

Prevention of Money Laundering Act, 2002



What is Money Laundering –

- Money laundering is the process of making large amounts of money generated by a criminal activity, such as terrorism, smuggling, prostitution rings etc.
- The objective of money laundering is to show that the money from criminal activity has come from a legitimate (legal) source.
- The money from the criminal activity is considered dirty, and the process "launders" it to make it look clean.
- **Money Laundering is a crime.**
- 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

How money laundering works?

There are 3 stages in the process of money laundering –

1) Placement –

- a. This stage represents the initial entry of the "dirty" cash or proceeds of crime into the financial system.
- b. In this stage, the criminal releases himself of holding and guarding large amounts of bulky cash and the money is placed into the legitimate (legal) financial system.
- c. Money launderers are the most vulnerable at this stage as placing large amounts of cash into the legitimate financial system may raise suspicions (doubts) of officials and he may get caught



2) Layering –

- The layering stage is the most complex and often involves the international movement of the funds.
- Here, the illegal / dirty money is separated from its source.
- This is done by the sophisticated layering of financial transactions that makes difficult the audit trail and separates the link with the original crime.

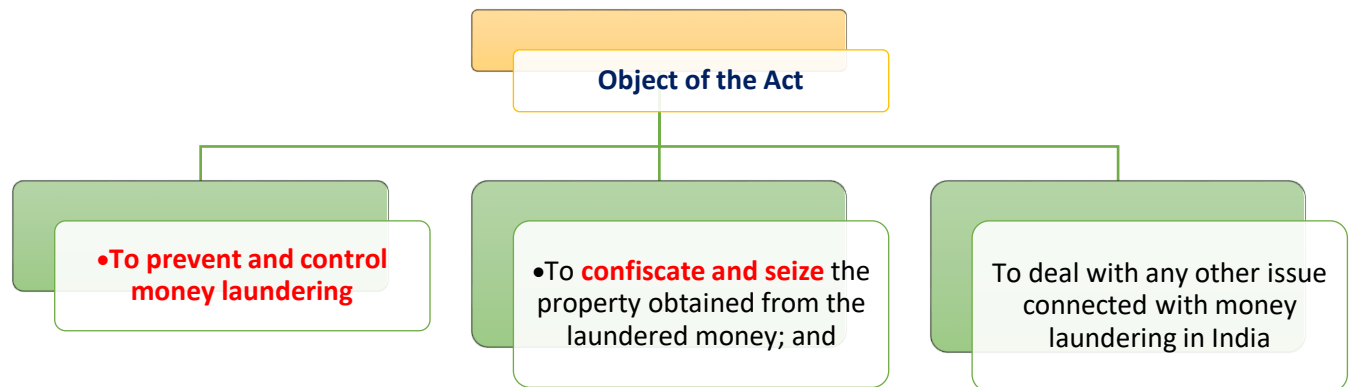
3) Integration –

- The final stage is where the money is returned to the criminal from what seem to be legitimate sources.
- Having been placed initially as cash and layered through a number of financial transactions, the criminal proceeds are now fully integrated into the financial system and can be used for any purpose.
- For example, the purchases of property, art work, jewelry, or high- end automobiles are common ways for the launderer to enjoy their illegal profits without necessarily drawing

attention to themselves

Introduction to PMLA, 2002 –

- **Prevention of Money Laundering Act, 2002** is an Act of the Parliament of India enacted to prevent money-laundering.
- **The Act extends to the whole of India including the state of Jammu & Kashmir.**



Important Definitions under the Act –

1) Proceeds of Crime – Section 2(1)(u)

Section 2(1)(u) defines the term ‘proceeds of crime’ as to mean 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 or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

2) Scheduled offence – Section 2(1) (y)

Scheduled Offence includes the offences specified under **Part A of the Schedule**, the offences specified under **Part B of the Schedule if the total value involved in such offences is one crore rupees or more**; the offences specified under **Part C of the Schedule**.

Money Laundering – Section 3 and 4

A) Meaning of Money laundering – Section 3

Whosoever directly or indirectly attempts to indulge (to get involved) or knowingly assists (to help) or knowingly is a party or 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 is an untainted property shall be guilty of offence of money laundering.

