

PREVENTION OF MONEY LAUNDERING ACT, 2002

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Introduction

- It came into force on 01-07-2005. Further amended by,
 - Prevention of Money-laundering (Amendment) Act, 2005, w.e.f. 1-7-2005
 - Prevention of Money-laundering (Amendment) Act, 2009, w.e.f. 1-6-2009
 - Prevention of Money-laundering (Amendment) Act, 2012, w.e.f. 15-2-2013.
 - By Finance Act, 2015 and 2016
 - Proposed by Finance Bill, 2018.
- “Money laundering” is the process of transforming the proceeds of crime and corruption into apparently legitimate assets.
- It involves three steps:
 - a) **Placement**, introducing cash into the financial system by some means.
 - b) **Layering**, carrying out complex financial transactions to camouflage the illegal source of the cash.
 - c) **Integration**, acquiring wealth generated from the transactions of the illicit funds.

Important Definitions

- **"attachment"** means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III.
- **"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. *(w.e.f. 15-2-2013)*
- **"client"** means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting. *(w.e.f. 15-2-2013)*
- **"notification"** means a notification published in the Official Gazette;
- **"reporting entity"** means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. *(w.e.f. 15-2-2013)*
- **"transfer"** includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

- **"offence of cross border implications"**, (*w.e.f 01-06-2009*)
 - 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.
- **"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. (*amended by Finance Act, 2015*)
- **"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 one crore rupees or more; or
 - iii. the offences specified under Part C of the Schedule

Schedule – Part A

Para 1 - Offences Under The Indian Penal Code

- Criminal conspiracy (120B)
- Waging or attempting to wage war or abetting waging of war, against the Government of India (121)
- Conspiracy to commit offences punishable by section 121 against the State (121A)
- Counterfeiting Government stamp (255)
- Making or selling instrument for counterfeiting Government stamp(257)
- Sale of counterfeit Government stamp (258)
- Having possession of counterfeit Government stamp (259)
- Using as genuine a Government stamp known to be counterfeit (260)
- Murder (302)
- Punishment for culpable homicide not amounting to murder (304)
- Attempt to murder (307)
- Attempt to commit culpable homicide (308)
- Voluntarily causing hurt to extort property, or to constrain to an illegal act (327)

- Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act (329)
- Kidnapping for ransom, etc. (364A)
- Offences relating to extortion (384 to 389)
- Offences relating to robbery and dacoity (392 to 402)
- Dishonestly receiving stolen property (411)
- Dishonestly receiving property stolen in the commission of a dacoity (412)
- Habitually dealing in stolen property (413)
- Assisting in concealment of stolen property (414)
- Punishment for cheating (417)
- Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect (418)
- Punishment for cheating by personation (419)
- Cheating and dishonestly inducing delivery of property (420)
- Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors (421)
- Dishonestly or fraudulently preventing debt being available for creditors (422)

- Dishonest or fraudulent execution of deed of transfer containing false statement of consideration (423)
- Dishonest or fraudulent removal or concealment of property (424)
- Forgery of valuable security, will, etc. (467)
- Using as genuine a forged document or electronic record (471)
- Making or possessing counterfeit seal, etc., with intent to commit forgery (472 and 473)
- Counterfeiting device or mark (475 and 476)
- Using a false property mark (481)
- Punishment for using a false property mark (482)
- Counterfeiting a property mark used by another (483)
- Counterfeiting a mark used by a public servant (484)
- Making or possession of any instrument for counterfeiting a property mark (485)
- Selling goods marked with a counterfeit property mark (486)
- Making a false mark upon any receptacle containing goods (487)
- Punishment for making use of any such false mark (488)
- Counterfeiting currency notes or bank notes (489A)
- Using as genuine, forged or counterfeit currency notes or bank notes (489B)

Para 2 - Offences Under The Narcotic Drugs And Psychotropic Substances Act, 1985

- Contravention in relation to poppy straw (15)
- Contravention in relation to coca plant and coca leaves (16)
- Contravention in relation to prepared opium (17)
- Contravention in relation to opium poppy and opium (18)
- Embezzlement of opium by cultivator (19)
- Contravention in relation to cannabis plant and cannabis (20)
- Contravention in relation to manufactured drugs and preparations (21)
- Contravention in relation to psychotropic substances (22)
- Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances (23)
- External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (24)
- Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (25A)
- Financing illicit traffic and harbouring offenders (27A)
- Abetment and criminal conspiracy (29)

Para 3 - Offences Under The Explosive Substances Act, 1908

- Causing explosion likely to endanger life or property (3)
- Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property (4)
- Making or possessing explosives under suspicious circumstances (5)

Para 4 - Offences Under The Unlawful Activities (Prevention) Act, 1967

- Penalty for being member of an unlawful association, etc. (10 r.w.s 3)
- Penalty for dealing with funds of an unlawful association (11 r.w.s 3)
- Punishment for unlawful activities (13 r.w.s 3)
- Punishment for terrorist act (16 r.w.s 15)
- Punishment for making demands of radioactive substances, nuclear devices, etc. (16A)
- Punishment for raising fund for terrorist act (17)
- Punishment for conspiracy, etc. (18)
- Punishment for organising of terrorist camps (18A)
- Punishment for recruiting of any person or persons for terrorist act (18B)
- Punishment for harbouring, etc. (19)

- Punishment for being member of terrorist gang or organization (20)
- Punishment for holding proceeds of terrorism (21)
- Offence relating to membership of a terrorist organization (38)
- Offence relating to support given to a terrorist organization (39)
- Offence of raising fund for a terrorist organization (40)

Para 5 - Offences Under The Arms Act, 1959

- To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959. To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959. Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc. Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas. (25)

- To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act. To do any act in contravention of any provisions of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act (26)
- Use of arms or ammunition in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959 (27)
- Use and possession of fire arms or imitation fire arms in certain cases (28)
- Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same (29)
- Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder (30)

Para 6 - Offences Under The Wild Life (Protection) Act, 1972

- Hunting of wild animals (51 r.w.s 9)
- Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants (51 r.w.s 17A)
- Contravention of provisions of section 39 relating to wild animals, etc., to be Government property (51 r.w.s 39)
- Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited (51 r.w.s 44)
- Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee (51 r.w.s 48)
- Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals (51 r.w.s 49B)

Para 7 - Offences Under The Immoral Traffic (Prevention) Act, 1956

- Procuring, inducing or taking person for the sake of prostitution (5)
- Detaining a person in premises where prostitution is carried on (6)
- Seducing or soliciting for purpose of prostitution (8)
- Seduction of a person in custody (9)

