

## CHAPTER - 8

# PREVENTION OF MONEY LAUNDERING

*Section 3 of the Act states that:*

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

### **PUNISHMENTS**

- 1) *Section 4 provides that any person who 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 also liable to fine.*
- 2) *However, where the proceeds of crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances Act, the punishment may extend to rigorous imprisonment for ten years.*

**There are 3 Stages of money laundering: -**

- a) **Placement:** *This stage is also known as first stage of money laundering where the launderer introduces dirty money in the financial System. and is generally done by breaking the large amount into smaller sums and then depositing it into bank accounts. This stage is the riskiest stage as the source is very near and can be easily caught.*
- b) **Layering:** *In this stage the launderer engages into series of conversion and movement to distant the fund from the source and further it can be done by series of transfers, change of currency abroad or even moving the funds abroad.*
- c) **Integration:** *This is the last stage of money laundering and once the source is distant the launderer re-enters the funds into the economy and integrates the same into luxury assets or real estate.*

## **PREVENTION OF MONEY LAUNDERING-GLOBAL INITIATIVE**

### **VIENNA CONVENTION**

- a) *This is the first major initiative was the united nation convention (also known as Vienna Convention) to prevent money laundering and to combat money laundering. It obliges its member States to Criminalise money laundering from drug trafficking and confiscation of the same.*
- b) *It promotes international cooperation, investigation and makes extraditions easy.*
- c) *It States that the banks domestic sector norms cannot interfere with international criminal investigation.*

### **COUNCIL OF EUROPE CONVENTION**

- a) *The council of Europe convention on Laundering, Search, Seizure and confiscation of proceeds of crime Act, 1990 has established a common measure on money laundering.*
- b) *It sets out a common definition for money laundering and common measures for dealing with it.*
- c) *The main purpose of the convention is to promote international cooperation as regards to search, Seizure, investigation and confiscation and the proceeds of crime.*

### **EUROPEAN UNION MONEY LAUNDERING DIRECTIVE**

- a) *These directives were issued because of the new opportunities in money laundering because of liberalisation which allowed capital movement and cross border transfers.*
- b) *It obligated all the member states outlaw money laundering and to require all the member states that they should put an Obligation upon their Financial Institution to establish and maintain financial controls to prevent money laundering.*
- c) *Further to obtain the identification of customers with whom they enter into transaction of more than a particular threshold amount and to keep proper records of at least 5 years.*
- d) *Financial Institution should report suspicious transaction and it should not result into liability for the institution.*

## GLOBAL PROGRAMME AGAINST MONEY LAUNDERING (GPML)

- a) GPML was set up based upon the 1988 convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- b) The objective is to strengthen the ability of UN member states to fight money laundering.
- c) GPML mainly works by providing through technical cooperation and assistance. Also, when countries requested for specialized help, it hires professional experts as mentors to provide training and delivers direct technical assistance in order to Improve the capacity in states and regions.

## FATF

- a) It was established in the year 1989 by group of 7 summit in Paris to examine and develop measures to combat money laundering.
- b) The FATF acts as a watchdog in the sphere of money laundering and terrorist financing.
- c) It acts as a policy maker and also generates necessary political will to bring national legislation to combat money laundering.
- d) Further the FATF sets standards and promote the effective implementation of measures for combating money laundering and terrorist financing.
- e) It then monitors the progress of its member countries as well as reviews the global money laundering and Terrorist financing trends and counter measures.
- f) The FATF meets at least 3 times a year.
- g) FATF has developed the FATF recommendations or FATF standards which ensures coordinated global response to prevent organised crime, corruption and terrorism.
- h) Further it always keeps on reviewing the new risk evolving in sphere of money laundering, for instance crypto currencies & also works to stop funding for weapons of mass destruction.

## INDIAN INITIATIVES.

India passed the prevention of Money Laundering Act, 2002.

## ATTACHMENT OF PROPERTY INVOLVED IN MONEY LAUNDERING

- a) Under Section 5 the act has given power to the director that if he has reason to believe on the basis of material in his possession that any person is in possession of the proceeds of money laundering or is a party and such proceeds are likely to be concealed or dealt in a manner which will result into frustration of the proceeding regarding the confiscation of the property, to provisionally attach the property for a period not exceeding 180 days.
- b) Once the officer provisionally attaches the property, he should forward a copy of the order along with the material to the Adjudicating Authority immediately and further within a period of 30 days file a complaint stating the facts before the Adjudicating Authority

## ADJUDICATION

- a) If the Adjudicating Authority has reason to believe that any person has done any offence punishable under Section 4 then it may serve a notice of not less than 30 days to the person calling upon him to indicate the source of his income and to show cause, why the property should not be declared as a property which is involved in money laundering and is being confiscated.
- b) If there are multiple parties involved, then notice should be sent to all of them.
- c) The Authority should after considering all replies, hearing the aggrieved party as well as the director and taking into account all the relevant material decide as to whether all or any of the property is involved in money laundering.
- d) If the Authority decides that the property is involved in money laundering then it shall confirm the attachment which allows the director to take possession of the property attached for 365 days or until the final order is passed.
- e) Now if the special court finds that the offence of money laundering has been committed then it shall order for confiscation of property and if the property is not involved in money laundering order release.
- f) If confiscation order has been made then all the rights and titles in such property shall vest with the central govt free from all encumbrances.

