

LAWS AND REGULATIONS RELATED TO ANTI - MONEY LAUNDERING PMLA, 2005

What is Money Laundering

Money Laundering is the process of conversion of such proceeds of crime, the 'dirty money', to make it appear as 'legitimate' money.

What is Money Laundering as per Law

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".

Money Laundering: A global problem

The problem of money-laundering is a global problem. In view of this, India has become a member of the Financial Action Task Force and Asia Pacific Group on money-laundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism.

Money Laundering: A Historical Problem

The Prevention of Money Laundering Act (PMLA), 2002 was enacted in January, 2003. The Act along with the Rules framed thereunder have come into force with effect from 1st July, 2005.

Money Laundering: A tool to fulfil international obligations

The Prevention of Money-laundering Act, 2002 addresses the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money laundering.

Structure of the Act

The Prevention of Money Laundering Act, 2002 consists of ten chapters containing 75 sections and one Schedule divided into five parts.

Chapter I containing section 1 and 2 deals with short title, extent and commencement and definitions.

Chapter II containing sections 3 and 4 provides for offences and punishment for money laundering.

Chapter III (Section 5-11) provides for attachment, adjudication and confiscation

Chapter IV (Sections 12-15) deals with obligations of banking companies, financial institutions and intermediaries.

Chapter V (Sections 16-24) relates to Summons, Searches and Seizures etc.

Objects of the Act

- (a) To prevent and control money laundering.
- (b) To confiscate and seize the property obtained from the laundered money. And
- (c) To deal with any other issue connected with money laundering in India.

The process of Money Laundering IMP

- (a) **Placement:** The Money Launderer introduces the illegal funds into the financial systems.
- (b) **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.
- (c) **Integration:** The Launderer 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.

Offence of Money Laundering IMP

Whosoever

- ☞ directly or indirectly
- ☞ attempts to indulge KOSHISH KARI
- ☞ 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
- ☞ or projecting
- ☞ or claiming as untainted property

shall be guilty of offence of money-laundering.

Predicate Offences

The offences listed in the Schedule the Act, are scheduled offences and are divided into three parts - Part A,B and C.

- ☞ In Part A, offences to the Schedule have been listed in 28 paragraphs and it comprises of *offences under Indian Penal Code, offences under Narcotic Drugs and Psychotropic Substances, offences under Explosive Substances Act, 1908, offences under Unlawful Activities (Prevention) Act, 1967, offences under Arms Act, 1959, offences under Wild Life (Protection) Act, 1972, offences under the Immoral Traffic (Prevention) Act, 1956, offences under the Prevention of Corruption Act, 1988, offences under the Explosives Act, 1884 and offences under Antiquities & Arts Treasures Act, 1972 etc.*
- ☞ Part 'B' of the Schedule are offences with total value involved is ₹ 1 crore or more.
- ☞ Part 'C' deals with trans-border crimes, and is a vital step in tackling Money Laundering across International boundaries.

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.

Punishment for the Offence of Money Laundering

VERY VERY VERY IMP

1. Whoever commits the offence of money-laundering shall be punishable with
 - ☞ rigorous imprisonment minimum less 3 years maximum 7 years which may extend to seven years and
 - ☞ shall also be liable to fine.
2. But where the proceeds of crime involved in money-laundering relate to narcotics offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.
3. Property made out of proceeds of crime, directly or indirectly attached and/or confiscated by the authority.

Procedure of Investigation/Authorities under PMLA

1. PMLA empowers certain officers of the **Directorate of Enforcement** to carry out investigations in cases involving offence of money laundering and also to attach the property involved in money laundering.
Powers of investigation and prosecution for offences under the Act have been conferred on the Director, Enforcement Directorate.
The Directorate is under the administrative control of Department of Revenue for operational purposes.
2. PMLA envisages setting up of an **Adjudicating Authority** to exercise jurisdiction, power and authority conferred by it essentially to confirm attachment or order confiscation of attached properties.
3. It also envisages setting up of an **Appellate Tribunal** to hear appeals against the order of the Adjudicating Authority and the authorities like Director FIU-IND.
The Tribunal consists of a Chairperson and two other Members.
The Chairman and one Member of Appellate Tribunal for Forfeited Property (ATFP) holds additional charge of the post of Chairman and Member of Tribunal under PMLA.
4. PMLA envisages designation of one or more **courts of sessions as Special Court or Special Courts** to try the offences punishable under PMLA and offences with which the accused may, under the Code of Criminal Procedure 1973, be charged at the same trial.
The Central Government, in consultation with the Chief Justice of the respective High Courts, has designated one or more Courts of Session as Special Court or Special Courts specified areas. 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.
5. The Government has constituted the **Financial Intelligence Unit, India, in November, 2004**, headed by Director in the rank of a Joint Secretary to the Government of India.

The organization has become functional and has started receiving Cash Transaction Reports and Suspicious Transactions Reports from the banking companies etc.

'Financial Intelligence Unit - India was set as the central 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 the global efforts against money laundering and related crimes.

FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

Bilateral Agreements

The Act provides for bilateral agreements between countries to cooperate with each other and curb the menace of money laundering.

These agreements shall be for the purpose of either enforcing the provisions of this Act or for the exchange of information which shall help in the prevention in the commission of an offence under this Act or the corresponding laws in that foreign State.