Para 8 - Offences Under The Prevention Of Corruption Act, 1988

- Public servant taking gratification other than legal remuneration in respect of an official act. (7)
- Taking gratification in order, by corrupt or illegal means, to influence public servant (8)
- Taking gratification for exercise of personal influence with public servant. (9)
- Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988. (10)
- Criminal misconduct by a public servant. (13)

Para 9 - Offences Under The Explosives Act, 1884

- Punishment for certain offences. (9B)
- Offences by companies. (9C)

Para 10 - Offences Under The Antiquities And Arts Treasures Act, 1972

- Contravention of export trade in antiquities and art treasures. (25 r.w.s 3)
- Offences by companies. (28)

Para 11 - Offences Under The Securities And Exchange Board Of India Act, 1992

- Prohibition of manipulative and deceptive devices, insider trading and substantial. (12A r.w.s 24)
- Acquisition of securities or control. (24)

Para 12 - Offences Under The Customs Act, 1962

- Evasion of duty or prohibitions. (135)

Para 13 - Offences Under The Bonded Labour System (Abolition) Act, 1976

- Punishment for enforcement of bonded labour. (16)
- Punishment for extracting bonded labour under the bonded labour system. (18)
- Abetment to be an offence. (20)

Para 14 - Offences Under The Child Labour (Prohibition And Regulation) Act, 1986

- Punishment for employment of any child to work in contravention of the provisions of section 3. (14)

Para 15 - Offences Under The Transplantation Of Human Organs Act, 1994

- Punishment for removal of human organ without authority. (18)
- Punishment for commercial dealings in human organs. (19)
- Punishment for contravention of any other provisions of this Act. (20)

Para 16 - Offences Under The Juvenile Justice (Care And Protection Of Children) Act, 2000

- Punishment for cruelty to juvenile or child. (23)
- Employment of juvenile or child for begging. (24)
- Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child. (25)
- Exploitation of juvenile or child employee. (26)

Para 17 - Offences Under The Emigration Act, 1983

- Offences and penalties. (24)

Para 18 - Offences Under The Passports Act, 1967

- Offences and penalties. (12)

Para 19 - Offences Under The Foreigners Act, 1946

- Penalty for contravention of provisions of the Act, etc. (14)
- Penalty for using forged passport. (14B)
- Penalty for abetment. (14C)

Para 20 - Offences Under The Copyright Act, 1957

- Offence of infringement of copyright or other rights conferred by this Act. (63)
- Enhanced penalty on second and subsequent convictions. (63A)
- Knowing use of infringing copy of computer programme. (63B)
- Penalty for contravention of section 52A. (68A)

Para 21 - Offences Under The Trade Marks Act, 1999

- Penalty for applying false trade marks, trade descriptions, etc. (103)
- Penalty for selling goods or providing services to which false trade mark or false trade description is applied. (104)
- Enhanced penalty on second or subsequent conviction. (105)
- Penalty for falsely representing a trade mark as registered. (107)
- Punishment of abetment in India of acts done out of India. (120)

Para 22 - Offences Under The Information Technology Act, 2000

- Penalty for breach of confidentiality and privacy. (72)
- Act to apply for offence or contravention committed outside India. (75)

Para 23 - Offences Under The Biological Diversity Act, 2002

- Penalties for contravention of section 6, etc. (55 r.w.s 6)

Para 24 - Offences Under The Protection Of Plant Varieties And Farmers' Rights Act, 2001

- Penalty for applying false denomination, etc. (70 r.w.s 68)
- Penalty for selling varieties to which false denomination is applied. (71 r.w.s 68)
- Penalty for falsely representing a variety as registered. (72 r.w.s 68)
- Penalty for subsequent offence. (73 r.w.s 68)

Para 25 - Offences Under The Environment Protection Act, 1986

- Penalty for discharging environmental pollutants, etc., in excess of prescribed standards. (15 r.w.s 7)
- Penalty for handling hazardous substances without complying with procedural safeguards. (15 r.w.s 8)

Para 26 - Offences Under The Water (Prevention And Control Of Pollution) Act, 1974

- Penalty for pollution of stream or well. (41(2))
- Penalty for contravention of provisions of section 24. (43)

Para 27 - Offences Under The Air (Prevention And Control Of Pollution) Act, 1981

- Failure to comply with the provisions for operating industrial plant. (37)

Para 28 - Offences Under The Suppression Of Unlawful Acts Against Safety Of Maritime Navigation And Fixed Platforms On Continental Shelf Act, 2002

- Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc. (3)

Para 29 - OFFENCE UNDER THE COMPANIES ACT, 2013

- Punishment for fraud (447)

Schedule – Part B *(Omitted by Prevention of Money-laundering (Amendment) Act, 2012,)*

Schedule – Part C

An offence which is the offence of cross border implications and is specified in,—

- 1) Part A; or
- 2) *[omitted]*
- 3) the offences against property under Chapter XVII of the Indian Penal Code.

Offence of money-laundering (Sec 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. (*Amended by Prevention of Money-laundering (Amendment) Act, 2012, w.e.f. 15-2-2013*)



Punishment for the offence are...

(Sec 4)

- Imprisonment for not less than **3 years** but which may extend to **7 years**,
- In specified cases, imprisonment may extend to **10 years**.
- Also, liable to fine. *(Amended by Prevention of Money-laundering (Amendment) Act, 2012)*



Projecting proceeds untainted after Act is applicable, makes the retrospective effect of Act

- “Projecting the proceeds of crime as untainted property” attracts the applicability of penal provisions of PMLA, 2002
- Sales proceeds or property derived from a crime, which at that time, was not a scheduled offence, but was a scheduled offence when such sales proceeds or property projected as untainted, there would be no bar to the applicability of the Act.
- If the proceeds of crime , which has been declared as a ‘Scheduled Offence’ on the day on which the ‘projection of such proceeds’ as ‘untainted’ is attempted or undertaken, the provisions of the Act would apply.
- ***Hansan Ali v. Union of India (Criminal Bail Application No. 994 of 2011, 12-08-2011, Bombay)***

Relevant Date for Prosecution

- As contained in section 3, 2(1)(u), 2(1)(v) of the Prevention of Money Laundering Act, 2002, it would appear that any person who involves himself directly or indirectly with any process or activity connected with the proceeds of crime and projects it as untainted will be prosecuted u/s 3.
- The date on which scheduled offence was committed is of no relevance.
- The relevant date for prosecution is when one person is found involved in any process or activity connected with the proceeds of crime and projects it as untainted i.e. Date of Money laundering.
- Held in ***Narendra Mohan Singh v. Directorate of Enforcement, 2014 (2) E Cr C 518***

ATTACHMENT, ADJUDICATION AND CONFISCATION (*Sec 5*)



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

- person is in possession of any proceeds of crime; and
- 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 removal 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.

