

Corporate and Economic Laws

REVISION NOTES FOR MAY/**JUNE**, 2020

Part C: Economic Laws

- ✓ *Covers entire applicable Economic Laws Syllabus*
- ✓ *Ideal for exam time revision*
- ✓ *No lengthy explanations or examples*
- ✓ *Updated with all relevant amendments (**Incl. RTP May, 2020**)*
- ✓ *Print Friendly*

2nd Edition

CA Mohit Bansal

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Important Instructions:

1. These notes contain all exam relevant topics applicable for Part C (Economic Laws) of CA-Final (New) Paper 4: Corporate and Economic Laws for May/June, 2020 Exams (**NOTES FOR PART A & B i.e. COMPANY LAW AND SECURITIES LAW ARE RELEASED SEPERATELY**). Therefore **everything in these notes is part of syllabus for May, 2020 Exams** and nothing is to be excluded anyway unless ICAI specifically excludes any topic by way of Announcement/Notification after 10TH April, 2020.

2. **These notes are meant for REVISION only** and therefore suggested to be referred by only those who have either read and understand the provisions of Economic Laws in detail from ICAI Study Material or any other Study Material/Classes.

3. These notes are prepared with intention to help students on the paper day for complete revision of Economic laws syllabus in less than 1 day. **There is no need to do MCQs separately** as they are also prepared from material.

At least 2 readings of the notes are **suggested, 1st before beginning of exams (in which student may put markings in these notes as per his/her convenience) and 2nd in days just before the Paper.**

4. Interpretation (i.e. Analysis) of most provision has not been included in these notes as the same would have defeated the purpose of these notes making them lengthy and difficult to cover in entirety. **However, necessary effects such as underlining or making the font Bold/Coloured have been made at appropriate places for easy interpretation and highlighting importance.** (Light coloured text may be skipped in last revision)

5. ALL AMENDMENTS COVERED

These notes are fully updated as per the amended relevant provisions of Applicable Economic Laws as effective on **31/10/2019** which is cut-off date for May/June, 2020 Exams. **Font of recent amendments has been made in Italics at relevant places.** Further, these notes cover updates of RTP for May, 2020 issued by BOS, ICAI recently. Complete RTP may be accessed at https://www.icai.org/post.html?post_id=14473.

6. Whether all “Rules” covered?

All relevant Rules/Regulations/Schedules/Case Laws/Circulars have been **covered** in these notes to the extent made part of syllabus by BOS, ICAI and most of them are given with relevant section(s). **YOU NEED NOT REFER ANY THING OTHER THAN THESE NOTES FOR ECONOMIC LAWS in Paper 4 except RTP as mentioned on Point 5.**

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7. What if there is any ERROR in any part of these notes?

Although due care has been taken while preparing these notes, in spite of this, if any error (typographical or otherwise) is noticed by you, then you may bring the same into my notice at below mentioned link so that the same can be taken care of in next edition.

Disclaimer: In case of any inadvertent error in notes, students themselves will be responsible for referring to the correct provision of Law and the author of these notes shall not be responsible for any loss, if any, incurred.

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The Prevention of Money Laundering Act, 2002 (PMLA, 2002)

QUICK INTRODUCTION

As per the preamble of PMLA, 2002, it is an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

PMLA, 2002 mandates that the investigation of the offence of money laundering be linked to the Scheduled Offences investigated by the concerned Central or State Law Enforcement Agencies. The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under PMLA, 2002. [PMLA also extends to the whole of India.](#)

Relevant Definitions
Sec 2(1)(p) "<u>money-laundering</u>" has the meaning assigned to it in section 3. [As per section 3, 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 and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.]
Sec 2(1)(n) "<u>intermediary</u>" means,- (i) 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 adviser or any other intermediary associated with securities market and registered u/s 12 of SEBI Act, 1992. (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or (iv) a recognised stock exchange referred to in clause (f) of section 2 of SCRA, 1956
Sec 2(1)(ra) "<u>offence of cross border implications</u>", means- (i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner] the proceeds of such conduct or part thereof to India; OR (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.
Sec 2(1)(rb) "<u>payment system</u>" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. Explanation.--For the purposes of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