Obligation of banking companies, financial institutions and intermediaries ^{IMP}

- (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.
- (b) They shall furnish to the Director (FIU) within such time as may be prescribed information relating to such transactions.
- (c) They shall verify the identity of its clients in such manner and subject to such conditions as may be prescribed.
- (d) They shall identify the beneficial owner, if any, of such of its clients, as may be prescribed.
- (e) They shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files for a period of five years in case of record and information relating to transactions, and
- (f) 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.

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

STR (Suspicious Transaction Reports)

- 1) The Prevention of Money laundering Act, 2002 and the Rules made there under require every banking company to furnish details of suspicious transactions whether or not made in cash.
- 2) 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 or 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.

The Prevention of Money Laundering (Maintenance of Record) Rules, 2005

Every reporting entity shall maintain record of all transactions, including record of-

- (a) Cash transaction of more than ₹ 10 lakhs.
- (b) All series of integrated transaction below ₹ 10 Lakh per month
- (c) All transaction of receipt of ₹ 10 lakhs and more on its equivalent foreign currency
- (d) All transactions with counterfeit currency
- (e) Any suspicious transaction made in cash or otherwise including transactions involving transfer of immovable property.

Manner of maintenance of records

Reporting entities shall keep record uniformly in prescribed format. The entity shall make out a mechanism and system of disseminating and analysing of records and information available to them. Few records are to be taken and retained in hard copy only. Every entity shall designate a principal officer, who shall report to the Director of Financial intelligence Unit.

KYC Obligations

1. Every entity shall identify its clients and take required details to check the status and authenticity of the details furnished.
2. Reporting entities shall then, within 10 days' file electronic data to central KYC records Registry established under this rule.
3. The reporting entity may have reasonable ground for believing on the statements of the clients/third party.
4. For each of the category of client the required document/information will vary.
5. The entities may conduct client due diligence which is a matter of detail.

Central KYC records Registry

1. A central KYC registry has been constituted in 2015 to keep centralised data which would include analysis, dissemination transforming of data.
2. The registry will comply with the instructions issued the Regulation.

Digital KYC process

1. The Regulations have made detailed process of accepting, verifying, authenticating and certifying KYC records of the clients, which is on line and secured.
2. Digital payments, electronic record, live transactions are some of the systems which will reduce illegal and immoral transactions of people.
3. The adhar, telephone, bank account, income tax all are inter linked and hence all transactions now shall be transparent.

EXERCISE**Multiple Choice Questions (MCQs)**

1. Every reporting entity shall maintain record of:
 - (a) all transactions in cash of more than ₹ 10 lakhs.
 - (b) All series of integrated transaction below ₹ 10 Lakh per month
 - (c) All transaction of receipt of ₹ 10 lakhs and more on its equivalent foreign currency
 - (d) All of the above
2. FIU stands for:

(a) Financial Intelligence unit	(b) Financial Issue unit
(c) Featured Intelligence Unit	(d) None of the above
3. In part B of the schedule, offences involved a value of ₹ _____ is mentioned.

(a) 15 Lakh	(b) 50 lakh
(c) 75 lakh	(d) One crore
4. STR stands for:

(a) Suspicious Trade Report	(b) Special Trade Reserve
(c) Suspicious Transaction Reports	(d) Special Trade Reports
5. Reporting authority shall send the KYC data to Central Registry within _____ days.

(a) 5	(b) 10
(c) 15	(d) 20
6. The Money Launderer introduces the illegal funds into the financial systems. This is called:

(a) Placement	(b) Layering
(c) Integration	(d) None of the above.
7. The cases under PMLA can be tried n:

(a) Common courts	(b) High courts only
(c) Special designated courts	(d) (none of the above).

Fill in the blanks

1. The authority under PMLA is.....
2. Every scheduled offence is a.....offence under the act.
3. The maximum imprisonment in money laundering case is.....years.
4. FIU stands for.....
5. STR stands for.....
6. Under PMLA, every reporting entity shall maintain record of all transactions, including record of cash transaction of more than ₹lakhs
7. Central KYC records Registry has been constituted in the year.....

8. The PMLA Record Rules were introduced in the year in.....

Short Essay Type Questions

1. Discuss, in short, the object of money laundering.
2. Write a note on Special courts under PMLA.
3. What are the obligations of the reporting entity?

Essay Type Questions

1. Discuss the purpose of PMLA.
2. What is the function of central KYC Registry?
3. Discuss few obligations of the Reporting entity.

Case study (unsolved)

There was a petition made to civil court against a senior Govt. officer on corruption c for irregularities in appointment of "D" category staff in Govt. Simultaneously, a compliant was made to Director, Enforcement under PMLA. On investigation, ultimately, a huge cash was found in the residence one of the person who is indirectly related to the person against whom corruption charges have been made. The person cannot explain the sources but says that the money belongs to another person whose name he will not disclose. In your opinion, what would be the fate of the case. What rights are available to the accused?

Answer

Multiple Choice Questions (MCQs)

1	2	3	4	5	6	7
d	a	d	c	b	a	c

Fill in the blanks

1	Directorate of Enforcement, Ministry of Finance	2	Predicate
3	7	4	Financial Intelligence Unit
5	Suspicious Transaction report.	6	10
7	2015	8	2005