Chapter 3

The Prevention of Money Laundering Act, 2002

Learning Outcomes

After reading this chapter, you will be able to:

- Learn the measures to prevent and control money laundering
- Know when the property obtained from the laundered money be confiscated and seized
- Know the penalties imposed and the adjudication process in money laundering cases

1. Introduction

Money Laundering

It is a highly sophisticated act to cover up or camouflage the identity/origin of illegally obtained earnings so that they appear to have derived from lawful sources.

It is the process by which illegal funds and assets are converted into legitimate funds and assets. In other words it is basically the process of converting illegal/black money of a person in a legal or white money. It is the process used by criminals’ to wash their “tainted” money to make it “clean.”

Illegal / Dirty Money  ➤  Legal / White Money

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The **Prevention of Money Laundering Act, 2002** is known to have been legislated basically to sub-serve twin purpose firstly, is to prevent money laundering and secondly to provide for confiscation of property derived from, or involved in money laundering, and to ensure of the curbing of the tendency of committing scheduled offences.

Money laundering is a single process however; its cycle can be broken down into three distinct stages

1. **Placement**: It is the first and the initial stage when the crime money is injected into the formal financial System.

2. **Layering**: Then under the second stage, money injected into the system is layered and moved or spread over various transactions in different accounts and different countries. Thus, it will become difficult to detect the origin of the money.

3. **Integration**: Under the third and final stage, money enters the financial system in such a way that original association with the crime is sought to be obliterated so that the money can then be used by the offender or person receiving as clean money.

There are multiple methods through which money can be laundered and huge profit is being made, some of them are:

- **Cash Smuggling**: Moving cash from one location to another or depositing the cash in Swiss Bank Account;
- **Structuring**: Cash is broken down into formal receipts to buy money orders etc., smaller amounts are hard to detect;
- **Laundering via Real Estate**: Buying a land for money and then selling it making the profits legal.
- Stock Markets scams
- By creating bogus companies.
- Drug Trafficking;
- Bribery and Corruption;
- Kidnapping and Extortion.
If left unchecked, money laundering can erode a nation’s economy by changing the demand for cash, making interest and exchange rates more volatile, and by causing high inflation in countries where criminal elements are operating. The draining of huge amounts of money a year from normal economic growth poses a real danger for the financial health of every country which in turn adversely affects the global market.

In view of an urgent need for the enactment of a comprehensive legislation for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money laundering etc., the Prevention of Money Laundering Bill, 1998 was introduced in the Parliament on 4th August, 1998. The Bill received the assent of the President and became the Prevention of Money Laundering Act, 2002 on 17th January 2003. The Act has come into force with effect from 1st July 2005. It has been amended in 2005, 2009 and then in 2012.

The objective of the Act is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected.

Understanding Money Laundering

Let us understand Money Laundering with the example of Hawala.

How Hawala Works: Hawala system works with a network of operators called Hawaladars or Hawala agents. For a Hawala transaction a customer contacts a Hawala agent at the source location. The Hawala agent at that end collects money from the person who wishes to make a transfer. The agent then calls up his counterpart in the country where the transfer has to be made. This counterpart then hands over the cash to the recipient after deducting a commission. The source agent promises to settle the debt to the destination agent through an informal settlement.

For example, a person in country ‘A’ who wants to transfer some money to someone in country ‘B’ gives the money to the Hawala broker in country ‘A’. The agent accepts it and calls up his colleague in country ‘B’. His colleague gives the money in country ‘B’s’ currency to the person in country ‘B’ to whom it has to be transferred. An identification code is requested, ensuring the authenticity of the receiver.

In a Hawala transfer, the money enters the hawala system in local currency and leaves as foreign currency. The currency exchange happens at a rate set by the agents and not the official rates. This way they make an addition profit than the commission.

Then, if anybody does the act which is in contravention to above, or in contravention to the provision of the act will be liable for the punishment under section 4 of the Act.

2. DEFINITIONS

To understand the meaning of money – laundering it is essential to define proceeds of crime, property and scheduled offence. Infact, all the above definitions have to be read together.
I. Clause (p) of sub section (1) of section 2 provides that "money-laundering" has the meaning assigned to it in section 3. Moving to section 3, it is observed that 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.

II. Section 2(1)(u) defines "proceeds of crime" as 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;

III. Now, let us understand what is this Property as talked above. In terms of clause (v) of sub – section (1) of section 2, "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. The term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

IV. In terms of clause (rb) of sub – section (1) of section 2 "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.

It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

V. The term “scheduled offence” has been defined in clause (y) of sub-section (1) of section 2. It means –

(a) the offences specified under Part A of the Schedule; or

(b) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
(c) The offences specified under Part C of the Schedule.

VI. “Transfer” includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

Other Definitions

“Banking company” means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act.

“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.

“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.