Sec 2(1)(s) "person" includes— (i) an individual, (ii) a HUF, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.
Sec 2(1)(u) "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 or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.
Sec 2(1)(v) "property" means any property or assets of every description, whether corporeal 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; Explanation.--For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences.
Sec 2(1)(wa) "reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.
Sec 2(1)(fa) "beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.
Sec 2(1)(y) "scheduled offence" means— (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is ₹ 1 Crore or more; or (iii) the offences specified under Part C of the Schedule [AMENDMENT NOTE: Recently "Offences u/s 447 of Companies Act, 2013 i.e Punishment for Fraud" has been made a "scheduled offence" under Para 29 of Part A of Schedule of PMLA, 2002]
Sec 2(1)(za) "transfer" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.
Sec 2(1) (zb) "value" means the FMV of any property on the date of its acquisition by any person, or If such date cannot be determined, the date on which such property is possessed by such person.
Sec 2(1)(rc) "payment system operator" means a person who operates a payment system and such person includes his overseas principal.

Explanation.--For the purposes of this clause, "**overseas principal**" means,--

- (A) **in the case of a person, being an individual**, such individual **residing outside India**, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
- (B) **in the case of a HUF, Karta** of such HUF **residing outside India** who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
- (C) **in the case of a company, a firm, an association of persons, a BOI, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, BOI, artificial juridical person incorporated or registered outside India or existing as such** and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

Sec 2(1) (sa) "person carrying on designated business or profession" means,--

- (i) a **person carrying on activities for playing games of chance** for cash or kind, **and includes** such activities associated with **casino**;
- (ii) a **Registrar or Sub-Registrar** appointed u/s 6 of the Registration Act, 1908, as may be notified by the CG;
- (iii) **real estate agent**, as may be notified by the CG;
- (iv) **dealer in precious metals**, precious stones and other high value goods, as may be notified by the CG
- (v) **person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons**, as may be notified by the CG; or
- (vi) **person carrying on such other activities as the CG may, by notification, so designate**, from time to time

Sec 2(1)(w) "records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed.

Section 4 Punishment For Money Laundering [IMPORTANT]

Whoever 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 7 years** **and** shall also be liable to **fine (NO Limit)**.

Provided that where the proceeds of crime involved in money-laundering relates to any offence **specified under paragraph 2 of Part A of the Schedule**, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to **ten years**" had been substituted.

[Para 2 of Part A of the Schedule specifies Offences Under The Narcotic Drugs And Psychotropic Substances Act, 1985 which includes:

- **Embezzlement of opium by cultivator.**
- Contravention in relation to poppy straw, **coca plant and coca leaves**
- Contravention in relation to **prepared opium, opium poppy and opium.**
- Contravention in relation to **cannabis plant** and cannabis.
- Contravention in relation to manufactured drugs and preparations.
- Contravention in relation to **psychotropic substances.**
- **Illegal import** into India, **export** from India or **transshipment of narcotic drugs and psychotropic substances.**]

Interpretation Note: If any person is guilty of offence of money laundering then he **shall** be punishable with:

If Proceeds of Crime Relates to offence specified in:	Rigorous Imprisonment for
• Para 2 of Part A of the Schedule	3-10 years & Unlimited Fine
• Other than Para 2 of Part A of the Schedule	3-7 years & Unlimited Fine

Section 5 Attachment of property involved in money-laundering

(1) **Where the Director or any other officer** not below the rank of Deputy Director authorised by the Director for the purposes of this section, **has reason to believe** (the reason for such belief to be recorded in writing), on the basis of material in his possession, **that—**

(a) any person is in possession of any proceeds of crime;

and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, **a report has been forwarded to a Magistrate** u/s 173 of the Code of Criminal Procedure, 1973, **or a complaint has been filed by a person authorised to investigate the offence** mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, **or a similar report or complaint has been made or filed under the corresponding law of any other country:**

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of 180 days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding 30 days from the date of order of vacation of such stay order shall be counted.

