

# Laws and Regulations Related to Anti - Money Laundering

11

## **This Module Includes:**

- 11.1 The Prevention of Money Laundering Act, 2002**
- 11.2 The Prevention of Money Laundering (Maintenance of Record) Rules, 2005**

# Laws and Regulations Related to Anti - Money Laundering

## **SLOB Mapped against the Module**

To obtain an overview of the laws and regulations associated with prevention of money laundering in India.

## **Module Learning Objectives:**

After studying this module, the students will be able to -

- ✦ The concept of money laundering;
- ✦ The actions which can be taken by the authorities;
- ✦ Being in accounts, the students will need to have special interest in the module to identify authentic transaction in their work life.

# The Prevention of Money Laundering Act, 2002

11.1

## 11.1.1. Overview

**T**he goal of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amounts of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimize” the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of ‘dirty money’. Money Laundering is the process of conversion of such proceeds of crime, the ‘dirty money’, to make it appear as ‘legitimate’ money.

In the PMLA, 2002, money laundering has been defined as “any process or activity by a person which 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”.

Because of the opportunities and needs created by the global dimension of business, crimes such as fraud, counterfeiting, corruption and embezzlement have opportunities to shift from individual or family ambit to more organized and competitive global structures.

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.

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. The Act extends to the whole of India including the state of Jammu & Kashmir. The Act was amended by the Prevention of Money Laundering (Amendment) Act 2009 w.e.f. 01.06.2009. The Act was further amended by the Prevention of Money - Laundering (Amendment) Act, 2012 w.e.f. 15-02-2013.

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.

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 and 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.

The Act provides for establishment of Appellate Tribunal. There are also Special Courts for various authorities under the Act, their appointment, powers, jurisdiction etc.

### 11.1.2. Objects of the Act

The objects sought to be achieved under the Act are:

- (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.

### 11.1.3. Authorities under the Act

The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under Prevention of Money Laundering Act, 2002. Financial Intelligence Unit - India (FIU-IND) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analysing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs. Central Govt.(CG) shall appoint adjudicating authority to exercise jurisdiction and powers conferred under the Act.

### 11.1.4. The process of Money Laundering

- (a) **Placement:** The Money Launderer introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.
- (b) **Layering:** In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.
- (c) **Integration:** 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. The Money Launderer may invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

### 11.1.5. Offence of Money Laundering

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment possession, acquisition or use or projecting or claiming as untainted property shall be guilty of offence of money-laundering. It prescribes obligation of banking companies, financial institutions and intermediaries for verification and maintenance of records of the identity of all its clients and also of all transactions and for furnishing information of such transactions in prescribed form to the Financial Intelligence Unit-India (FIU-IND). It empowers the Director of FIU-IND to impose fine on banking company, financial institution or intermediary on non compliance of the provisions of the Act.

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, offence under The Securities and Exchange Board of India, 1992, The Custom Act, 1962 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.

#### 11.1.6. Punishment for the Offence of Money Laundering

Who ever 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, the maximum punishment may extend to ten years instead of seven years. Property made out of proceeds of crime, directly or indirectly attached and/or confiscated by the authority.

#### 11.1.7. Procedure of Investigation

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. 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. 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.

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 Act provides for reciprocal arrangements for processes/assistance with regard to accused persons. In order to enlarge the scope of this Act. 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.

Special Courts have been set-up in a number of States / UTs by the Central Government to conduct the trial of the offences of money laundering. The authorities under the Act like the Director, Adjudicating Authority and the Appellate Tribunal have been constituted to carry out the proceedings related to attachment and confiscation of any property derived from money laundering.

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. in terms of Section 12 of the PMLA.

Powers of investigation and prosecution for offences under the Act have been conferred on the Director, Enforcement Directorate.

In addition, the Adjudicating Authority in terms of section 6 of the Act and the Appellate Tribunal under section 25 of the Act have also been constituted and have become functional.

#### 11.1.8. Enforcement Directorate (ED)

The Directorate of Enforcement is responsible for enforcement of the Foreign Exchange Management Act, 1999

(FEMA) and certain provisions under the Prevention of Money Laundering Act. Work relating to investigation and prosecution of cases under the PML has been entrusted to Enforcement Directorate. The Directorate is under the administrative control of Department of Revenue for operational purposes.

#### **11.1.9. Financial Intelligence Unit - India (FIU-IND)**

‘Financial Intelligence Unit – India was set by the Government of India during November 2004 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.

#### **11.1.10. Obligations of the Reporting Entity [Section 12].**

- (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.

#### **11.1.11. Functions of Adjudicating Authority**

Adjudicating Authority exercise jurisdiction, powers and authority conferred by or under the PMLA. Where the Adjudicating Authority decides that any property is involved in money-laundering, Adjudicating Authority shall, by an order in writing confirm the attachment of the property made or retention of property or record seized (under sec. 5 of PMLA).

#### **11.1.12. Appellate Tribunal**

Under Section 25 of the Prevention of Money-laundering Act, 2002, the Central Government has established an Appellate Tribunal. Section 28(4) of the PMLA provides that the Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a member of that Tribunal, may be appointed as the Chairperson or a Member, as the case may be, of the Appellate Tribunal under this Act.

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.

Appellate Tribunal has been constituted to hear appeals against the orders of the Adjudicating Authority and the authorities under the said Act.

### 11.1.13. Special Courts

For trial of offence punishable under section 4 of PMLA, 2002, the Central Government, in consultation with the Chief Justice of the respective High Courts, by notification, has designated one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as specified in the notifications. While trying an offence of money laundering under PMLA, 2002, a Special Court has also to try the offences, with which the accused may, under the Code of Criminal Procedure. 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.

### 11.1.14. STR (Suspicious Transaction Reports)

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. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith:

- (a) Gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime, or
- (b) Appears to be made in circumstances of unusual or unjustified complexity. or
- (c) Appears to have no economic rationale or bonafide purpose.

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

## 11.2

### **11.2.1. The Rules were made in 2005 and last revised in March 2023. Every reporting entity shall maintain record of all transactions, including record of-**

- a) Cash transaction of more than ₹10 lakhs or its equivalent in foreign currency.
- 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 deposits or withdrawal into or from any an account, credit or debits into of from non-monetary accounts such as demat account, loan and advances including credit or loan substitutes, investment or contingent liability and transactions involving transfer of immovable property.
- f) All cross border wire transfers of the value of more than Rupees Five lac rupees or its equivalent in foreign currency where either origin or destination of fund is in India
- g) all purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity, as the case may be

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.

The principal officer of the reporting entity shall furnish the information related to the reporting transactions every month to the Director by 15th of the succeeding month.

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

### **11.2.2. Central KYC records Registry**

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

The Reserve bank may call for information, statement or other particulars from the central registry or cause an inspection of the central registry

### **11.2.3. Digital KYC process**

The Regulations have made detailed process of accepting, verifying, authenticating and certifying KYC records of the clients, which is on line and secured. Digital payments, electronic record, live transactions are some of the systems which will reduce illegal and immoral transactions of people. The aadhar, 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.

**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