“Financial institution” means a financial institution as defined in clause (c) of section 45 I 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.

“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

(ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 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.

“Records” include the records maintained in the form of books or stored in a computer or such other form as may be prescribed.

“Reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.
3. PUNISHMENT FOR THE OFFENCE OF MONEY LAUNDERING [SECTION 3 AND 4]

Section 3 deals with the offence of money laundering which has been discussed in the definition part above.

**Section 4 provides for the 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.

But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule (i.e. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985), the maximum punishment may extend to ten years instead of seven years.

- Whoever commits the offence of money-laundering shall be punishable
- with rigorous imprisonment from 3 to 7 years, and
- fine

- Where the proceeds of crime involved in money-laundering relate to any offences pertaining to the NDPS Act, 1985
- the maximum punishment may extend to ten years
- fine

4. OBLIGATION OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

**Reporting entity to maintain records**

Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries i.e. the reporting entity to maintain records of transactions.

1. **Maintenance of records**: According to sub-section (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;

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1 Paragraph 2 of Part A deals with Offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, which mainly consist of contravention in relation to poppy straw, opium, cannabis plant, cannabis, psychotropic substances, manufactured drugs.
(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. **Confidentiality:** Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force shall be kept confidential.

3. **Maintenance of records (for clause a):** 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. **Maintenance of records (for clause e):** 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. **Exemption by the Central Government:** The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter.

**Access to information [Section 12A]**

This section empowers Director to call for any of the above records and for any additional information as he considers necessary, from any reporting entity. Every reporting entity shall furnish to the Director the required information within such time and manner as he may specify. Every information sought by the Director shall be kept confidential.
Power of director to impose fine [Section 13]

According to the section following are the powers of the Directors:

**Order to make an inquiry:**

Director may make inquiry or cause inquiry to be made, if necessary, with regard to the obligations of the reporting entity

- on his own motion, or
- on an application, made by
  - any authority
  - officer or
  - person

**Direct to audit the records:** 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, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose. The expenses of, and incidental to, any such audit shall be borne by the Central Government.

**In case of non-compliance with the obligations under this chapter by the reporting entity and others:** If the Director, during inquiry, finds that a reporting entity / its designated director on the Board /any of its employees has failed to comply with the obligations under this Chapter, then, 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.

Copy of order to be forwarded to the reporting entity: The Director shall forward a copy of the order passed to every banking company, financial institution or intermediary or person who is a party to the proceedings.

No civil or criminal proceedings: Act gives immunity to reporting entity, its directors etc., against civil or criminal proceedings for furnishing information under clause (b) of sub-section (1) of section 12. (Section 14)

Whereas as per Section 15 the Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under section 12(1) for the purpose of implementing the provisions of this Act.

5. ATTACHMENT, ADJUDICATION AND CONFISCATION

“Attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act.

“Adjudicating Authority” means an Adjudicating Authority appointed under sub-section (1) of section 6.

The Prevention of Money Laundering Act gives extremely wide powers to the authorities to attach properties suspected to be involved in Money Laundering.

Attachment of property involved in money-laundering [Section 5]

1. Order for provisional attachment: Where the Director or any other officer (not below the rank of Deputy Director authorised by the Director), 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
3.10 CORPORATE AND ECONOMIC LAWS

(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.

**Condition for attachment:** 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,** 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 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.

**Computation of period of attachment:** Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

2. **Forward of copy of attachment to adjudicating authority:** The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment, forward a copy of the order, along with the material in his possession, in a sealed envelope, in the prescribed manner and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

3. **Period of validity of attachment order:** Every order of attachment made, shall cease to have effect after the expiry of the period i.e., one hundred and eighty days from the date of the order, or on the date of an order made under section 8(3), whichever is earlier.

4. **No effect on the right to enjoy the property:** This section shall not prevent the person interested in the enjoyment of the immovable property attached from such enjoyment.

“person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.
5. **Complaint against the attachment before the AA:** The Director or any other officer who provisionally attaches any property shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority (AA).

**Adjudication [Section 8]**

(1) **Serving of notice:** On receipt of a complaint under section 5(5), or applications made under section 17(4) or under section 18(10), 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 under section 5(1), or, seized 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.

**Person on behalf of any other person holds property specified in notice:** 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:

**In case of joint holding of property:** Where more than one person holds such property jointly, such notice shall be served to all persons holding such property.

(2) **Order of AA:** The Adjudicating Authority (AA) shall by an order, after—

(a) considering the reply, if any, to the notice issued;

(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, record a finding whether all or any of the properties referred to in the notice issued, are involved in money-laundering.

**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) **Order for attachment/retention of property etc.** 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 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect.

**Period for attachment, retention, or freezing of the seized or frozen property or record:**
Whereupon such attachment, retention, or freezing of the seized or frozen property or record, AA shall—

(a) continue during investigation, for a period not exceeding three hundred and sixty-five 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, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under section 8(7) or section 8(5) or section 58B or section 60(2A) by the Special Court.