(2) The **Director**, or any other officer not below the rank of Deputy Director, **shall, immediately after attachment** under sub-section (1), **forward a copy of the order**, along with the material in his possession, referred to in that sub-section, **to the Adjudicating Authority**, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made u/s 8(3), whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.--For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The **Director or any other officer who provisionally attaches** any property under sub-section (1) shall, within a period of 30 days from such attachment, **file a complaint stating the facts** of such attachment **before the Adjudicating Authority.**

Linked Provision: As per Section 2(1)(d) "**attachment**" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III [i.e ATTACHMENT, ADJUDICATION AND CONFISCATION]

Section 8 Adjudication [Important]

(1) **On receipt of a complaint** u/s section 5(5), or applications made u/s 17(4) or u/s 18(10), if the Adjudicating Authority has reason to believe that any person has committed an offence u/s 3 or is in possession of proceeds of crime, it **may serve a notice of not less than thirty days on such person calling upon him to indicate** the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached u/s 5(1), or, seized or frozen u/s 17 or section 18, **the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the CG:**

Provided that where a notice under this sub-section specifies any property as being held by a person on **behalf of any other person**, a copy of such **notice shall also be served upon such other person:**

Provided further that where such property is held **jointly** by more than one person, such notice shall be served to **all** persons holding such property.

(2) The Adjudicating Authority **shall**, after—

- (a) considering the reply, if any, to the notice issued under sub-section (1);
- (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; **and**
- (c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) **Where the Adjudicating Authority decides** under sub-section (2) that any **property is involved in money-laundering, he shall**, by an order in writing, **confirm the attachment of the property** made u/s 5(1) or retention of property or record seized or frozen u/s 17 or section 18 **and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—**

(a) **continue during investigation** for a period not exceeding **365 days** or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be;

and

(b) **become final after an order of confiscation** is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;

Explanation.--For the purposes of computing the period of 365 days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) **Where the provisional order** of attachment made under u/s 5(1) **has been confirmed u/s 8(3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property** attached u/s 5 or frozen u/s 17(1A), in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen u/s 17(1A), the order of confiscation shall have the same effect as if the property had been taken possession of.

8(5) **Where on conclusion** of a trial of an offence under this Act, **the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved** in the money laundering or which has been used for commission of the offence of money-laundering **shall stand confiscated to the CG.**

8(6) **Where on conclusion** of a trial under this Act, **the Special Court finds that the offence of money laundering has not taken place or the property is not involved** in money-laundering, it shall order release of such property to the person entitled to receive it.

8(7) **Where the trial** under this Act **cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed u/s 8(3), pass appropriate orders regarding confiscation or release of the property,** as the case may be, involved in the offence of money-laundering after having regard to the material before it.

8(8) **Where a property stands confiscated to the CG u/s 8(5), the Special Court, in such manner as may be prescribed, may also direct the CG to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:**

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

Section 9 Vesting of property in CG

Where an order of confiscation has been made u/s 8(5) or section 8(7) or section 58B or section 60(2A) in respect of any property of a person, all the rights and title in such property shall vest absolutely in the CG free from all encumbrances:

Provided that where the Special Court or the Adjudicating Authority, as the case may be, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized or frozen under Chapter V [SUMMONS, SEARCHES AND SEIZURES, ETC], is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Section 11A Verification of Identity by Reporting Entity (Recently Introduced)

11A(1) Every Reporting Entity **shall verify the identity** of its clients and the beneficial owner, **by—**

(a) **authentication under the Aadhaar** (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 **if the reporting entity is a banking company;**

or

(b) **offline verification under the Aadhaar** (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016;

or

(c) **use of passport issued** u/s 4 of the Passports Act, 1967;

or

(d) **use of any other officially valid document or modes** of identification **as may be notified by the CG** in this behalf

Provided that the **CG may, if satisfied** that a reporting entity other than banking company, complies with such the standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and it is necessary and expedient to do so, **by notification, permit such entity to perform authentication under clause (a):**

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established u/s 11(1) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the appropriate regulator.