- *No order of attachment shall be made unless, in relation to the offence, a report has been forwarded to a Magistrate under u/s 173 of the Code of Criminal Procedure or a complaint has been filed by a person authorised to investigate the offence, 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.*
- **(Substituted by Prevention of Money-laundering (Amendment) Act, 2012)**

***Provided** also that for the purposes of computing the period of one hundred and eighty 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 thirty days from the date of order of vacation of such stay order shall be counted. (proposed by Finance Bill, 2018)*

- 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 prescribed period .
- Every order of attachment made, shall not effect after the expiry of the period specified in this section or on the date of an order made under *sub-section (3)* of section 8, whichever is earlier. *(proposed by Finance Bill, 2018)*
- Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached.
- The Director or any other officer who provisionally attaches any property shall, within a period of 30 days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Properties of Person not wanted in Scheduled offence can also be attached

- The designated officer can provisionally attach a property which, does not concern a person charged with a scheduled offence as long as he has reason to believe, based on the material in his possession, that a person is in possession of proceeds of crime and such proceeds are likely to be concealed, transferred or dealt within any manner may result in frustrating proceedings relating to confiscation of proceeds of crime.
- If scheduled offence is not established, the proceedings under the Act should end. *Mahanivesh Oils and Foods Pvt. Ltd. v. Directorate of Enforcement, 2016 (228) 142*, where the persons accused of a scheduled offence are acquitted, the fundamental premises that any proceeds have been derived or obtained from any activity relating to a scheduled offence by either the persons accused or any other person linked to them would also not hold good and therefore, any proceeding initiated under the Act would have to be terminated.

- Writ petition against provisional order not maintainable in view of *post facto* hearing is provided in the aftermath of a provisional attachment being under section 8 full dress hearing and for grant of complete opportunity to the aggrieved party in that behalf.
- ***Gautam Khaitan v. Union of India, 2015 (218) DLT 183***

Who is Adjudicating Authority? (Sec 6)

- The Central Government shall, by notification, appoint an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act.
- The Authority shall consist of a Chairperson and two other members, provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.
- A person is not qualified for appointment as Member of an Adjudicating Authority:—
 - in the field of law, unless he is qualified for appointment as District Judge or has been a Member of the Indian Legal Service and has held a post in Grade I of that service.
 - in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.

- The jurisdiction of the Adjudicating Authority may be exercised by Benches which may be constituted by the Chairperson of the Authority with one or two Members as the Chairperson may deem fit.
- The Central Government shall, by notification, specify the areas in relation to which each Bench of the Authority may exercise jurisdiction. The Chairperson may transfer a member from one Bench to another.
- If at any stage of the hearing of a case, it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench, then it will be transfer to the bench as the Chairperson may deem fit.
- The Chairperson and members shall hold office till 5 years from the date of their joining or attained the age of 65 years, whichever is earlier.
- The Chairperson or any member may resign his office by giving notice in writing addressed to the Central Government. They cannot be removed from their office except by an order made by the Central Government after giving necessary opportunity of hearing.

Staff of Adjudicating Authorities

(Section 7)

1. The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.
2. The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.
3. The salaries and allowances and other conditions of service of the officers and employees of the Adjudicating Authority shall be such as may be prescribed.

Adjudication (Sec 8)

- If the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, it 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, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5.
- If 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 and if held jointly by more than one person, such notice shall be served to all persons holding such property.
- The Adjudicating Authority after considering reply to the notice issued, all relevant materials, hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, record a finding by an order whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering.

After this, the authority by an order in writing confirm the attachment of property and such attachment will continue during “investigation for a period not exceeding **90 days** or the pendency of the proceedings of any offence under this Act before a court or under the corresponding law of any other country, before the competent court outside India, as the case may be. *(proposed by Finance Bill, 2018)*

- The attachment become final after an order of confiscation is passed under *sub-section 5 (Special Court finds that the offence has been committed), or sub-section 7 (the trial 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)*, of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority.
- Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached in such manner as may be prescribed.
- Where on conclusion of a trial under this Act, the Special Court finds that the offence has not been committed or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

Link between sec 5(1) & sec 8

- The decision of ED u/s 5(1) is tentative and can become effective only after an order is passed by the adjudicating authority under section 8.
- Provision in section 5 cannot be seen in isolation, but has to be read with provision in section 8.

Property after confiscation

- **(Section 9)** Where an order of confiscation has been made under *sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60* 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.

Management of properties confiscated (Section 10)

- The Central Government by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator. They shall receive and manage the property in relation to which an order has been made under in manner and subject to conditions as may be prescribed.

The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 9.



Powers of Adjudicating Authority *(Sec 11)*

- The Adjudicating Authority have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters namely,
 - ✓ discovery and inspection
 - ✓ enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
 - ✓ compelling the production of records;
 - ✓ receiving evidence on affidavits;
 - ✓ issuing commissions for examination of witnesses and documents; and
 - ✓ any other matter which may be prescribed.
- All the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are and produce required documents.
- Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the IPC(45 of 1860).

Obligation of Reporting Entities (Sec 12)

- Reporting Entities include **banking companies, financial institutions and intermediaries.**
- Every information maintained, shall be kept confidential.
- 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; **(record maintained for 5 years from the date of transaction between a client and the reporting entity)**
 - 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) verify the identity of its clients;
 - d) identify the beneficial owner, if any;
 - 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. **(record maintained for 5 years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is late)**

Access to information (Sec 12A)

- The Director may call for from any reporting entity any of the records referred to in section 12 and any additional information as he considers necessary for the purposes of this Act.
- Every reporting entity shall furnish to the Director such information as may be required by him, within such time and in such manner as he may specify.



Powers of director to impose fine

(Sec 13)

- The Director may, either by his own or on an application made by any authority or person, make such inquiry, as he thinks fit to be necessary, with regard to the obligations of the reporting entity.
- 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, **(accountant here means Chartered Accountant)** maintained by the Central Government for this purpose. The expenses of, and incidental to, any audit shall be borne by the Central Government.

- 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, then he may—
 - issue a warning in writing; or
 - direct them to comply with specific instructions; or
 - direct them, to send reports at such interval as may be prescribed on the measures it is taking; or
 - by an order, impose a monetary penalty, which shall not be less than Rs. 10,000 but may extend to Rs. 1,00,000 for each failure.
- The Director shall forward a copy of the order passed mentioned above to every banking company, financial institution or intermediary or person who is a party to the proceedings.
- **(Section 14)** 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 under section 12.