For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) **Confirmation of provisional order:** Where the provisional order of attachment made under section 5(1) has been confirmed as stated above as per section 8(3), the Director or any other officer authorized by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under section 17(1A).

If if it is not practicable to take possession of a property frozen, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) **Final order on confirmation of commission of Act:** 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.

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.

(6) **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—

there in such case, 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

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2 Substituted for “ninety days” by the Finance Act, 2019, w.e.f. 20-3-2019.
3 Inserted by the Finance Act, 2019, w.e.f. 20-3-2019
been passed under section 8(3), 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.

(7) Where a property stands confiscated to the Central Government under section 8(5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

Vesting of property in Central Government [Section 9]

Where an order of confiscation has been made under section 8(5) or section 8(7) or section 58B or section 60(2A) 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.

However, where the 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 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 this Chapter, it may, by order, declare such encumbrance 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.

Further, 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.

The Administrator appointed by Central Government, shall receive and manage the property in relation to which an order has been made under sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60. 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. [Section 10]
Section 48 provides for the following classes of authorities for the purposes of this Act, namely:-

1. Director or Additional Director or Joint Director,
2. Deputy Director,
3. Assistant Director, and
4. such other class of officers as may be appointed for the purposes of this Act.

As per section 2(1) clause (b), **Appellate Tribunal** means the Appellate Tribunal referred to in section 25.

**Appellate Tribunal [Section 25]**

The Appellate Tribunal constituted under section 12(1) of the 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.

**Appeals to Appellate Tribunal [Section 26]**

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal (AT).
**Decision to be by majority [Section 38]**

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 Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by 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.
Civil court not to have jurisdiction [Section 41]

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.

Appeal to High Court [Section 42]

“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.

7. SPECIAL COURTS

“Special Court” means a Court of Session designated as Special Court under section 43(1).

Sections 43 – 47 deals with provision relating to Special Courts.

Section 43 empowers the Central Government in consultation with the Chief Justice of the High Court for trial of offence of money laundering (offence punishable under section 4), to designate one or more Courts of Sessions as Special Court or Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect.

Jurisdiction of special courts: Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that –

(i) Trail of offence punishable under section 4 and any scheduled offence: an offence punishable under section 4 and any scheduled offence committed under this Act, shall be triable by the Special Court constituted for the area in which the offence has been committed.
The Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or

(ii) **Cognizance of offence under section 3 by special Court:** a Special Court may, upon a complaint made by an authority authorised in this behalf take cognizance of offence under section 3, without the accused being committed to it for trial; or

(iii) **Transfer of scheduled offence to special court:** 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; or

(iv) **Same power as that of session court for trial of offences:** 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.

The provisions of Section 44 shall not be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 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.

**Nature of offence committed under the Act:** Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Person accused of an offence under this Act shall not 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.

**Exceptions:** In case of any person who is under the age of 16 years or in case of a woman or in case of a 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.

**Cognizance of offence:** The Special Court cannot take cognizance of any offence under the Act, unless a complaint in writing is made by:-

(a) The Director or
(b) Any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

Investigation by Police officer: Police officer shall investigate into an offence under this Act only when specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

Section 46 provides that the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds) shall apply to the proceedings before a Special Court and 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.

Section 47 empowers the High Court to exercise (so far as applicable) all the powers granted by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure 1973 related to appeal and revision, on Special Court within its jurisdiction, 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.

8. RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS

Definitions

“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.

“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.

According to section 55, unless the context otherwise requires-

“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;
### Agreements with foreign countries [Section 56]

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.

### Letter of request to a contracting State in certain cases [Section 57]

1. **Issue of letter of request by special court for investigation to a contracting State:** 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,
(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. **Mode of communication of letter of request**: The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

3. **Nature of evidence**: Every statement recorded or document or thing received shall be deemed to be the evidence collected during the course of investigation.

<table>
<thead>
<tr>
<th>Letter of request to contracting state</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When</strong>: When an application is received by Special court that any evidence is required in respect of investigation</td>
</tr>
<tr>
<td><strong>From whom</strong>: (i) by the Investigating Officer or (ii) any officer superior in rank to the Investigating Office</td>
</tr>
<tr>
<td><strong>Opinion of officer</strong>: That such evidence may be available with contracting state</td>
</tr>
<tr>
<td><strong>Statification of Special Court</strong>: is necessary</td>
</tr>
<tr>
<td><strong>Letter to whom</strong>: to a court or an authority in the contracting State competent to deal with such request</td>
</tr>
</tbody>
</table>

**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 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.

<table>
<thead>
<tr>
<th>Letter of request from Contracting state</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Received by</strong>: CG</td>
</tr>
<tr>
<td><strong>From</strong>: Contracting State</td>
</tr>
<tr>
<td><strong>For</strong>: request for investigation into an offence or proceedings under this Act</td>
</tr>
<tr>
<td><strong>Forward to</strong>: (i) Special Court (ii) to any authority under the Act as it thinks fit for execution of such request</td>
</tr>
</tbody>
</table>
DISCLOSURE OF INFORMATION [SECTION 66]

(1) 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 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.