11A(2) **If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.**

11A(3) **The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.**

[Interpretation Note: It means that the mode of verification of identity u/s 11A(1) is not mandatorily to be under Aadhaar(TDFOSB&S) Act, rather every client or beneficiary owner can, at his discretion, select any other mode of verification of identity among provided options in that provision. Here note that 'Verification of Identity' is mandatory u/s 11A, but 'selection of mode of verification among the provided options' is at discretion of client or beneficial owner]

11A(4) **If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.**

11A(5) Nothing in this section shall prevent the CG from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation.--The expressions "Aadhaar number" and core biometric information shall have the same meanings as are respectively assigned to them in section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

Section 12 Reporting entity to maintain records
(1) Every reporting entity shall— (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions; (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed; (c), (d) omitted (in view of Section 11A) (e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.
(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.
(4) The records referred to in clause (e) of sub-section (1) shall be maintained 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.
(5) The CG may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter. [Chapter IV: OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES]

Section 12A. Access to information.—

(1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.
(2) Every reporting entity shall furnish to the Director such information as may be required by him u/s 12A(1) within such time and in such manner as he may specify.
(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director u/s 12A(1), shall be kept confidential.

Section 13 Powers of Director to impose fine

(1) The **Director may**, either of his own motion or on an application made by any authority, officer or person, **make such inquiry** or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter.

(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the CG for this purpose.

(1B) The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the CG.

(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

(a) issue a warning in writing;

or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions;

or

(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking;

or

(d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ₹ 10,000 but may extend to ₹ 1 lakh for each failure.

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

Explanation.--For the purpose of this section, "accountant" shall mean a CA within the meaning of the Chartered Accountants Act, 1949.

Section 14 No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.—

Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information u/s 12(1)(b).

Section 15 Procedure and manner of furnishing information by reporting entities.—

The CG may, in consultation with the RBI, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity u/s 12(1) for the purpose of implementing the provisions of this Act.

Section 19 Power to Arrest

(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the CG by general or special order, has on the basis of material in his possession, **reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act**, he may **arrest such person** and shall, as soon as may be, **inform him of the grounds** for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within 24 hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of 24 hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's Court.

Section 48 Authorities under Act

There shall be the following classes of authorities for the purposes of this Act, namely:--

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) such other class of officers as may be appointed for the purposes of this Act.

APPEALS**Section 25 Appellate Tribunal**

The **Appellate Tribunal constituted u/s 12(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal** for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Section 26: Appeal to Appellate Tribunal.

26(1) Save as otherwise provided in sub-section (3), **the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.**

26(2) Any **reporting entity aggrieved by any order of the Director made u/s 13(2), may prefer an appeal to the Appellate Tribunal.**

26(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

26(4) **On receipt of an appeal** under sub-section (1) or sub-section (2), the **Appellate Tribunal may**, after giving the parties to the appeal an opportunity of being heard, **pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.**

26(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

26(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within 6 months from the date of filing of the appeal.

Section 38 Decisions to be taken by Majority

If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by third Member of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 41 Civil Court not to have Jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal 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 any power conferred by or under this Act.

Section 42 Appeal to High Court

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Explanation.--For the purposes of this section, "High Court" means--

- (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; **and**
- (ii) where the CG is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.



Hierarchy of Appeal under PMLA

Section 43 Special Courts

(1) The CG, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.--In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) **While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial**

Section 44 Offences Triable By Special Court

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,--

(a) **an offence punishable u/s 4 and any scheduled offence connected to the offence under that section** shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence;

or

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence u/s 3, without the accused being committed to it for trial;

(c) **if the court which has taken cognizance of the scheduled offence is other than the Special Court** which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), **it shall**, on an application by the authority authorised to file a complaint under this Act, **commit the case relating to the scheduled offence to the Special Court** and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 as it applies to a trial before a Court of Session.