No civil or criminal proceedings against reporting entity, its directors and employees in certain cases (*Section 14*)

- 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 under clause (b) of sub-section (1) of section 12.]
- **(Section 14)** *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 under section 12.*

Procedure and manner of furnishing information by reporting entities

(Section 15)

- The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.

Power of Survey (*Sec 16*)

- 1) If an authority, on the basis of material in his possession, has reason to believe (to be recorded in writing) that an offence under section 3 has been committed, he may enter any place—
 - within the limits of the area assigned to him; or
 - in respect of which he is authorised by other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,—

- afford him the necessary facility to inspect such records as he may require and which may be available at such place;
- afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and
- furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

- 2) The authority referred to in sub-section (1) shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with material in his possession to the Adjudicating Authority in a sealed envelope in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed.

- 3) An authority acting under this section may—
 - place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom,
 - make an inventory of any property checked or verified by him, and
 - record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.

Search and seizure (*Sec 17*)

- Where the Director or any other officer not below the rank of Deputy Director authorised by him, on the basis of information in his possession, has reason to believe (to be recorded in writing) that any person, has committed any act or in possession of any proceeds of crime or any records, property related to crime involved in money laundering.
- he may authorise any officer subordinate to him to
 - search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
 - break open the lock of any door, box, locker, safe, almirah or other holder, where the keys are not available;
 - seize any record or property found as a result of such search;
 - place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;
 - make a note or an inventory of such record or property;
 - examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

- Where it is not practicable to seize such record or property, the authorised officer may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.
- The authorized authority shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the prescribed manner and such Adjudicating Authority shall keep such reasons and material for prescribed period.
- Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence is likely to be concealed or tampered with, he may, for reasons (to be recorded in writing), enter and search the building or place where such evidence is located and seize that evidence.
- The authority seizing any record or property or freezing any record or property under sub-section (1A) shall, within a period of 30 days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.

Search of Persons (*Sec 18*)

- If an authority, authorised by the Central Government by general or special order, has reason to believe (to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act.
- The authority, who has been authorised shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the prescribed manner, and such Adjudicating Authority shall keep such reasons and material for prescribed period.
- Where an authority is about to search any person, he shall, if such person so requires, take such person within 24 hours (excluding journey time) to the nearest Gazetted Officer, superior in rank to him, or a Magistrate.

- The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, without delay discharge such person but otherwise shall direct that search be made.
- Before making the search, the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.
- The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.
- The authority shall record the statement of the person searched in respect of the records or proceeds of crime found or seized in the course of the search.
- The authority, seizing any record or property shall, within a period of 30 days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.

Power to arrest (*Sec 19*)

1. If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government 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 twenty-four 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 twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the ***Special Court or*** Magistrate's Court.
(proposed by Finance Bill, 2018)

Retention of property (*Sec 20*)

- Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (to be recorded in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property 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 was seized or frozen, as the case may be.
- The authorised officer shall, immediately after passing an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, 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 prescribed period.
- On the expiry of the period (180 days), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

- The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period(180 days) shall satisfy himself that the property is prima facie involved in money-laundering and the property is required for the purposes of adjudication under section 8.
- After passing the order of confiscation section 8, the Court or the Adjudicating Authority, as the case may be, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.
- Where an order releasing the property has been made by the Court section 8 or by the Adjudicating Authority under section 58B or section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of 90 days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

Retention of records (*Sec 21*)

- Where any records have been seized, or frozen u/s 17 or 18 and authorised officer has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records 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 records were seized or frozen, as the case may be.
- The person, from whom records seized or frozen, shall be entitled to obtain copies of records.
- On the expiry of the period (180 days) the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.
- The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period, shall satisfy himself that the records are required for the purposes of adjudication under section 8.

- After passing of an order of confiscation u/s 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.
- Where an order releasing the records has been made by the Court u/s 8 or by the Adjudicating Authority under section 58B or section 60, the authorised officer may withhold the release of any such record for a period of 90 days from the date of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.

Presumption as to records or property in certain cases (*Sec 22*)

- Where any records or property are found in the possession of any person in the course of a survey, or where any record or property is produced by any person or has been resumed or seized from the custody of any person or has been frozen under this Act, it shall be presumed that—
 - such records or property belongs to such person;
 - the contents of such records are true; and
 - the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

- Where any records have been received from any place outside India, duly authenticated by such authority or person and in prescribed manner, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—
 - presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
 - admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Presumption in inter-connected transactions (*Sec 23*)

- Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court, be presumed that the remaining transactions form part of such inter-connected transactions.

Burden of proof (*Sec 24*)

In any proceeding relating to proceeds of crime under this Act,—

- 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
- in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

Appellate Tribunal (*Sec 25*)

- The Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976) shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act. (*Substituted by Finance Act, 2016*)

Appeals to Appellate Tribunal (*Sec 26*)

- 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.
- Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.
- Every appeal preferred under sub-section (1) or (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 the prescribed form along with prescribed fee.

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

- On receipt of an appeal under sub-section (1) or (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.
- 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.
- 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 27** *Composition, etc., of Appellate Tribunal Finance Act 2016 (omitted by the Finance Act, 2016)*
- **Section 28** *Qualifications for appointment Finance Act 2016 (omitted by the Finance Act, 2016)*
- **Section 29** *Term of office (omitted by the Prevention of Money-laundering (Amendment) Act, 2005)*
- **Section 30** *Conditions of service (omitted by the Finance Act, 2016)*
- **Section 31** *Vacancies (omitted by the Finance Act, 2016)*
- **Section 32** *Resignation and removal (omitted by the Finance Act, 2016)*
- **Section 33** *Member to act as Chairperson in certain circumstances (omitted by the Finance Act, 2016)*
- **Section 34** *Staff of Appellate Tribunal (omitted by the Finance Act, 2016)*

Procedure and powers of Appellate Tribunal (*Sec 35*)

- The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.
- The Appellate Tribunal have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—
 - summoning and enforcing the attendance of any person and examining him on oath;
 - requiring the discovery and production of documents, receiving evidence on affidavits;
 - subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

- issuing commissions for the examination of witnesses or documents; reviewing its decisions;
 - dismissing a representation for default or deciding it ex parte;
 - setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
 - any other matter, which may be, prescribed by the Central Government.
- An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
 - The Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and court shall execute the order as if it were a decree made by that court.
 - All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the IPC (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Distribution of business amongst Benches (Sec 36)

- Where any Benches are constituted, the Chairman may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of Chairman to transfer cases (*Sec 37*)

- On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or by his own without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be by majority (*Sec 38*)

- If the Members of a Bench consisting of two Members **differ in opinion** on any point, they shall state the points on which they differ, and make a reference to the Chairman who shall either hear the points himself or refer the case for hearing on such points by third Member of the Appellate Tribunal and such 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.