B) Penalty for Money Laundering – Section 4

Any person who commits the offence of money laundering shall be punishable as follows –
Imprisonment – Minimum 3 years and maximum 7 years.

Note –

Where the proceeds of crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances Act, 1985 the punishment may extend to strict imprisonment for 10 years.

Attachment of property involved in money laundering – Section 5

- **If any person is in possession of any proceeds of money laundering or is charged of having committed** scheduled offence and such proceeds of crime are likely to be concealed or transferred resulting into difficulty in confiscation then the Director or any officer authorized by director who shall not be below the rank of Deputy Director may attach the property.
- **Period of attachment = Maximum 180 days (This attachment is also called as provisional attachment)**
- After attachment, the Director or any other officer is required to forward a copy of the order along with material in his possession to the Adjudicating Authority immediately.
- The Director or any other officer should file a complaint stating the facts of such attachment before the Adjudicating Authority **within 30 days of attachment.**

Who is Adjudicating Authority?

CG has the power to appoint one or more persons not below the prescribed rank or designation or having prescribed experience, as the Adjudicating Authority to exercise the jurisdiction, powers and authority conferred on or under the Act.

- AA comprises of **3 persons.**
- Out of above 3 persons, one shall be from law, one from administration and one from finance.
- One member is appointed as chairperson of the AA
- It functions within the Department of Revenue, Ministry of Finance of the CG with its headquarter at New Delhi.

Adjudication – Section 8

1) Issuing notice –

On receipt of a complaint if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than 30 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 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.

Note –

- **If there is beneficial owner, then notice shall be served to beneficial owner as well.**
- **where such property is held jointly by more than one person, such notice shall be served to all persons holding such property**

2) Findings by AA –

After considering the reply to the notice and hearing the aggrieved person and the Director or any other officer and considering all relevant materials, the AA will 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.

3) Attachment of the property –

Where the Adjudicating Authority decides that any property is involved in money-laundering, the AA shall, **by order in writing confirm the attachment of the property** or retention of property or record seized or frozen whereupon such attachment or retention or freezing of the seized or frozen property or record shall –

- continue during investigation for a period not exceeding 365 days or the pendency of the proceedings relating to any offence under this Act before a court or under the

- corresponding law of any other country
 - become final after an order of confiscation is passed by the Special Court.
- 4) Where the provisional order of attachment made has been confirmed, the Director or any other officer authorised by him in this behalf shall immediately take the possession of the property attached.
 - 5) After finishing the trial if 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) After finishing the trial if 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.

Vesting of Property in Central Government – Section 9

- 1) Where an order of confiscation has been made in respect of any property of a person then in such case all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances
- 2) Where the Special Court or the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized or frozen 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 PMLA Act, 2002 then it may, by order, declare such encumbrance or lease-hold interest to be void.

Note –

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.

Obligation of Banking Companies, Financial Institutions and Intermediaries –

- 1) Every reporting entity shall –
 - maintain a record of all transactions
 - furnish to the Director information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed.
 - 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 furnished by banking companies, financial institutions and intermediaries shall be kept confidential.
- 3) Records should be maintained for a period of 5 years from the date of transaction between a client and the reporting entity.

Summon, Searches and Seizures, etc. –

- 1) If the authority has reason to believe that an offence of money laundering has been committed then it has the **power to enter any place within the limits of the area assigned.**
- 2) Authority may place marks of identification on the records inspected by him and make extracts or copies therefrom.
- 3) Authority will make an inventory of any property checked or verified by him and record the statement of any person present in the place which may be useful for, or relevant to, any proceedings under the Act.
- 4) if an authority 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 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.



Retention of Property – Section 20

- 1) Where any property has been seized or frozen and the officer authorised by the Director in this behalf has reason to believe that such property is required to be retained for the purposes of adjudication, such property 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 was seized or frozen.
- 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, forward a copy of the order along with the material in his possession to the Adjudicating Authority, in a sealed envelope.
- 3) On the expiry of the period as specified in point 1 above, 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) After passing the order of confiscation the Court or the Adjudicating Authority 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.
- 5) Where an order releasing the property has been made by the Court or by the Adjudicating Authority the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of 90 days from the date of such order **if he is of the opinion that such property is relevant for the appeal proceedings under the Act.**

Retention of records – Section 21

- 1) Where any records have been seized or frozen 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 180 days from the day on which such records were seized or frozen.
- 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 in point 1 above, 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 shall satisfy himself that the records are required for the

purposes of adjudication.

