THE PREVENTION OF MONEY LAUNDERING ACT, 2002

Money Laundering: It is the process by which illegal funds and assets are converted into legitimate funds and assets. In other words it is basically the process of converting illegal/ black money of a person in a legal or white money. It is the process used by criminals' to wash their "tainted" money to make it "clean."

Money laundering is a single process however; its cycle can be broken down into three distinct

stages

1. **Placement:** It is the first and the initial stage when the crime money is injected into the formal financial System.

2. **Layering**: Then under the second stage, money injected into the system is layered and moved or spread over various transactions in different accounts and different countries. Thus, it will become difficult to detect the origin of the money.

3. **Integration:** Under the third and final stage, money enters the financial system in such a way that original association with the crime is sought to be obliterated so that the money can then be used by the offender or person receiving as clean money.

Ex of Money Laundering: Cash Smuggling, Structuring, Laundering via Real Estate, Stock Markets scams, By creating bogus companies., Drug Trafficking;, Bribery and Corruption, Kidnapping and Extortion, Hawala

The Bill received the assent of the President and became the Prevention of Money Laundering Act, 2002 on 17th January 2003.

DEFINITIONS

I. section 2(1)(p) provides that "*money-laundering*" has the meaning assigned to it in section 3. Moving to section 3, it is observed that 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.

II. Section 2(1)(u) defines "*proceeds of crime*" as 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;

III. section 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.

The term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

IV. The term "*scheduled offence*" has been defined in clause (y) of sub-section (1) of section

2. It means – (a) the offences specified under Part A of the Schedule; or (b) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

Whosoever (directly or indirectly) attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process/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

"Reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

PUNISHMENT FOR THE OFFENCE OF MONEY

LAUNDERING [SECTION 3 AND 4]

Section 3 deals with the offence of money laundering which has been discussed in the definition

part above.

Section 4 provides for the Punishment for Money-Laundering- Whoever 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 (i.e. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985)1, the maximum punishment may extend to ten years instead of seven years.

OBLIGATION OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

12(1)(a)	Maintain record of all transactions
12(1)(b)	Information's, transaction and nature to director
12(1)(c)	Verify –Identity of clients
12(1)(d)	Identify – Beneficial owner if any clients
12(1)(e)	Maintain record –Docs evidence identity of its clients and beneficial owners
12(2)	Information maintained or furnished to be confidential
12(3)	Records shall be maintained for period of 5 years from date of transaction
12(4)	5 years from the later of business relation ended/accs closed
12(5)	Exemption reporting entity/class of reporting entity by CG

Access to information [Section 12A]

This section empowers Director to call for any of the above records and for any additional information as he considers necessary, from any reporting entity. Every reporting entity shall furnish to the Director the required information within such time and manner as he may specify. Every information sought by the Director shall be kept confidential.

Power of director to impose fine [Section 13]

According to the section following are the powers of the Directors:

- Order to make an inquiry:

13(1)	On receipt of application from any authority , officer or person or suomoto director can conduct enquiry
13(1A)	If director was in opinion the audit of accounts was necessary then he may give direct to the reporting authority to get the records audited by the CA or panel of CA
13(1B)	Expense of audit and expenses and incidental there to borne by CG
13(2)	If director finds failure to comply by reporting entity or employee he will written warning to comply specific directions and direct to send reports on measures taken . if failure penalty min 10000 max 1 lakh
13(3)	Director shall send copy of order to reporting entity or any such person in party

- 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 ten thousand rupees but may extend to one lakh rupees for each failure.

- Copy of order to be forwarded to the reporting entity: The Director shall forward a copy of the order passed to every banking company, financial institution or intermediary or person who is a party the proceedings.

- No civil or criminal proceedings: Act gives immunity to reporting entity, its directors etc., against civil or criminal proceedings for furnishing information under clause (b) of sub-section (1) of section12.

ATTACHMENT, ADJUDICATION AND CONFISCATION

"Attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act.

"Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of

section 6.

Attachment of property involved in money-laundering [Section 5]

✓ Order for provisional attachment: Where the Director or any other officer (not below the rank of Deputy Director authorised by the Director), has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) issue warning in writing to comply (10,000 to 1 Lac/ failure)

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner then, he may, by order in writing, provisionally attach such property for a period not 180 from the date of the order, in such manner as may be prescribed.

Condition for attachment: 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 or a complaint has been filed by a person authorised to investigate the offence mentioned before magistrate or a similar report or complaint has been made or filed under the corresponding law of any other country.