Right of appellant to take assistance of AR and of Govt. to appoint Presenting officers (Sec 39)

- A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative to present his case before the Appellate Tribunal.
- Explanation — The expression “authorised representative” shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income-tax Act, 1961.
- The Central Government or the Director may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Members, etc., to be public servants (Sec 40)

- The Chairman, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Civil court not to have jurisdiction

(Sec 41)

- 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.

Appeal to High Court (*Sec 42*)

- 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 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—The expression “High Court” here means the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain.
- Where the Central Government 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.

Special Courts (Sec 43)

- The Central Government, 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 for 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.
- 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 (2 of 1974), be charged at the same trial.

Offences triable by Special Courts (Sec 44)

- an offence punishable under section 4 and any other scheduled offence connected to the that 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
- a Special Court may, upon a complaint made by an authority authorized in this behalf take cognizance of offence under section 3, without the accused being committed to it for trial.
- 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.
- 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.

Offences to be cognizable and non-bailable (*Sec 45*)

- No person accused of an offence ~~punishable for a term of imprisonment of more than 3 years under Part A of the Schedule~~ under this act shall be released on bail or on his own bond **unless** — (*proposed by Finance Bill, 2018*)
- the Public Prosecutor has been given an opportunity to oppose the application for such release; and
- 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 rupees**, may be released on bail, if the Special Court so directs, (*proposed by Finance Bill, 2018*)

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

- the Director; or
- any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.
- The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Application of Code of Criminal Procedure, 1973 to proceedings before Special Court (Sec 46)

- 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 this purpose, 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 Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

- A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor unless he has been in practice as an Advocate for not less than 7 years, under the Union or a State, requiring special knowledge of law.
- 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 (2 of 1974) and the provisions of that Code shall have effect accordingly.

Appeal and revision (*Sec 47*)

- The High Court may exercise, all the powers conferred by 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.

Authorities under Act (*Sec 48*)

- The classes of authorities for the purposes of this Act, namely - 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.

Appointment and powers of authorities and other officers (*Sec 49*)

- The Central Government may appoint such persons as it thinks fit to be authorities for this Act. Without prejudice to the provisions of sub-section (1), the Central Government may authorise any authority mentioned u/s 48 to appoint other authorities below the rank of an Assistant Director. An authority may exercise the powers and discharge the duties conferred or imposed by Central Government.

Powers of authorities regarding summons, production of documents etc. (Sec 50)

- The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, while trying a suit in respect of the following matters, namely :—
 - discovery and inspection;
 - enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;
 - compelling the production of records; or receiving evidence on affidavits;
 - issuing commissions for examination of witnesses and documents; and
 - any other matter which may be prescribed.
- The authorities under this act shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

- All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
- Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.
- Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act.

Provided that an Assistant Director or a Deputy Director shall not—

- impound any records without recording his reasons for so doing; or
- retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director Joint Director.

(proposed by Finance Bill, 2018)

Jurisdiction of authorities (*Sec 51*)

1. The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.
2. In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—
 - a) territorial area;
 - b) classes of persons;
 - c) classes of cases; and
 - d) any other criterion specified by the Central Government in this behalf.

Power of Central Government to issue directions, etc. (Sec 52)

- The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government :

Provided that no such orders, instructions or directions shall be issued so as to—

- a) require any authority to decide a particular case in a particular manner; or
- b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Empowerment of certain officers

(Sec 53)

- The Central Government may, by a special or general order, empower an officer not below the rank of Director of the Central Government or of a State Government to act as an authority under this Act:

Provided that the Central Government may empower an officer below the rank of Director if the officer of the rank of the Director or above are not available in a particular area.

Certain officers to assist in inquiry, etc. (Sec 54)

The following officers and others are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

- a) officers of the Customs and Central Excise Departments;
- b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985
- c) income-tax authorities under section 117(1) of the Income-tax Act, 1961
- d) members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956
- e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934
- f) officers of Police;

- g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999
- h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992
- ha) officers of the Insurance Regulatory and Development Authority established u/s 3 of the Insurance Regulatory and Development Authority Act, 1999
- hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952
- hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952
- hd) officers of the Pension Fund Regulatory and Development Authority;
- he) officers of the Department of Posts in the Government of India;
- hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908
- hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988

- hh) officers and members of the ICAI constituted under section 3 of the Chartered Accountants Act, 1949
- hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959
- hj) officers and members of the ICSI constituted under section 3 of the Company Secretaries Act, 1980
- i) officers of any other body corporate constituted or established under a Central Act or a State Act;
- j) such other officers of the Central Government, State Government, local authorities or reporting entities as the Central Government may, by notification, specify, in this behalf.

Definitions (*Section 55*)

- i. **“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 treaty or otherwise;
- ii. **“identifying”** includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;
- iii. **“tracing”** means determining the nature, source, disposition, movement, title or ownership of property.

Agreements with foreign countries

(Section 56)

1. The Central Government 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 Central Government 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.

Letter of request to a contracting State in certain cases (*Section 57*)

- 1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) 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, 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.
- 2) The letter of request shall be transmitted in such manner as the Central Government 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.

Assistance to a contracting State in certain cases (Section 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 this 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 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.

Special Court to release the property (Sec 58A)

- Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

Letter of request of a contracting State or authority for confiscation or release the property *(Sec 58B)*

- Where the trial under the corresponding law of any other country 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 Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.

Reciprocal arrangements for processes and assistance for transfer of accused persons (Sec 59)

1. Where a Special Court, in relation to an offence punishable u/s 4, desires that—
 - a) a summons to an accused person, or
 - b) a warrant for the arrest of an accused person, or
 - c) a summons to any person requiring him to attend and produce a document or other thing or to produce a document or other thing or to produce it, or
 - d) a search warrant,

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

2. Where a Special Court, in relation to an offence punishable u/s 4 has received for service or execution—
 - a) a summons to an accused person, or
 - b) a warrant for the arrest of an accused person, or
 - c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
 - d) a search-warrant,

issued by a Court, Judge or Magistrate in a contracting State, it shall, cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

- i. a warrant of arrest has been executed, the person arrested shall be dealt with in accordance with the procedure specified under section 19;
- ii. a search warrant has been executed, the things found in this search shall so far as possible, be dealt with in accordance with the procedure specified u/s 17 and 18:

Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.

3. Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in India, the Special Court or the Central Government may impose such conditions as that Court or Government deems fit.
4. Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

Attachment, seizure and confiscation, etc., of property in a contracting State or India (Sec 60)

1. Where the Director has made an order for attachment of any property under section 5 or for freezing u/s 17(1A) or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or (6) of section 8, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.
2. Where a letter of request is received by the CG from a court or an authority in a contracting State requesting attachment, seizure, freezing or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under a corresponding law committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

- 2A. Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.
3. The Director shall, on receipt of a letter of request under section 58 or section 59, direct any authority under this Act to take all steps necessary for tracing and identifying such property.
4. The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.
5. Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

6. The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in the Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.
7. When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.

Procedure in respect of letter of request *(Sec 61)*

- Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

Punishment for vexatious search *(Sec 62)*

- 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 Rs. 50,000 or both.

Punishment for false information or failure to give information, etc. (Sec 63)

1. Any person wilfully 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 Rs. 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 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 five hundred rupees but which may extend to Rs. 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 under section 174 of the Indian Penal Code (45 of 1860).

Cognizance of offences (*Sec 64*)

1. No court shall take cognizance of any offence under section 62 or sub-section (1) of section 63 except with the previous sanction of the Central Government.
2. The Central Government shall, by an order, either give sanction or refuse to give sanction within ninety days of the receipt of the request in this behalf.

Code of Criminal Procedure, 1973 to apply (*Sec 65*)

- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) 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.

Disclosure of information (Sec 66)

- 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 (61 of 1985); or
 - ii. such other officer, authority or body performing functions under any other law as the Central Government 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.
- *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. (proposed to be inserted by Finance Bill, 2018)*

Bar of suits in civil courts (Sec 67)

- 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.

Notice, etc., not to be invalid on certain grounds (Sec 68)

- No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Recovery of fine or penalty (Sec 69)

- Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six 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 (43 of 1961) for the recovery of arrears and he or any officer authorized by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Offences by companies (Sec 70)

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 there under 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.

Continuation of proceedings in the event of death or insolvency (*Sec 72*)

1. Where—

- a) any property of a person has been attached under section 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.

2. Where—
 - a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 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 provision 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 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be.

Power to make rules (Sec 73)

1. The Central Government may, by notification, make rules for carrying out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—
 - a) the form in which records referred to in this Act may be maintained;
 - aa) the manner of provisional attachment of property under sub-section (1) of section 5;]
 - b) the manner in which the order and the material referred to in sub-section (2) of section 5 to be maintained;
 - c) matters in respect of experience of Members under sub-section (3) of section 6;
 - d) the salaries and allowances payable to and other terms and conditions of service of Members of the Adjudicating Authority under sub-section (9) of section 6;
 - e) the salaries and allowances payable to and other terms and conditions of service of the officers and employees of the Adjudicating Authority under sub-section (3) of section 7;
 - ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or u/s 8(4)
 - f) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 10;

- f) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (1) of section 11;
- i) the nature and value of transactions and the time within which the information of transactions under clause (b) of sub-section (1) of section 12 shall be furnished;
- j) the manner and the conditions in which identity of clients shall be verified by the reporting entities under clause (c) of sub-section (1) of section 12;
- jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;
- jjj) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13;]
- k) the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 as required under section 15;
- l) the manner in which the reasons and the material referred to in sub-section (2) of section 16 shall be maintained;
- m) the rules relating to search and seizure under sub-section (1) of section 17;
- n) the manner in which the reasons and the material referred to in sub-section (2) of section 17 shall be maintained;
- o) the manner in which the reasons and the material referred to in sub-section (2) of section 18 shall be maintained;

- p) the manner in which the order and the material referred to in sub-section (2) of section 19 shall be maintained;
- pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20;]
- q) the manner in which records authenticated outside India may be received under sub-section (2) of section 22;
- r) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 26;
- s & t) *(Omitted by Finance Act, 2016)*
- u) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 35;
- ua) conditions subject to which a police officer may be authorized to investigate into an offence under sub-section (1A) of section 45;]
- v) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of section 50;
- w) the rules relating to impounding and custody of records under sub-section (5) of section 50;
- x) any other matter which is required to be, or may be, prescribed.

Rules to be laid before Parliament (Sec 74)

- Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties (Sec 75)

1. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty :
Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.
2. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Violation of FEMA or Income Tax Act not violation of Scheduled offence

- As defined under section 2(1)(y) of the Prevention of Money Laundering Act, 2002, FEMA does not create any offence and at any rate, the violation of the provisions of the FEMA cannot be termed as “Scheduled Offence”.
- The Schedule does not incorporate either the violation of FEMA or contravention of the provisions of the Income Tax Act including the offences punishable under the Income Tax Act as “Scheduled Offence”.

Notification No. 2/ F No. P.12011 dated 1-6-2017

- Prevention of Money Laundering (Maintenance of Records) Rules, 2005 has been amended as per the gazette notification dated June 1, to provide for submission of Aadhaar number, where the client enters into an account based relationship with reporting entity. Further, it is provided that,
 - I. Where the client has not submitted Aadhaar number at the time of commencement of account based relationship with the reporting entity, as per the PMLA requirement, then he/ it shall submit the same within 6 months of commencement of account based relationship with the reporting entity.
 - II. Similarly, where the client is already having an account based relationship with reporting entities, prior to the date of notification, and have not submitted Aadhaar number, as per the PMLA requirement, to the reporting entity, then he/ it shall submit the same by December 31, 2017
 - III. In case of failure to submit the documents within the aforesaid timelimit, the account shall cease to be operational till the time Aadhaar number is submitted by the client.

Initiatives taken for money laundering

- In India, before the enactment of Prevention of Money Laundering Act, 2002 (PMLA) the major statutes that incorporated measures to address the problem of money laundering were:
- The Income Tax Act, 1961
- The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)
- The Smugglers and Foreign Exchange Manipulators Act, 1976 (SAFEMA)
- The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPSA)
- The Benami Transactions (Prohibition) Act, 1988
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988
- The Foreign Exchange Management Act, 2000, (FEMA)

THE FINANCIAL INTELLIGENCE UNIT - INDIA (FIU-IND)

- While the Prevention of Money Laundering Act (PMLA) 2002, forms the core framework for combating money laundering in the country, The Financial Intelligence Unit - India is the nodal agency in India for managing the AML ecosystem and has significantly helped in coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. These are specialized government agencies created to act as an interface between financial sector and law enforcement agencies for collecting, analysing and disseminating information, particularly about suspicious financial transactions. In terms of the PMLA Rules, banks are required to report information relating to cash and suspicious transactions and all transactions involving receipts by non-profit organizations of value more than rupees ten lakh or its equivalent in foreign currency to the Director, FIU-IND in respect of transactions.
- It receives prescribed information from various entities in financial sector under the Prevention of Money Laundering Act 2002 (PMLA) and in appropriate cases disseminates information to relevant intelligence/ law enforcement agencies which include Central Board of Direct Taxes, Central Board of Excise & Customs Enforcement Directorate, Narcotics Control Bureau, Central Bureau of Investigation, Intelligence agencies and regulators of financial sector. FIU-IND does not investigate cases.