- 5) After passing of an order of confiscation 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 the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of 90 days from the date of such order **if he is of the opinion that such property is relevant for the appeal proceedings under the Act.**

Appellate Tribunal – Section 25

- 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.
- The Appellate Tribunal constituted under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.
- Appeal shall be made within 45 days.
- However, if there is sufficient cause for delay then appeal may be allowed even after the expiry of 45 days.
- Appellate Tribunal shall dispose the appeal within 6 months.

Important Point –

- ✓ Any person aggrieved by the order of Appellate Tribunal may file an appeal with the High Court within 60 days.
- ✓ However, if there is sufficient cause for delay then appeal may be allowed even after the expiry of 60 days.

Special Courts – Sections 43 to 47

CG has the power to designate, in consultation with the Chief Justice of the High Court, one or more Courts of Session as Special Courts for trial of offence punishable under Section 4.

Offences to be cognizable and Non-bailable – Section 45

- Every offence punishable under the Act to be cognizable.
- No person accused of an offence under this Act shall 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 in bail

- 1) Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs.
- 2) No police officer shall investigate into an offence under this Act, unless specifically authorized, by the Central Government by a general or special order, and subject to such conditions as may be prescribed.

Agreement with Foreign Countries – Section 56

CG has the power to enter into an agreement with the Government of any country for enforcing the

provisions of the Act and also for exchange of information for the prevention of any offence under the this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under the Act.

Assistance to a Contracting State in Certain Cases – Section 58

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 the 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 as it thinks fit for execution of such request in accordance with the provisions of the Act or as the case may be, any other law for the time being in force.

Reciprocal Arrangements for Processes and Assistance for Transfer of Accused Persons –

1) If the special court desires –

- **To summon an accused person; or**
- **To issue warrant for arrest of accused person**
- **To summon any person to produce any document; or**
- **To issue search warrant**

shall be served or executed at any place in any contracting state then 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 specify and that court, Judge or Magistrate, shall cause the same to be executed

2) If the special court has received for service or execution –

- **A summon to an accused person; or**
- **A warrant for arrest of accused person; or**
- **A summon to any person to produce any document; or**
- **A search warrant**

Which is issued by a court, Judge or Magistrate in a contracting State then it shall cause the same to be served or executed as if it were a summon or warrant received by it from another court in the said territories for service or execution within its jurisdiction.

Attachment, Seizure and Confiscation of Property, etc. –

- 1) Where the Director has made an order for attachment of any property or for freezing property or where an Adjudicating Authority has made an order relating to a property or where a Special Court has made an order of confiscation relating to a property and such property is suspected to be in a contracting state, 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.
- 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.

KYC Norms – Anti Money Laundering Standards

A) KYC norms –

- 1) RBI issue Circular from time to time on 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.
- 2) Banks were advised to follow certain customer identification procedure for opening of accounts and monitoring transactions of a suspicious nature for the purpose of reporting it to appropriate authority.



B) Objective of KYC norms –

- 1) To prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities
- 2) KYC procedures also enable banks to know/understand their customers and their financial dealings better which in turn help them manage their risks

C) Obligation of Banks –

- 1) To maintain confidentiality of the information collected from the customer for the purpose of opening of account.
- 2) Not to disclose confidential information to the third parties.
- 3) Banks should ensure that the provisions of Foreign Contribution (Regulation) Act, 2010 and the Foreign Exchange Management Act, 1999 as amended from time to time, wherever applicable are strictly adhered to.

D) KYC Policy –

KYC Policies of banks should include the following four key elements –

- Customer acceptance policy;
- **Customer identification procedures;**
- **Monitoring of transactions;**
- **Risk management.**

Definition of customer as per KYC policy –

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

E) Information to be preserved –

Banks are required to maintain all necessary information in respect of transactions including the following information –

- the nature of the transactions;
- the amount of the transaction and the currency in which it was denominated;
- the date on which the transaction was conducted; and

- the parties to the transaction.

