

PREVENTION OF MONEY LAUNDERING

Introduction

The Act is enacted for the purpose of prevention of money laundering, which is simply means conversion of black money into white money.

What is Money Laundering?

Money laundering is the processing of criminal proceeds to disguise its illegal origin. Terrorism, illegal arms sales, financial crimes, smuggling, and the activities of organised crime, including drug trafficking and prostitution rings, generate huge sums. And this process of laundering shall help criminals to continue with criminal task and encourages others to become criminal.

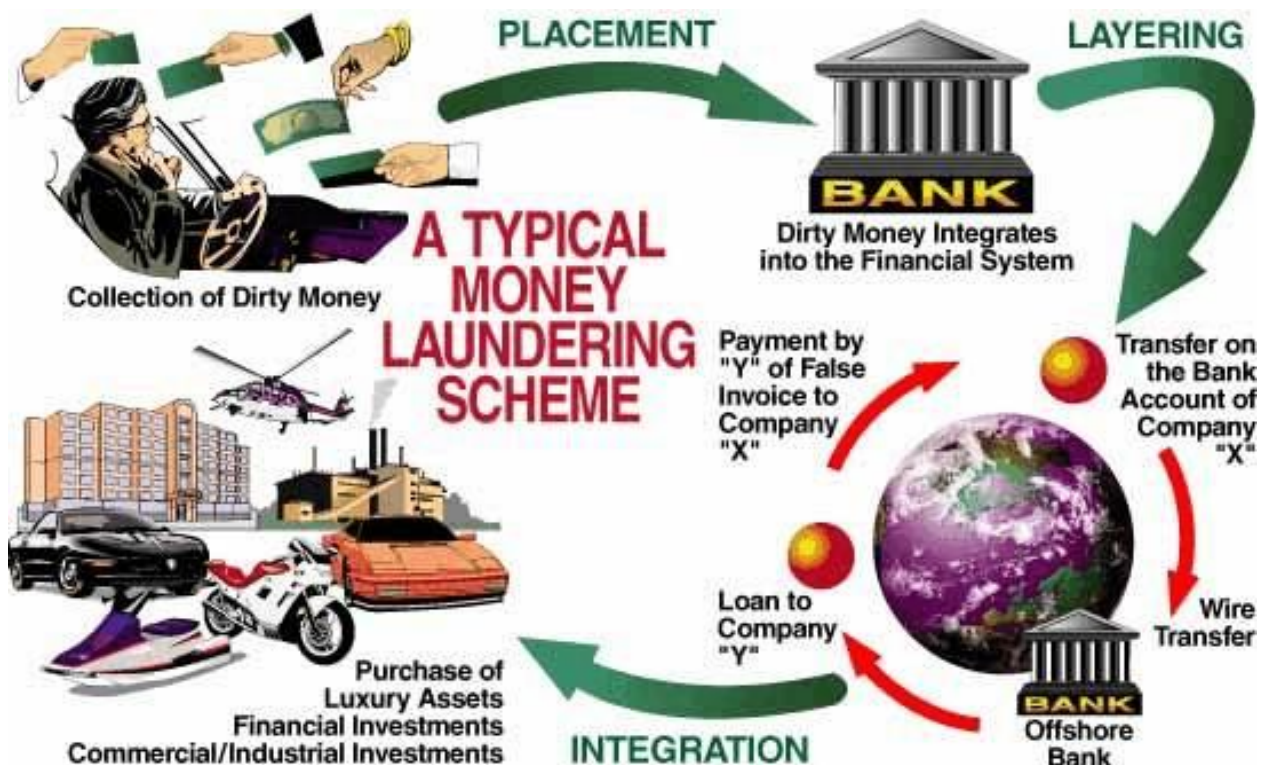
How is Money Laundered?

The process of money laundering can be classified into three stages, namely, placement, layering and integration.

Placement stage: The launderer introduces his illegal profits into the financial system, by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or in the financial system

Layering stage: the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channeled through the purchase and sale of investment instruments.

Integration stage: the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.



Impact of Money Laundering on Development

Prevention of Money Laundering – Global Initiatives

Since money laundering is an international phenomenon, transnational co-operation is of critical importance in the fight against this menace, without this support launderers are taking benefits of their ill-gotten benefits. The few of global initiatives are:

United Nations or the Bank for International Settlements**Financial Action Task Force (FATF):**

The FATF, set up by the governments of the G-7 countries at their 1989 Economic Summit, has representatives from twenty-four OECD countries to define policy and to promote the adoption of countermeasures against money laundering. The main tasks of the FATF are:

- Monitoring members' progress in applying measures to counter money laundering.
- Reviewing money laundering techniques and countermeasures.
- Promoting the adoption and implementation of appropriate measures by non-member countries.

Recommendations of Financial Action Task Force are:

- declaration of laundering of monies carried through serious crimes, a criminal offence;
- workout modalities of disclosure by financial institutions regarding reportable transactions;
- confiscation of proceeds of crime;
- declaring money laundering to be an extraditable offence; and
- promoting international cooperation in investigation of money laundering.

The Vienna Convention:

The first major initiative in the prevention of money laundering was the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in December 1988 (popularly known as Vienna Convention). Main features:

- international cooperation in investigations
- domestic bank secrecy provisions should not interfere with international criminal investigations.

Basle Committee on Banking Regulation**Council of Europe Convention**

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, 1990

- establishes a common policy on money laundering.
- international cooperation as regards investigative assistance, search, seizure and confiscation of the proceeds of all types of criminality generate large profits.