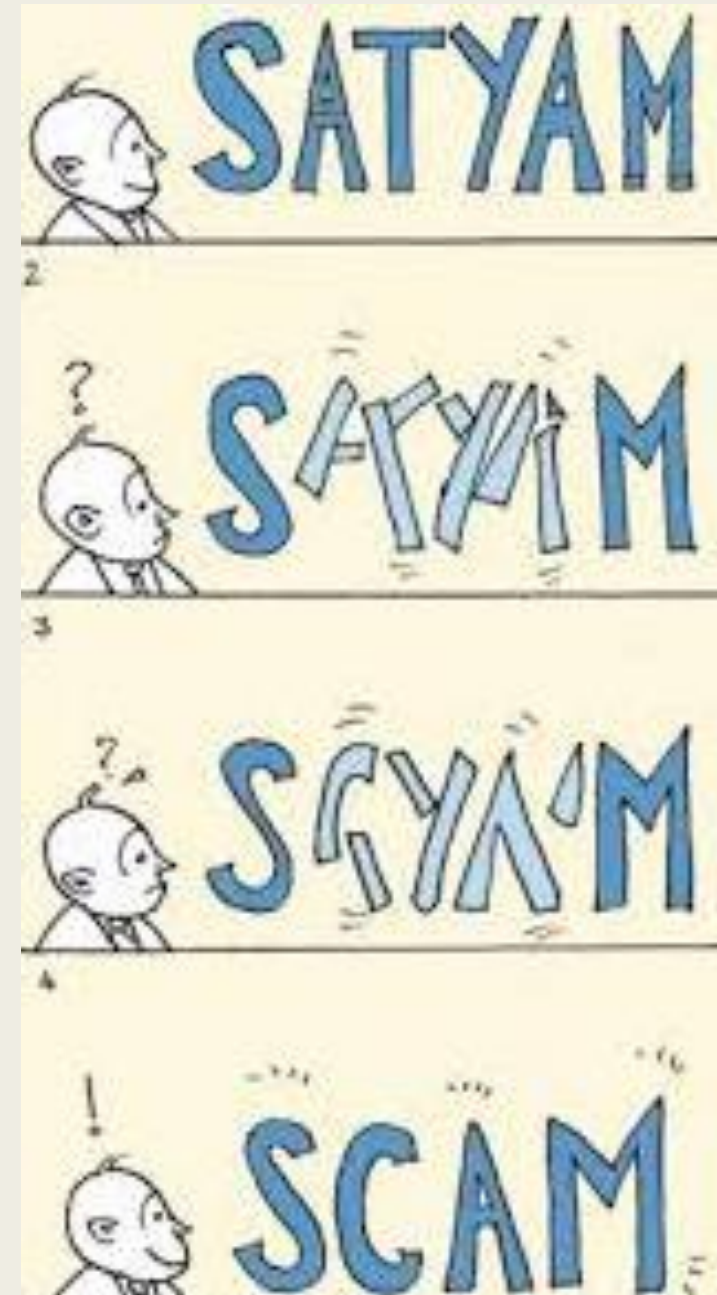
ANTI MONEY LAUNDERING STANDARDS

- RBI issued Master Circular on Know Your Customer (KYC) norms/ Anti-Money Laundering (AML) standards/ Combating of Financing of Terrorism (CFT)/ Obligation of banks under Prevention of Money Laundering Act, 2002 and Banks were advised to follow certain customer identification procedure for opening of accounts and monitoring transactions of a suspicious nature for the purpose of reporting it to appropriate authority.
- These KYC guidelines have been revisited in the context of the Recommendations made by the Financial Action Task Force (FATF) on Anti-Money Laundering (AML) standards and on Combating Financing of Terrorism (CFT). Banks have been advised to ensure that a proper policy framework on KYC and AML measures with the approval of the Board is formulated and put it place.
- The Objective of KYC Norms/ AML Measures/ CFT Guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities. KYC procedures also enable banks to know/ understand their customers and their financial dealings better which in turn help them manage their risks prudently.

CASE STUDY



- Satyam Computers founder Ramalinga Raju and another accused appeared before a court in Hyderabad in connection with a prosecution complaint filed by Enforcement Directorate (ED) against them for offences under the Prevention of Money Laundering Act (PMLA). The Enforcement Directorate had filed the complaint against Raju and 212 others, including 166 companies, before the XXI Additional Chief Metropolitan Magistrate Court cum Special Sessions Judge here for allegedly laundering funds under a “corporate veil” to perpetrate the accounting scam that rocked the business world in 2009. ED in its prosecution investigation report sought to “prosecute the accused for offence of money laundering” under PMLA. The court subsequently took cognizance of the complaint and had issued summons against the accused seeking their appearance. The ED report said that Ramalinga Raju and the other accused, who have also been probed by CBI, “derived proceeds of crime from the sale and pledge of inflated shares of M/s Satyam Computers and Services Ltd (SCSL)”.



- The prosecution complaint (charge sheet), names 213 accused - 47 individuals (among them Ramalinga Raju and nine other accused already named in the CBI charge sheet in the multi-crore Satyam accounting fraud case) and 166 firms - including SCSL. Besides, Raju, the former chairman of Satyam Computers, his brother B Suryanarayana Raju, Satyam's former MD B Rama Raju, ex-CFO Vadlamani Srinivas, former PwC auditors Subramani Gopalakrishnan, T Srinivas and Satyam's former internal chief auditor V S Prabhakar Gupta were among others who appeared in the court and executed personal bonds of Rs 10,000 each.
- ED which had earlier interrogated prime accused Ramalinga Raju, Rama Raju, and the others had registered a case against the Satyam founder and his family under PMLA, which defines money laundering offences as those involving money derived from any activity connected with the proceeds of crime. The Act provides for the freezing and seizure of the proceeds of crime. So far, 350 immovable and five movable properties, valued at a cumulative Rs 1,075 crore, have been attached in the case, ED had said.

