

Latest Developments vis-à-vis Prevention of Money Laundering Act



Prevention of Money Laundering Act, 2002 (PMLA) is an Act of the Parliament of India enacted by the Indian government to prevent money-laundering and to provide for confiscation of property derived from money-laundering. In the PMLA, 2002, the offence of money laundering has been defined as “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.” This article presents an overview and the latest developments vis-à-vis PMLA. Read on to know more...

Proceeds of Crime in PMLA

Proceeds of crime has also been defined to mean 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.

Interconnected Transactions

Where money-laundering involves two or more interconnected transactions and one or more such

transactions is proved to be involved in money laundering, then for the purposes of adjudication or confiscation or for the trial offence of money laundering, 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

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



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Scheduled Offences

The offences listed in the Schedule to the Prevention of Money Laundering Act, 2002 are scheduled offences in terms of Section 2(1)(y) of the Act. The scheduled offences are divided into two parts - Part A & Part C.

In Part A, offences to the Schedule have been listed in 28 paragraphs and it comprises offences under Indian Penal Code, offences under Narcotic Drugs and Psychotropic Substances, offences under Explosive Substances Act, offences under Unlawful Activities (Prevention) Act, offences under Arms Act, offences under Wild Life (Protection) Act, offences under the Immoral Traffic (Prevention) Act, offences under the Prevention of Corruption Act, offences under the Explosives Act, offences under Antiquities & Arts Treasures Act etc. Part 'C' deals with trans-border crimes, and is a vital step in tackling Money Laundering across International Boundaries.

Prior to 15th February, 2013, i.e., the date of notification of the amendments carried out in PMLA, the Schedule also had Part B for scheduled offences where the monetary threshold of rupees 30 lakhs was relevant for initiating investigations for the offence of money laundering.

However, all these scheduled offences, hitherto in Part B of the Schedule, have now been included in Part A of Schedule w.e.f 15.02.2013. Consequently, there is no monetary threshold to initiate investigations under PMLA.

Process of Money Laundering

The process of money laundering generally involves the following three stages:

- (a) **Placement:** The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial systems.
- (b) **Layering:-** In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source.
- (c) **Integration:** The Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income.

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

- (a) Attachment of property, seizure/freezing of property and records. Property also includes property of any kind used in the commission

The PMLA in totality is a very stringent Act. Apart from bail, the Act has very tough provisions on the attachment of property, the recording of statements and arrest and prosecution. The PMLA is among very few Acts in the country wherein a statement recorded by an authorised agency officer is admissible as evidence in court. Such powers are not available to the police under the Criminal Procedure Code (CrPC).

of an offence under PMLA, 2002 or any of the scheduled offences.

- (b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine.
- (c) When the scheduled offence committed is under the Narcotics and Psychotropic Substances Act, 1985, the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to ten years and shall also be liable to fine.
- (d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

Bail under PMLA

The PMLA required that the public prosecutor must be given an opportunity to oppose any application for release on bail. Where the public prosecutor opposes bail, the court must be satisfied that there were reasonable grounds to believe that the accused was not guilty and was unlikely to commit an offence if granted bail.

Originally, the provision applied to those charged for money laundering as well as scheduled offences under Part A of the Act which covered cases involving waging war against the Government of India and offences under the Narcotic Drugs and Psychotropic Substances (NDPS) Act. Through the 2013 Amendment to the Act, the government brought Part B of the Act also under the Section's ambit. This further enhanced the section's scope, making bail difficult for those accused under comparatively minor offences. The tough bail conditions are now applied to offences under the Wildlife (Protection) Act, the Immoral Traffic (Prevention) Act, the Prevention of Corruption Act, 1988, the Antiquities and Arts Treasures Act, the Transplantation of Human Organs Act 1994, the Passports Act, the Information Technology Act and other laws.

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The result was that those accused under the PMLA rarely got bail before an incarceration that could last anywhere between two to three years. Given that money laundering offences attract between three to seven years of punishment in jail, this was considered practically like serving the sentence. Almost no one got bail until a charge sheet in the case was filed. Of the over 120 persons accused by the Enforcement Directorate (“ED”) and arrested under the PMLA since 2005, no more than two to three people have secured bail.

The Supreme Court has on 23rd November, 2017 said that Section 45 of PMLA (Provision of Bail) stood in violation of Article 21 (the right to life, liberty and security of a person) and Article 14 (the right to equality).

Giving a ray of hope, the Apex court said that all cases in which bail has been denied so far due to the conditions contained in Section 45, will now go back to respective courts which trashed the similar plea in the past.