- the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

- Forward of copy of attachment to adjudicating authority: The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment ,forward a copy of the order, along with the material in his possession, , to the Adjudicating Authority, in a sealed

envelope, in the prescribed manner and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

- Period of validity of attachment order: 180 or date of order whichever is earlier
- No effect on the right to enjoy the property: This section shall not prevent the person interested in the enjoyment of the immovable property attached from such enjoyment.

"person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

- Complaint against the attachment before the AA: The Director or any other officer who provisionally attaches any property shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority (AA).

- if the Adjudicating Authority believe that offence committed under section 3 then serve a notice of not less than 30 days to indicate-

• the sources of his income, earning or assets, the evidence, other relevant information and particulars, to show cause not be declared to be the properties involved in money-laundering and confiscated by the Central Government.

- If joint holders both parties (opportunity to be heard)
- Whereupon such attachment, retention, or freezing of the seized or frozen property or record,

AA 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 by the Special Court .

  - the Special Court finds that the offence of money laundering has not taken place then it shal lorder release of such property to the person entitled to receive it.

  - Where a property stands confiscated to the Central Government under section 8(5), the Special Court, in such manner as may be prescribed, may also direct the Central Government 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:

- Where an order of confiscation has been made in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.

HIERARCHY UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002

Section 48 provides for the following classes of authorities for the purposes of this Act, namely:-

1. Director or Additional Director or Joint Director, Deputy Director, Assistant Director, and such other class of officers as may be appointed for the purposes of this Act.

2. Appellate Tribunal :The Appellate Tribunal constituted under section 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.

- Director or any person aggrieved can appeal against order made by AA/ Any reporting entity aggrieved by any order of the Director to AT within 45 days of receipt of order + Extension max 45 days

- AT shall give opportunity to be heard to parties and confirm, modify/set aside order of AA(natural justice)

- Time frame for disposing off appeal within 6 months from the date of filing of the appeal

- Sec 42- from order of AT to High court within 60 days+ Max 60 days extension (Question of law/fact)

  - Civil court not to have jurisdiction
  - 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 Appeal to High Court [Section 42]

SPECIAL COURTS

Sections 43 – 47 deals with provision relating to Special Courts.

Section 43 empowers the CG in consultation with the Chief Justice of the High Court for trial of offence of money laundering (offence punishable under section 4), to designate one or more Courts of Sessions as Special Court or Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect.

- It overrides the provisions of the CrPC, 1973 and Trail of offence punishable under section 4 and any scheduled offence: an offence punishable under section 4 and any scheduled offence committed under this Act
- Cognizance of offence under section 3 by special Court upon a complaint made by an authority and Transfer of scheduled offence to special court: if the court which has taken cognizance (Director, officer of CG, police report)
- Same powers under CrPC

- Nature of offence of money laundering were cognizable and non bailable
  - Release on accused on bail: by opportunity to public prosecutor to oppose, court satisfied not guilty or not likely to commit any offence
  - If age less than 16 years/woman/sick/infirm release if special court directs
  - No cognizance of offence except complaint made by Director, officer of CG/SG or along with other co-accused of money laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs.

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS

"Offence of cross border implications", 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.

"Contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treatyor otherwise;

Agreements with foreign countries [Section 56]

- 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

2. The Central Government may, by notification in the Official Gazette, direct that the application in relation to a contracting State with which reciprocal arrangements have been made.

3. If, in the course of an investigation into an offence or other proceeding an application is made to a Special Court by the Investigating Officer if any evidence is required if such evidence is required in connection with the proceedings Contracting State any country or place outside India arrangement is made by CG with the other country Through Treaty or otherwise

4. CG agreement with Other country (for) Enforcing the provisions of this Act Exchange of information Prevention of any offence under this Act Prevention of offence under corresponding law in force in that country Investigation of cases relating to any offence under this Act under this

Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-

(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.

- ✓ Every statement recorded or document or thing received shall be deemed to be the evidence
- ✓ Assistance to a contracting State in certain cases [Section 58]

RECOVERY OF FINE OR PENALTY

Punishment for vexatious search [Section 62]: imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

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

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 two years or with fine which may extend to fifty thousand rupees 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 under section 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 rupees but which may extend to 10,000 rupees for each such default or failure.

Cognizance of offences [Section 64]

1. previous sanction of the Central Government required

2. The CG either give sanction or refuse to give sanction within ninety days of the receipt of the request in this behalf.

- India has followed the recommendations of Financial Action Task Force (FATF) and criminalized money laundering. FATF is an international government body. Financial Intelligence Unit of India (FIU_IND) was also set up at New Delhi with an objective to coordinate and strengthen the collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and all the related crimes.