JUDICIAL PRONOUNCEMENTS

- **PAREENA SWARUP vs. UNION OF INDIA, (2008) 14 SCC 107** In this case, the Supreme Court has determined the constitutionality of the Adjudicating Authorities and the Appellate Tribunal under the PMLA, 2002. A Public Interest Litigation was filed under Article 32 of the Constitution seeking to declare various sections of the Act such as Section 6 which deals with adjudicating authorities, composition, powers etc., Section 25 which deals with the establishment of Appellate Tribunal, Section 27 which deals with composition etc. of the Appellate Tribunal, Section 28 which deals with qualifications for appointment of Chairperson and Members of the Appellate Tribunal, Section 32 which deals with resignation and removal, Section 40 which deals with members etc. as ultra vires of Articles 14, 19(1)(g), 21, 50, 323B of the Constitution of India. It was also pleaded that these provisions are in breach of scheme of the Constitutional provisions and power of judiciary.

The Court said that it is necessary to draw a line which the executive may not cross in their misguided desire to take over bit by bit and judicial functions and powers of the State exercised by the duly constituted Courts. While creating new avenue of judicial forums, it is the duty of the Government to see that they are not in breach of basic constitutional scheme of separation of powers and independence of the judicial function.

- The Court agreed that the provisions of Prevention of the Money Laundering Act are so provided that there may not be independent judiciary to decide the cases under the Act but the Members and the Chairperson to be selected by the Selection Committee headed by Revenue Secretary. Thus, the Court found merit in the arguments of the Petitioner and ordered to implement amended rules in the Act which can be seen by way of amendment of 2008 in the Act

Observation:

The Court maintained the basic structure of the Constitution which includes separation of powers and independence of judiciary and did not allow the Executive to act beyond their powers curbing the judicial powers.

- **Hari Narayan Rai VS. The Union of India, 2011 (High Court of Jharkhand)** The offence committed is punishable under Section 3 and 4 of the Prevention of Money laundering Act, 2002. The High Court held that it was clear that the offence under the said Act would continue till the accused continues to hold proceeds of crime and got himself involved in the process and activity connected with the proceeds of crime projecting the same as untainted property and in the present case, the accused had been attempting to convert and project the proceeds of crime in the aforesaid manner. Further, sufficient material had been collected during investigation to prove the guilt of petitioner. Section 45 of the Act provides that bail was to be granted by the Appellate Court only on the satisfaction that there were reasonable grounds for believing that the Petitioner was not guilty of such offence and that he was not likely to commit any offence while on bail. But since the allegations against the petitioner were very serious and sufficient material had come up against him, his prayer for bail was rejected.

Observation: Though Section 45 of PMLA gives a provision to grant bail if the Court is satisfied that the accused is not likely to commit any act in furtherance of the offence, but it can be rejected looking into the seriousness of the offence and the material collected against the offender during investigation

- **UNION OF INDIA vs. HASSAN ALI KHAN [2011] 11 SCR 778.**The allegation against the accused is that they have committed an offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002. The said case has been registered on the basis of a complaint filed by the Deputy Director, Directorate of Enforcement on the basis of the Report based on certain information and documents received from the Income Tax Department. An investigation was also conducted under the Foreign Exchange Management Act, 1999, ('FEMA'). Show-cause notices were issued to the accused for alleged violation of Sections 3A and 4 of FEMA for dealing in and acquiring and holding foreign exchange to the extent of Rs.36,000 crores approximately in Indian currency, in his account with the Union Bank of Switzerland. Inquiries also revealed that Shri Hassan Ali Khan had obtained at least three Passports in his name by submitting false documents, making false statements and by suppressing the fact that he already had a Passport. Based on the aforesaid material, the Directorate of Enforcement arrested the accused and produced him before the Special Judge, PMLA and was remanded in custody which was rejected and the accused was released on bail.

- The Union of India thereupon filed Special Leave Petition and upon observing that the material made available on record prima facie discloses the commission of an offence by the accused punishable under the provisions of the PMLA, the Supreme Court disposed of the appeal as well as the Special Leave Petition and set aside the order of the Special Judge, PMLA and directed that the accused be taken into custody. Thereafter, the accused was remanded into custody from time to time.

Observation:

The offence of money laundering is an offence of a grave nature. A person indulged in it cannot escape from the hands of the law. If such an offence is committed, strict actions will be taken.

- **ANOSH EKKA vs. CENTRAL BUREAU OF INVESTIGATION, 2011 (High Court of Jharkhand)** In this case, after the accused became M.L.A. and then the Minister, he acquired enormous moveable and immovable assets in his own name and in the name of his family members within a short period of three years. By his influence he got the works allotted in the name of his fictitious construction Company. Apart from that he also indulged in Money Laundering. Absolutely evasive replies were given by him and his wife about the assets. The CBI is collecting materials from different parts of the country and from outside the country also. Bail of the accused was earlier rejected twice up to the Supreme Court. However, liberty was given to renew the prayer if there is inordinate delay in completing the investigation. But from the records, it appeared that the accused himself was responsible for delaying the investigation/the trial on one pretext or the other. The supposed ground of sickness was taken on number of dates to avoid appearance in court and for remaining in hospitals for long periods. Prima facie, the accused, who claimed to be a public representative, was involved in looting and laundering enormous public money. He has not only tampered with the evidences but has been also abusing the process of law and is making contempt of the justice delivery system.

Observation:

The accused cannot take advantage of the wrong done by him.

- In the case of **Ramani Mistry vs. The Deputy Director Directorate of Enforcement (FPA-PMLA/296/KOL/2011)** the Appellate Tribunal while deciding the appeal filed by the Appellant under Section 26 of the PMLA Act, against the order of Adjudicating Authority, wherein the Adjudicating Authority confirmed the order of provisional attachment of the property of the Appellant, observed that the Session Court had convicted the Appellant for having possession of ganja and not for selling ganja and this fact was not considered by Respondent while forming his Reasons to Believe. The Appellate Tribunal while interpreting the importance of the expression 'Reason to Believe' held as under:

"The word "Reason to Believe" is not same as suspicion or doubt. Belief is a higher level of the state of mind. When it is said that a person has Reason to Believe a thing, it means that the circumstances and facts known to him are such that a reasonable man, by probable reasoning, can conclude or infer regarding the nature of the thing concerned. It may not be an absolute conviction or inference. But it may be a possible conclusion or prima facie conclusion."

- In this case of **Madanlal Manekchand Jain Vs. State of Gujarat Criminal misc.Application NO.22552 of 2015**, the validity of Section 45 of the PML Act, 2002 was questioned. The applicant contended that as a special leave petition is pending before the Supreme Court for final hearing, the applicant should be granted interim bail. The applicant in the above case who has been proven guilty of money laundering which is a cognizable offence as per section 45 of the PML Act, and according to the provisions of the above mentioned section if an accused is guilty of an offence punishable with imprisonment of more than three years under Part A of the Schedule, he shall not be released on bail. *It was held that vires of section 45 of the PML Act should not be ignored just because a petition is pending before the Supreme Court.*