F) Maintenance and Preservation of record –

- 1) Banks are required to maintain the records containing information of all transactions.
- 2) Banks should maintain information in such a manner that it can be retrieved easily and quickly whenever required or when requested by the competent authorities.
- 3) Banks should ensure that records pertaining to the identification of the customer and his address (e.g. copies of documents like passports, identity cards, driving licenses, PAN card, utility bills etc.) obtained while opening the account and during the course of business relationship, are properly preserved.
- 4) Banks have been advised to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions

G) Reporting to Financial Intelligence Unit – India –

Banks are required to report information relating to cash and suspicious transactions and all transactions involving receipts by non-profit organisations of value more than rupees ten lakh or its equivalent in foreign currency to the Director, Financial Intelligence Unit-India (FIU-IND) in respect of transactions.

Freezing of Assets under Section 51A of Unlawful Activities (Prevention) Act, 1967 –

- CG has the power to freeze, seize or attach funds and other financial assets or economic resources held by individuals or entities or any other person engaged in or suspected to be engaged in terrorism.
- Prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities or any other person engaged in or suspected to be engaged in terrorism.

Global Initiatives for Prevention of Money Laundering

The Vienna Convention –

- 1) The first major initiative in the prevention of money laundering was the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in **December 1988**
- 2) It is popularly known as Vienna Convention.
- 3) It criminalizes the laundering of money from drug trafficking and confiscation of proceeds derived from such offence.
- 4) It promotes international cooperation in investigations and makes extradition between member states applicable to money laundering

Council of Europe Convention –

- 1) The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, 1990 **establishes a common policy on money laundering.**
- 2) **This convention came into force in September 1993.**
- 3) The Convention lays down the principles for international cooperation among the member states, which may also include states outside the Council of Europe.
- 4) One of the purposes of the convention is to facilitate international cooperation as regards investigative assistance, search, seizure and confiscation of the proceeds of all types of

criminality, particularly serious crimes, such as, drug offences, arms dealing, terrorist offences etc. and other offences which generate large profits.

European Union Money Laundering Directive –

- 1) The Council of the European Communities in June, 1991 issued a directive on the Prevention of Use of the Financial System for the Purpose of Money Laundering.
- 2) The member states have been put under obligation to require financial institutions to establish and maintain internal systems to prevent laundering, to obtain the identification of customers with whom they enter into transaction of more than a particular amount and to keep proper records for at least five years.
- 3) The financial institutions are also required to report suspicious transactions and ensure that such reporting does not result in liability for the institution or its employees.

Basle Committee's Statement of Principles –

- In December 1988 the Basle Committee on Banking Regulation Supervisory Practices issued a statement of principles to be complied by the international banks of member states.
- These principles include identifying customers, avoiding suspicious transactions, and cooperating with law enforcement agencies.
- The statement aims at encouraging the banking sector to adopt common position in order to ensure that banks are not used to hide or launder funds acquired through criminal activities.

The Financial Action Task Force (FATF) –

A) About FATF –

- FATF is an inter-governmental body established in 1989.
- FATF is a “policy-making body”.
- The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.
- The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally

B) Objectives of FATF –

Objective of FATF is to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

C) History of the FATF –

Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Summit that was held in Paris in 1989.

D) FATF recommendations –

- 1) The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering.
- 2) The various broad heads of recommendations include declaration of laundering of monies

carried through serious crimes a criminal offence, to work out modalities of disclosure by financial institutions regarding reportable transactions, confiscation of proceeds of crime, declaring money laundering to be an extraditable offence, promoting international co-operation in investigation of money laundering etc.

United Nations Global Programme Against Money Laundering –

The programme encompasses following three areas of activities, providing various means to states and institutions in their efforts to effectively combat money laundering:

- Technical cooperation is the main task of the Programme. It includes activities of creating awareness, institution building and training.
- The research and analysis aims at offering States Key Information to better understand the phenomenon of money laundering and to enable the international community to devise more efficient and effective countermeasure strategies.
- The commitment to support the establishment of financial investigation services for raising the overall effectiveness of law enforcement measures.

The implementation of the Global Programme against Money Laundering is carried out in the spirit of cooperation with other international, regional and national organizations and institutions.