(2) **Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail u/s 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated u/s 43**

Section 45 Offences to be cognizable and non-bailable [Very Important]

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **no person** accused of an offence under this Act shall be **released on BAIL or on his own bond unless—**

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release;
and

(ii) where the Public Prosecutor 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:

Provided that a person, who, is **under the age of 16 years**, or is a **woman** or is **sick or infirm**, or is **accused** either on his own or along with other co-accused **of money-laundering a sum of less than ₹ 1 crore** may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable u/s 4 except upon a complaint in writing made by—

(i) the Director;

or

(ii) any officer of the CG or a SG authorised in writing in this behalf by the CG by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, **no police officer shall investigate into an offence under this Act unless specifically authorised**, by the CG by a general or special order, and, subject to such conditions as may be prescribed.

(2) **The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure or any other law** for the time being in force on granting of bail.

Section 46 Application of Code of Criminal Procedure, 1973 to proceedings before Special Court

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Provided that the CG may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) **A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless** he has been in **practice as an advocate for not less than seven years**, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

Section 47 Appeal and Revision

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Chapter X: RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

Section 55 Definitions

In this Chapter, unless the context otherwise requires,--
(a) " contracting State " means any country or place outside India in respect of which arrangements have been made by the CG with the Government of such country through a treaty or otherwise;
(b) " identifying " includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;
(c) " tracing " means determining the nature, source, disposition, movement, title or ownership of property.

Section 56 Agreements with Foreign Countries

(1) The CG may enter into an agreement with the Government of any country outside India for— (a) enforcing the provisions of this Act; (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.
(2) The CG may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Section 57 Letter of Request to a Contracting State in certain cases

1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, <u>may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—</u> (i) examine facts and circumstances of the case, (ii) take such steps as the Special Court may specify in such letter of request, and (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.
(2) The letter of request shall be transmitted in such manner as the CG may specify in this behalf.
(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.

Section 58 Assistance to contracting State in certain cases

Where a letter of request is received by the CG from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the CG may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.

Section 62 Punishment for Vexatious Search (Important)

Any authority or officer exercising powers under this Act or any rules made thereunder, who, without reasons recorded in writing,--

- (a) searches or causes to be searched any building or place;
- or
- (b) detains or searches or arrests any person,

shall for every such offence be liable on conviction for imprisonment for a term which may extend to 2 years or fine which may extend to ₹ 50,000/- or both.

Section 63 Punishment for false information or failure to give information etc.

(1) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to 2 years or with fine which may extend to ₹ 50,000/- or both.

(2) If any person,--

(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act;

or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign;

or

(c) to whom a summon is issued u/s 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than ₹ 500/- but which may extend to ₹ 10,000/- for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against u/s 174 of the Indian Penal Code.

Section 64 Cognizance of Offences

- (1) No court shall take cognizance of any offence u/s 62 or u/s 63(1) except with the previous sanction of the CG.
- (2) The CG shall, by an order, either give sanction or refuse to give sanction within 90 days of the receipt of the request in this behalf.

Section 65 Code of Criminal Procedure 1973 to apply

The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act.

Section 66 Disclosure of Information

- (1) The **Director or any other authority** specified by him by a general or special order in this behalf **may** furnish or cause to be furnished to--
- (i) **any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances** under the Narcotic Drugs and Psychotropic Substances Act, 1985;
- or
- (ii) **such other officer, authority or body performing functions under any other law as the CG may**, if in its opinion it is necessary so to do in the public interest, **specify**, by notification in the Official Gazette, in this behalf,
- any information received or obtained** by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, **in the opinion of the Director or the other authority**, so specified by him, **be necessary for the purpose of the officer, authority or body specified** in clause (i) or clause (ii) to perform his or its functions under that law.
- (2) **If the Director or other authority specified under sub-section (1) is of the opinion**, on the basis of information or material in his possession, that **the provisions of any other law for the time being in force are contravened**, then the **Director or such other authority shall** share the information with the concerned agency for necessary action.