**Note:** All Banking companies and Financial Institutions shall maintain record of all transactions and furnish it to the director value exceeds the threshold and the record shall be maintained for a period of 5 years.

## **SUMMON, SEARCH AND SEIZURE**

The Authority is empowered to enter any place where it believes an offence of section 3 has been committed.

Such authority should put marks of identification in all the records inspected by them and take all the extracts of any records which it feels would be useful in the proceedings.

Further if the authority feels that any person has secreted any records or proceeds of crime then he may search that person and seize any such record.

## **RETENTION OF PROPERTY**

- a) Where any property is seized by the director then he can retain Such property for a period not exceeding 180 days.
- b) Once the officer has passed the order of retention of the property, he should forward a copy of the same along with the material in his possession in the sealed envelope.
- c) Upon expiry of the period the property shall be returned to the person from whom it was seized unless the Adjudicating Authority permits further continuation.
- d) If the order of confiscation has been passed, but some has been reversed by Special Court, then property should be transferred immediately to the person entitled.
- e) However, director may withhold the release for period of 90 days, from date of order if he is of opinion that it is relevant for purpose of appeal.

## **APPELLATE TRIBUNAL**

*The appellate tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be appellate tribunal under this Act.*

*Note: Any offence punishable under sec 4 Shall be triable only by a special court upon a complaint made by an authority authorised.*

*All the offences under the act are cognizable and non-bailable. However, if person is under age of 60/is a woman/is sick or infirm who has been accused of an offence involving sum less than 1 crore may be released on bail.*

## **RECIPROCAL ARRANGEMENTS FOR TRANSFER OF OCCUSED PERSON**

*Where Special court wants to send a Summon or a warrant accused person at any place on a contracting state it Shall do so by sending the same to the court with the CG wherein it has notified in his behalf and the court shall cause the same to be delivered.*

*Where a special court has received a request, from any SC of the contracting State then it shall cause same to be executed within its jurisdiction.*

## **ATTACHMENT, SEIZURE AND CONFISCATION OF PROPERTY**

*Where SC or Adjudicating Authority in 1 country, suspects that a property situated in any other country is a subject matter of Money Laundering then it can request the SC of that country to attach the property.*

*If further, if authority requests the Indian Govt to seize or confiscate such property in India then appropriate govt. may forward the same to director for execution.*

*If a case is concluded in FC and states that Money Laundering has been committed then SC after receiving application for same confiscate the property and transfer it to CG.*

## **RBI KYC DIRECTIONS**

*These KYC norms enable banks to understand customers and their financial dealings and to prevent the banks from being used for Money Laundering or terrorist financing activities.*

*These KYC norms are applicable on all KYC entities.*

**Regulated entity(RE) means: -**

- a) Scheduled commercial banks / Regional Rural any corporation.*
- b) All India financial institutions*
- c) All NBFC'S including residuary NBFC'S.*
- d) All payment system providers.*

*All regulated entities. Should have board approved policy which should include following 4 Key elements: -*

- a) customer acceptance policy*
- b) customer identification procedures*
- c) Monitoring of transaction.*
- d) Risk management*

*All the RE's shall carry out ML and terrorist financing risk assessment to identify, assess and mitigate the ML and terrorist financing risk.*

*Assessment process should further determine the risk tolerance level and the mitigation Strategy adopted.*

*Risk assessment should be properly documented and periodically shall be determined by board as per need, but shall be reviewed annually, at least*

*RE'S shall apply risk-based approach for mitigation or all the identified risks.*

## **(FIU-IND)**

*It is an independent body set up by the govt which is responsible pr receiving, processing, analysing and disseminating in to regarding suspected financial transaction.*

*Body directly reports to ELC (Economic Intelligence Council) headed by finance minister.*

### **Functions FIU-IND: -**

- a) Acts as central repository for receiving all the reports of cash transactions, cross border wire transfer, NPO transaction.*
- b) Further analyses the info.*
- c) Shares the into with national intelligence and law enforcement agencies as well as foreign financial intelligence units.*
- d) Acts as a point of connect and co-ordinates, Shares into with other authorities.*
- e) Research and analyses on now trends of ML.*

## **FREEZING G ASSETS UNDER UAPA - UNLAWFUL ACTIVITIES PREVENTION ACT**

### **(UAPA)**

*The UAPA has been enacted for more effective prevention of certain unlawful activities of ind and associations dealing with terrorist activities.*

### **Unlawful activities here include: -**

- a) Any activity which attempts to separate a part of Ind territory.*
- b) Challenges, or disturbs Sovereignty and integrity of India.*
- c) causes or intends to cause disloyalty towards India.*

*CG has authority to further freeze financial assets and economic resources of such individuals and also prohibit any person from providing any financial assistance to such person.*