

## 21. The Prevention of Money Laundering Act, 2002

### Objectives

- Prevent money-laundering
- Combat channelling of money into illegal activities and economic crimes
- Provide for confiscation of property derived from, or involved in, money laundering
- Provide for matters connected therewith or incidental thereto.

### Definitions

- **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.
- **Proceeds or 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.
- **Property:** means any property or assets of every description, whether corporal 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.
- **Scheduled offence:** means
  - ✓ the offence specified under part A of the schedule; or
  - ✓ the offence specified under Part B of the schedule of total value involved in such offence is Rs. 30 lakh or more;
  - ✓ the offence specified under part C of the schedule.

### Punishment for money-laundering (Section 3)

- where commits of offences 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 which may extend to Rs. 5 Lakh.
- If the proceeds of crime involved in paragraph 2 of part A of the schedule, the imprisonment is up to 10 years.

### Banking companies, financial institution and intermediaries to maintain records (Section 12)

- **Duties**
  - ✓ Maintain a record for all transaction, the nature and value of which may be prescribed, whether such transaction comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within 1 month;
  - ✓ Furnish information or transaction to referred in clause (a) to the director within such time as may be prescribed;
  - ✓ Verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed.

- Furnishing of information where transaction below the prescribed value are suspicious
  - ✓ Where the principal officer of a banking company or FI or Intermediary, as the case may be, has reason to believe that single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transaction to the director within the prescribed time.
- The records shall be maintained for a period of 10 years.

### **Power of director to impose fine (section 13)**

#### **1. Inquiry**

- ✓ The director may, either of his own motion or an application made by any authority, office or person, call for records referred in above section 12, and make any such inquiry or cause such inquiry to be made, as he thinks fit.
- Imposition of fine
  - ✓ Shall not be less than Rs. 10,000 but may extend to Rs. 1 Lakh for each failure.
- The director has to forward a copy of order to such banking company, FI or intermediary about its offence and fine.
- As per section 14, save as otherwise provided in section 13, the BC, FI or I and other officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub section 1 of section 12.

### **Appeals to appellate tribunal (section 26)**

1. The director or any person aggrieved by the adjudicating authority under this act, may prefer to appeal to AA.
  2. Any BI, FI or I can make appeal against order of director to AA.
  3. Time limit – within 45 days of such order
  4. The AA can grant extension for time limit of application after giving opportunity of being heard.
  5. The AA can pass such orders thereon as he thinks fit, confirming, modifying or setting aside the order appealed against.
  6. The AA shall send a copy of order to concerned adjudicating authority and director, as the case may be.
  7. Time limit for disposing appeal is 6 months from the date of filing of appeal.
- As per section 41, no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the director, an adjudicating authority or AT 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 the said act.
  - As per section 42, any person aggrieved by any decision or order of AT may file an appeal to the HC within 60 days from the commencement of the decision made by AT. Extension may be allowed by HC.

### **Offence to be cognizable and non-bailable (section 45)**

- **Conditions:** notwithstanding anything contained in CPC, 1973, no person accused of an offence punishable for a term of imprisonment of more than 3 years under part A of the schedules shall be released on bail or on his own bond unless-
  - ✓ the public prosecutor has been given an opportunity to oppose the application for such release, and
  - ✓ Where the PP 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.
- **Condition for release**
  - ✓ If a person who is below 16 years and women or is a sick or infirm, he may be released on bail, if special court directs
- **Cognisance of offence**

The special court shall not take cognisance of any offence punishable under section 4 except upon a complaint in writing made by-

  - ✓ The director; or
  - ✓ Any officer of the CG or SG authorised in writing in this behalf by CH by a general or special order made in this behalf by that government.
- Notwithstanding anything contained in CPC, no police officer can investigate offence which covered under this Act. Unless specifically authorised by the CG.
- Condition for granting bail is as per CPC code or any law time being in force.

### **Authorities under the act (section 48)**

1. Director or additional director or joint director;
2. Deputy director;
3. Assistant director;
4. Such other class of officers as may be appointed for the purpose of this act.

### **Reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property (Section 56)**

- This section provides for agreements with foreign countries so that there is proper exchange of information with them.
- The CG may enter into an agreement with the Government of any country outside India for-
  - ✓ Enforcing the provisions of the Act;
  - ✓ Exchange of information for the prevention of offences under this act or under the corresponding law enforce in that country or investigation of cases relating to any offence under this act.