Section 67 Bar on Suits in Civil Courts

No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.

Section 69 Recovery of fine or penalty.—

Where any fine or penalty imposed on any person u/s 13 or section 63 is not paid within 6 months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Section 70 Offences by Companies (Important)

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly

Explanation 1.--For the purposes of this section,--

- (i) **"company" means any body corporate and includes a firm or other association of individuals;** and
- (ii) **"director", in relation to a firm, means a partner in the firm.**

Explanation 2.--For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

Section 71 Act to have Overriding Effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Section 72 Continuation of Proceeding in event of death or insolvency

(1) Where—

(a) any property of a persons has been attached u/s 8 and no appeal against the order attaching such property has been preferred;

or

(b) any appeal has been preferred to the Appellate Tribunal,

and--

(i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal;

or

(ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply, to such appeal.

72(2) Where—

(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High court u/s 42;
or

(b) any such appeal has been preferred to the High Court,--

then--

(i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court,

or

(ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provisions of section 42 shall, so far as may be, apply, or continue to apply, to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

OTHER RELEVANT QUESTIONS

- How does Money Laundering actually take place?

The process of Money Laundering generally involves the following **three stages (in sequence)**:

(a) Placement:- The Money Launderer, who is holding the money generated from criminal activities, 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:- The second stage of Money Laundering is 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:- Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then 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 might then choose to invest the funds into real estate, business ventures & luxury assets, etc.

- What are the possible actions which can be taken against persons / properties involved in Money Laundering?

Following actions can be taken against the persons involved in Money Laundering:-

(a) Attachment of property under Section 5, seizure/ freezing of property and records u/s 17 or 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.

(b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than 3 years but may extend up to 7 years and shall also be liable to fine [Section 4].

(c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than 3 years but which may extend up to 10 years and shall also be liable to fine [Section 4].

(d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

- What are the powers available to the Investigating Officers under the Act?

The Investigating Officers have the powers:-

- (a) to **provisionally attach** 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 [Section 5];
- (b) to **conduct survey** of a place [Section 16];
- (c) to **conduct search** of building, place, vessel, vehicle or aircraft & seize/freeze records & property [Section 17];
- (d) to conduct personal search [Section 18];
- (e) to **arrest persons** accused of committing the offence of Money Laundering [Section 19];
- (f) to **summon and record** the statements of persons concerned [Section 50].

- What is the time limit for retention of records or property seized during search & seizure? What is the time limit for continuation of the order of freezing of property/records frozen during search and seizure?

The property / record may, if seized be retained or if frozen may continue to remain frozen for a period not exceeding 180 days from the day on which such property or record were seized or frozen, unless the Adjudicating Authority under PMLA permits retention of such record or property beyond the period of 180 days [Sections 20 & 21].

- Upon whom is the burden of proof in any proceedings relating to proceeds of crime under PMLA, 2002?

- (a) In the case of a person charged with the offence of money-laundering u/s 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
- (b) In the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering [Section 24].

- What will happen if the Adjudicating Authority records the finding that all or any of the attached/seized/ frozen properties are not involved in money laundering?

In such cases, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized or the person entitled to receive it [Section 20(5)]. **However**, the Director or any other officer authorized by him in this behalf may withhold the release of any such property for a period of 90 days if he (Director of Enforcement) is of the opinion that such property is relevant for the appeal proceedings under this Act [Section 20(6)].

- What will happen to the seized/frozen records after confiscation of property involved in money laundering or used for the commission of the offence of the money laundering u/s 8 of PMLA?

After an order of confiscation of properties u/s 8 has been passed, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized. However, the Director or any other officer authorized by him in this behalf, may withhold the release of any such record for a period of 90 days if he (Director of Enforcement) is of the opinion that such property is relevant for the appeal proceedings under this Act [Section 21(5 & 6)].

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