European Union Money Laundering Directive

The member states have been put under obligation to require financial institutions to establish and maintain internal systems to prevent laundering, i.e. identification of transaction of more than a particular amount and to keep proper records for at least five years & reporting of suspicious transaction.

Prevention of Money Laundering – Indian Initiatives

The Prevention of Money Laundering Act, 2002 introduced for the purpose of protection against criminal proceeds. The Act consists of ten chapters containing 75 sections and one Schedule divided into five parts. The Act has come into force with effect from July 1, 2005.

Definitions:**Attachment:**

Means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III.

Proceeds of Crime:

Means 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.

Intermediary:

Means 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 advisor, and any other intermediary associated with securities market and registered under Section 12 of the SEBI Act, 1992.

Investigation:

Means and include all the proceedings under the Act conducted by the Director or by an authority authorized by the Central Government under this Act for the collection of evidence.

Money Laundering:

Section 3 of the Act states that whoever, acquires, owns, possesses, or transfers any proceeds of crime or knowingly enters into any transaction which is related to proceeds of crime directly or indirectly or conceals or aids in the concealment of the proceeds of crime, shall be guilty of offence of money laundering.

Punishments for money laundering (Sec. 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 3 years but which may extend to seven years and also liable to fine which may extend to 5 lakh rupees. However crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances, the punishment may extend to rigorous imprisonment for 10 years.

- **Offences specified under Part A of the Schedule**
 - ❑ **Offences under the Indian Penal Code (Sec 121, 121A)**
 - ❑ **Offences under the Narcotic Drugs And Psychotropic Substances Act, 1985**
- **Offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more.**
 - ❑ **Offences under the Indian Penal Code**
 - ❑ **Offences under the Arms Act, 1959**
 - ❑ **Offences under the Wild Life (Protection) Act, 1972**
 - ❑ **Offences under the Immoral Traffic (Prevention) Act, 1956**
 - ❑ **Offences under the Prevention Of Corruption Act, 1988**

Attachment of property involved in money laundering

Where the Director or any officer not below the rank of Deputy Director authorised by him, has reason to believe on the basis of material in his possession that any person is in possession of any proceeds of money laundering; or covered under offence in the Act, such officer may order in writing, provisionally attach such property for a period not exceeding 90 days from the date of the order, in the manner provided in the Second Schedule of the Income-tax Act, 1961.

Adjudicating Authority

Section 6 empowers the Central Government to appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authority.

Adjudication

Section 8 dealing with the adjudication provides that on receipt of a complaint from the Director or any other officer, the Adjudicating Authority 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, and show cause why all or any of such property should not be declared to be the properties involved in money laundering and confiscated by the Central Government.

Vesting of Property in Central Government

Section 9 provides that when an order of confiscation made, shall vests in the Central Government all the rights and title in such property free from all encumbrances.

Obligation of Banking Companies, Financial Institutions and Intermediaries

Section 12 requires every banking company, financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions legally connected to each other, and when such series of transactions take place within a month. These informations are required to be furnished to the Director within such time as may be prescribed. The records as mentioned above are required to be maintained for a period of ten years .

Summon, Searches and Seizures, etc. (Sec. 16-18)**Retention of Property (Sec. 20)****Presumption in Inter-connected Transactions (Sec. 23)****Appellate Tribunal**

Section 25 empowers the Central Government, to establish an Appellate Tribunal to hear appeals against the orders of Adjudicating Authority and other authorities under the Act.

Appeal to High Court (Sec. 42) person aggrieved by any order of the Appellate Tribunal can file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal on any question of law or fact arising out of such order.

Special Courts (Sec. 43 to 47) power of the Central Government to designate, in consultation with the Chief Justice of the High Court, one or more Courts of Session as Special Courts and the offence punishable under Section 4, shall be triable only by the Special Court constituted for the area in which the offence has been committed.

Offences to be Cognizable and Non-bailable

Section 45 declares every offence punishable under the Act to be cognizable. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, a person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall not be released on bail or on his own bond, However the special court shall not take cognizance of any offence punishable under Section 4, except upon a complaint in writing made by (i) the Director or (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or special order made by that Government.

Agreement with Foreign Countries

Section 56 empowers the Central Government to enter into an agreement with the Government of any country for enforcing the provisions of the Act and also for exchange of information for the prevention of any offence under the this Act

Assistance to a Contracting State in Certain Cases (Sec. 58)

where a letter of request is received by the Central Government, from a court or authority in a contracting State requesting for investigation into an offence or proceedings under the Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court for execution.

‘Know Your Customer’ (KYC) Guidelines – Anti Money Laundering Standards**Objective of KYC Guidelines**

The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. KYC policies incorporating the following four key elements:

- Customer Acceptance Policy;
- Customer Identification Procedures;
- Monitoring of Transactions; and
- Risk management.

Need for KYC

This means identifying the customer and verifying his/her identity by using reliable, independent source documents, data or information. Banks are required to obtain identification data to verify the identity of the customer, his address/location and also his recent photograph. For non-individuals, banks need to obtain identification data to verify the legal status of the legal person, its authorized signatories and Beneficial owners.

When does KYC apply?

KYC is carried out at the following stages:

- Opening a new account or opening a subsequent account where documents as per current KYC standards not been submitted while opening the initial account.
- Opening a Locker Facility where these documents are not available with the bank for all the Locker facility holders.
- When there are changes to signatories, mandate holders, beneficial owners etc.
- KYC is also carried out in respect of non-account holders approaching the bank for high value one-off transactions.