(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.

RECOVERY OF FINE OR PENALTY

Punishment for vexatious search [Section 62]

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.

Punishment for false information or failure to give information, etc. [Section 63]

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 500 rupees but which may extend to 10,000 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) (i.e. point 2 above) 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. 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.

Cognizance of offences [Section 64]
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.

Code of Criminal Procedure, 1973 to apply [Section 65]
The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far 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.

Recovery of fine or penalty [Section 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.
Offences by companies [Section 70]

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.

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 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.

Act to have overriding effect [Section 71]

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Continuation of proceedings in the event of death or insolvency [Section 72]

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,

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 provisions 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 or the Provincial Insolvency Act, 1920, as the case may be.

11. CONCLUSION

Does money laundering mean siphoning of fund. No, not just siphoning of fund, it actually refers to a whole process or an entire system by which money is actually generated from serious crimes as listed above, but they are given such shape (by disguising its origin into a series of transactions) that it looks like it has originated from legitimate sources. The point to note is that the volume of money generated by above activities is also very huge. But the fact remains how does it effect us. The answer lies in observing the continuous increase in terrorist or militant or other criminal activities worldwide (wide spreading global network of terrorists and others who deal in above crimes) and we cannot be ignorant to the fact that such activities need huge funding and they generate large volume of money. To curb the criminal activities, one needs to follow and hit at this generation and utilization of revenue. PLMA, 2002 aims to achieve this. So, money laundering is simply giving shape to the financial structure required and generated from serious crimes as listed above. For example, a criminal may deposit all his money into a bank account or purchase a fixed deposit or even buy a property. But sudden appearance of such a transaction, invites the attraction of one and all. Hence he may resort to money laundering by making cash purchases from the market and then selling the goods in the legal manner and at the end create an impression that the money has come from the...
sales and not from the criminal activities. So the money has been disguised by entering into a series of transactions and its origin now looks legitimate. India has followed the recommendations of Financial Action Task Force (FATF) and criminalized money laundering. FATF is an international government body. Financial Intelligence Unit of India (FIU_IND) was also set up at New Delhi with an objective to coordinate and strengthen the collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and all the related crimes. The subject is a major issue of concern at the international level and all sectors of business across the globe, like insurance, retail, real-estate, stock –market, entertainment – just to name a few are getting flooded with money and more money and at this stage we can certainly doubt, that it might be a case of money – laundering. Hence the need, significance and scope of operation of Prevention of Money Laundering Act, 2002.
Multiple Choice Questions

1. The offences under the Prevention of Money Laundering Act, 2002 shall be:
   (a) Cognizable and Bailable
   (b) Non- cognizable and non - bailable
   (c) Cognizable and non-bailable
   (d) Non- cognizable and bailable

2. Mr. Ram gave two of his friends’ cash amount of two lakh each in case of dire necessity for their business purposes. Later at the time of return, he asked both of them, in lieu of the same, to buy his product via credit card and online transfers in installments through next couple of months’ time for which he issued bills to adjust the amount in his account books.
   Does this payment system through credit card and online transfer mode are covered under money laundering act?
   (a) No, payment are made through credit cards & online transfers hence all the transaction are genuine
   (b) Yes, money laundering transactions done via credit card and online payments comes under the Prevention of Money Act
   (c) No, it is not money laundering as none of Mr. Ram friends are benefiting from this transaction.
   (d) No, because the transactions are not done with shell companies.

Descriptive Questions

Question 1

Explain the meaning of the term “Money Laundering”. Z, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

Question 2

Mr. Fraudulent has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case?
Question 3

The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advise explaining the relevant provisions of the Prevention of Money Laundering Act, 2002.

ANSWERS/SUGGESTED

Answer to MCQs

1.  (c) Hint: As per section 45 of the PMLA.
2.  (b) Hint: In terms of clause (b) of sub – section (1) of section 2 "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. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

Answer to Descriptive Questions

1. 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 and projecting it as untainted property shall be guilty of offence of money laundering. [Section 3 of the Prevention of Money Laundering Act, 2002]

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment: Section 4 of the said Act provides for the 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 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

2. Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act 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.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm person 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.

3. Establishment of Appellate Tribunal

According to section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under sub-section (1) of section 12 of the 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.

Appeals to Appellate Tribunal

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. 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.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and it shall be in such form and be accompanied by prescribed fees. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

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

Appeals to High Court

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.