Yet, the PMLA in totality is a very stringent Act. Apart from bail, the Act has very tough provisions on the attachment of property, the recording of statements and arrest and prosecution. The PMLA is among very few Acts in the country wherein a statement recorded by an authorised agency officer is admissible as evidence in court. Such powers are not available to the police under the Criminal Procedure Code (CrPC).

Powers of PMLA Investigating Officers

The PMLA investigating officers have the powers:

- (a) to provisionally attach any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;
- (b) to conduct survey of a place;
- (c) to conduct search of building, place, vessel, vehicle or aircraft & seize/freeze records & property;
- (d) to conduct personal search;
- (e) to arrest persons accused of committing the offence of Money Laundering;
- (f) to summon and record the statements of persons concerned.

Provisional Attachment

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

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. Thus, an appeal can be filed before High Court on any question of law or fact.

of any proceeds of crime and (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime he may, by an 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 such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognisance 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.

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

Every order of provisional attachment shall cease to have effect after 180 days from the date of the order, if no order is passed by the Adjudicating Authority under PMLA that the said property is involved in money laundering. However, within said 180 days, if the Adjudicating Authority, by an order, records a finding that properties are not involved in money laundering, the order of provisional attachment shall cease to have effect from the date of such order of the Adjudicating Authority.

It has been provided in the Act that before recording the finding that all or any of the properties are involved in money laundering, the Adjudicating Authority has to issue a show cause notice of not less than thirty days to the aggrieved person. The aggrieved person at this stage can submit his reply and attend the hearing before the Adjudicating Authority to present his defence.

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Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property. Such attachment shall— (a) continue during the pendency of the proceedings relating to any offences under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and (b) becomes final after an order of confiscation is passed.

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. Appeal has to be filed within a period of 45 days from the date of receipt of a copy of the order made by the Adjudicating Authority.

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. Thus, an appeal can be filed before High Court on any question of law or fact.

Recent Developments

- The Enforcement Directorate on 30th November, 2017 conducted multiple searches in Delhi in connection with a ₹5,000 crore money laundering probe against the directors and associates of Gujarat-based pharma firm Sterling Biotech.

The case is based on a CBI FIR against the same entities. The CBI had booked Sterling Biotech for the alleged bank fraud case.

The CBI alleged that the company took loans of over ₹5,000 crore from a consortium led by Andhra Bank which have turned into non-performing assets. According to the FIR, the total pending dues of the group companies were ₹5,383 crore as on December 31, 2016.

The ED took cognisance of this FIR to file a money laundering case against them.

- After demonetisation of high-value banknotes,

After demonetisation of high-value banknotes, the Enforcement Directorate has conducted 620 searches between November 2016 and September 2017 on suspicion of violation of foreign exchange rules, and money laundering. The department has also registered 3,700 cases under FEMA (The Foreign Exchange Management Act) and PMLA (Prevention of Money Laundering Act) and taken action against 1,000 shell companies.

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- Earlier on 23rd August, 2017, PMLA notification was rolled out that required the dealers in precious metals, stones and other high-value goods, to maintain a record of all transaction of value exceeding ₹10 lakh and all cross-border wire transfers of more than ₹5 lakh. Also, the sale of gold above ₹50,000 required customers to furnish PAN (permanent account number) or Aadhaar card to the jeweller. The lifting of PMLA on 6th October, 2017 has brought relief to the gems and jewellery companies and the consumers.
- Sections 447 and 448 under the Companies Act, which define fraud, will soon be a schedule offence under PMLA. Section 447 of the Companies Act states that any person found guilty of fraud involving public interest shall be held guilty. 'Fraud', in relation to the affairs of a company, includes any act or omission, concealment of any fact, or abuse of position committed by any person with intent to deceive or gain undue advantage from the company, its shareholders or creditors.

Section 448 further states that if a person who is found guilty furnishes a report or financial statement that is false, the person shall be liable.

- Miteshkumar Patel, 42, resident in Illinois, joined six other defendants who recently pleaded guilty to conspiracy charges for their roles in liquidating and laundering victim payments generated through a massive telephone impersonation fraud and money laundering scheme perpetrated by a network of India-based call centres responsible for defrauding American residents of hundreds of millions of dollars. They perpetrated a complex scheme in which individuals from call centres located in Ahmedabad, impersonated officials from the IRS and US Citizenship and Immigration Services (USCIS), and engaged in other telephone call scams, in a ruse designed to defraud victims located throughout the US. ■