Section | Description of offence |
|---------|---|
| 14 | Punishment for employment of any child to work in contravention of the provisions of section 3. |

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PARAGRAPH 15

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994
(42 OF 1994)

| Section | Description of offence |
|---------|---|
| 18 | Punishment for removal of human organ without authority. |
| 19 | Punishment for commercial dealings in human organs. |
| 20 | Punishment for contravention of any other provisions of this Act. |

PARAGRAPH 16

OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000
(56 OF 2000)

| Section | Description of offence |
|---------|---|
| 23 | Punishment for cruelty to juvenile or child. |
| 24 | Employment of juvenile or child for begging. |
| 25 | Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child. |
| 26 | Exploitation of juvenile or child employee. |

PARAGRAPH 17

OFFENCES UNDER THE EMIGRATION ACT, 1983
(31 OF 1983)

| Section | Description of offence |
|---------|-------------------------|
| 24 | Offences and penalties. |

PARAGRAPH 18

OFFENCES UNDER THE PASSPORTS ACT, 1967
(15 OF 1967)

| Section | Description of offence |
|---------|-------------------------|
| 12 | Offences and penalties. |

PARAGRAPH 19

OFFENCES UNDER THE FOREIGNERS ACT, 1946
(31 OF 1946)

| Section | Description of offence |
|---------|--|
| 14 | Penalty for contravention of provisions of the Act, etc. |
| 14B | Penalty for using forged passport. |
| 14C | Penalty for abetment. |

PARAGRAPH 20

OFFENCES UNDER THE COPYRIGHT ACT, 1957

(14 OF 1957)

| Section | Description of offence |
|---------|---|
| 63 | Offence of infringement of copyright or other rights conferred by this Act. |
| 63A | Enhanced penalty on second and subsequent convictions. |
| 63B | Knowing use of infringing copy of computer programme. |
| 68A | Penalty for contravention of section 52A. |

PARAGRAPH 21

OFFENCES UNDER THE TRADE MARKS ACT, 1999

(47 OF 1999)

| Section | Description of offence |
|---------|--|
| 103 | Penalty for applying false trade marks, trade descriptions, etc. |
| 104 | Penalty for selling goods or providing services to which false trade mark or false trade description is applied. |
| 105 | Enhanced penalty on second or subsequent conviction. |
| 107 | Penalty for falsely representing a trade mark as registered. |
| 120 | Punishment of abetment in India of acts done out of India. |

PARAGRAPH 22

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

(21 OF 2000)

| Section | Description of offence |
|---------|--|
| 72 | Penalty for breach of confidentiality and privacy. |
| 75 | Act to apply for offence or contravention committed outside India. |

PARAGRAPH 23

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

(18 OF 2003)

| Section | Description of offence |
|-------------------------|--|
| 55 read with section 6. | Penalties for contravention of section 6, etc. |

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PARAGRAPH 24

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

(53 OF 2001)

| Section | Description of offence |
|-------------------------|---|
| 70 read with section 68 | Penalty for applying false denomination, etc. |
| 71 read with section 68 | Penalty for selling varieties to which false denomination is applied. |
| 72 read with section 68 | Penalty for falsely representing a variety as registered. |
| 73 read with section 68 | Penalty for subsequent offence. |

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

(29 OF 1986)

| Section | Description of offence |
|------------------------|--|
| 15 read with section 7 | Penalty for discharging environmental pollutants, etc., in excess of prescribed standards. |
| 15 read with section 8 | Penalty for handling hazardous substances without complying with procedural safeguards. |

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

(6 OF 1974)

| Section | Description of offence |
|---------|--|
| 41(2) | Penalty for pollution of stream or well. |
| 43 | Penalty for contravention of provisions of section 24. |

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

(14 OF 1981)

| Section | Description of offence |
|---------|---|
| 37 | Failure to comply with the provisions for operating industrial plant. |

PARAGRAPH 28

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME
NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF
ACT, 2002

(69 OF 2002)

| Section | Description of offence |
|---------|--|
| 3 | Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”; |

(ii) in Part B, paragraphs 1 to 25 shall be omitted;

(iii) in Part C, serial number (2) and the entries relating thereto shall be omitted.

P.K. MALHOTRA,
Secy. to the Govt. of India.

Annexure IV

LIST OF THE AMENDED FINANCIAL ACTION TASK FORCE (FATF) RECOMMENDATIONS OF 2012

(Version as adopted on 15 February 2012)

INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION

| Number | THE FATF RECOMMENDATIONS |
|--------|---|
| | A – AML/CFT POLICIES AND COORDINATION |
| 1 | Assessing risks & applying a risk-based approach |
| 2 | National cooperation and coordination |
| | |
| | B – MONEY LAUNDERING AND CONFISCATION |
| 3 | Money laundering offence |
| 4 | Confiscation and provisional measures |
| | |
| | C – TERRORIST FINANCING AND FINANCING OF PROLIFERATION |
| 5 | Terrorist financing offence |
| 6 | Targeted financial sanctions related to terrorism & terrorist financing |
| 7 | Targeted financial sanctions related to proliferation |
| 8 | Non-profit organisations |
| | |
| | D – PREVENTIVE MEASURES |
| 9 | Financial institution secrecy laws |
| | <i>Customer due diligence and record keeping</i> |
| 10 | Customer due diligence |
| 11 | Record keeping |

Annexure-IV

| | |
|----|--|
| | <i>Additional measures for specific customers and activities</i> |
| 12 | Politically exposed persons |
| 13 | Correspondent banking |
| 14 | Money or value transfer services |
| 15 | New technologies |
| 16 | Wire transfers |
| | <i>Reliance, Controls and Financial Groups</i> |
| 17 | Reliance on third parties |
| 18 | Internal controls and foreign branches and subsidiaries |
| 19 | Higher-risk countries |
| | <i>Reporting of suspicious transactions</i> |
| 20 | Reporting of suspicious transactions |
| 21 | Tipping-off and confidentiality |
| | <i>Designated non-financial Businesses and Professions (DNFBPs)</i> |
| 22 | DNFBPs: Customer due diligence |
| 23 | DNFBPs: Other measures |
| | |
| | E – TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND ARRANGEMENTS |
| 24 | Transparency and beneficial ownership of legal persons |
| 25 | Transparency and beneficial ownership of legal arrangements |
| | |
| | F – POWERS AND RESPONSIBILITIES OF COMPETENT AUTHORITIES AND OTHER INSTITUTIONAL MEASURES |
| | <i>Regulation and Supervision</i> |
| 26 | Regulation and supervision of financial institutions |
| 27 | Powers of supervisors |
| 28 | Regulation and supervision of DNFBPs |

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| | |
|----|---|
| | <i>Operational and Law Enforcement</i> |
| 29 | Financial intelligence units |
| 30 | Responsibilities of law enforcement and investigative authorities |
| 31 | Powers of law enforcement and investigative authorities |
| 32 | Cash couriers |
| | <i>General Requirements</i> |
| 33 | Statistics |
| 34 | Guidance and feedback |
| | <i>Sanctions</i> |
| 35 | Sanctions |
| | |
| | G – INTERNATIONAL COOPERATION |
| 36 | International instruments |
| 37 | Mutual legal assistance |
| 38 | Mutual legal assistance: freezing and confiscation |
| 39 | Extradition |
| 40 | Other forms of international cooperation |

The full Text of all these Recommendations is available at the following site:
<http://www.fatf-gafi.org/>