

PREVENTION OF MONEY LAUNDERING ACT 2002 CONCEPTS AND PRACTICE

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ANTI- MONEY LAUNDERING REPORTING ENTITY

- Banks and Financial Institutions,
- Crypto Exchanges,
- Non Banking Financial Companies (NBFC)
- Dealers of Precious Metals, Gems and Jewellery
- Capital Marketing Intermediaries, &
- Many such bodies and institutions.....

PMLA NOTIFICATION: 3RD MAY, 2023

Recently on May 3rd 2023, PMLA Notification added Reporting Entity to include:

Chartered Accountants,

Cost Accountants,

Company Secretaries,

who are, in course of their profession:

i. carrying out financial transactions,

ii. on behalf of his client

(...Contd.)

in relation to the following activities: -- (Contd..)

PMLA NOTIFICATION: 3RD MAY, 2023

Carry out Financial Transactions on behalf of his client in relation to the following activities : --

- Buying and selling of immovable property
- Managing client money, client securities or other client assets,
- Manage bank accounts, savings or securities accounts,
- Organise contribution for:
 - Creation,
 - Operations, or
 - Management of **Companies**
- Creation, operation or management of:
 - Companies,
 - LLPs,
 - Partnerships,
 - Trust
- Buying and selling of Business Entities

PMLA NOTIFICATION: 3RD MAY, 2023

Interpretation of INMACS Experts: -

Carrying our Financial Transaction - on behalf of client- trigger the provision

Amendment / Notification do not cover normal professional services including : -

- Audit or Assurance
- Accounting
- Tax Advisory & Representation
- Professional Services in relation to
 - Incorporation of Companies / LLPs
 - Drafting of Deeds / Agreements / MOA / AOA / Shareholders Agreements / Trust Deed etc.
 - Advising Directors, Shareholders, Trustees or Management in Professional Capacity.
- Professional Services of Management, Consulting and Advisory Service

Note: Certificate of Practice is mandatory to carry out professional activity.

PMLA NOTIFICATION: 9TH MAY, 2023

Notification on May 9th 2023 **added Reporting Entities** to include:

- Following activities, when carried out **in the course of business**
- On behalf of or for another person
 - i. Acting as formation agent of Companies and LLPs
 - ii. Acting as (or arranging another person to act as):
 - A Director,
 - Secretary of a Company,
 - Partner of a Firm
 - Similar positions for LLPs or Companies

(...Contd.)

PMLA NOTIFICATION: 9TH MAY, 2023

On behalf of or for another person- **in the course of business-Professional activity not covered**

iii. Providing to a Company, LLP, Partnership or a Trust:

- Registered Office Address,
- Business Address,
- Correspondence Address,
- Accommodation Address, or
- Administrative Address

iv. Acting as (or arranging for another person to act as):

- A Trustee of an express trust, or
- Performing the equivalent function for another type of trust

v. Acting as (or arranging for another person to act as):

- A nominee shareholder for another person.

PMLA NOTIFICATION: 9TH MAY, 2023

Exclusions from Reporting Entity as per Notification of 9th May 2023

- Activity as part of a Lease, Sub-Lease, Tenancy or any other arrangement for use of land or building of space – if consideration is subjected to TDS (Section 194I)
- Activity carried out by an employee on behalf of employer
- Activity by a CA, CS, CMA or Advocate for filing declaration of compliance of formation of Company – Exception to 3rd May 2023 Notification
- Activity as an “Intermediary” including exchanges in capital market (Section 2 (n))

RESPONSIBILITY OF REPORTING ENTITY

Main Responsibilities of REs

- KYC check before clients on boarding
- Retain client data for a period of 5 Years
- Monitoring and reporting suspicious transactions
- Policy for tracking of transactions

(...Contd.)

RESPONSIBILITY OF REPORTING ENTITY

Main Responsibilities of REs (Contd...)

To report to Financial Intelligence Unit (FIU):

- All cash transactions equal to or greater than Rs. 10 Lakhs*
- All cash transactions carried out in a single transaction or series of transactions integrally connected or linked to each other equal to or more than Rs. 10 lakhs in cash or in foreign currency,
- All kind of suspicious transactions, whether or not made in cash,
- Any transaction in which counterfeit currency is received,

Note: RE to Register with FIU in case of a reportable transaction

** Rs. 2 Lakhs or more cash transactions prohibited as per the Income tax Act, 1961.*

DETAILED PROVISIONS

WHAT IS MONEY LAUNDERING?

- Section 3 - PMLA, 2002 defines offence of money laundering as under:
 - *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 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*

WHAT IS MONEY LAUNDERING?


Explanation:


A person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly **attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in** one or more of the following processes or activities connected with **proceeds of crime**, namely-


- a. concealment; or
 - b. Possession; or
 - c. Acquisition; or
 - d. Use; or
 - e. Projecting as untainted property; or
 - f. Claiming as untainted property,
- in any manner whatsoever;


The process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.


CONSEQUENCES OF MONEY LAUNDERING?

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Finances Terrorism: Money laundering provides terrorists with funds to carry out their activities.
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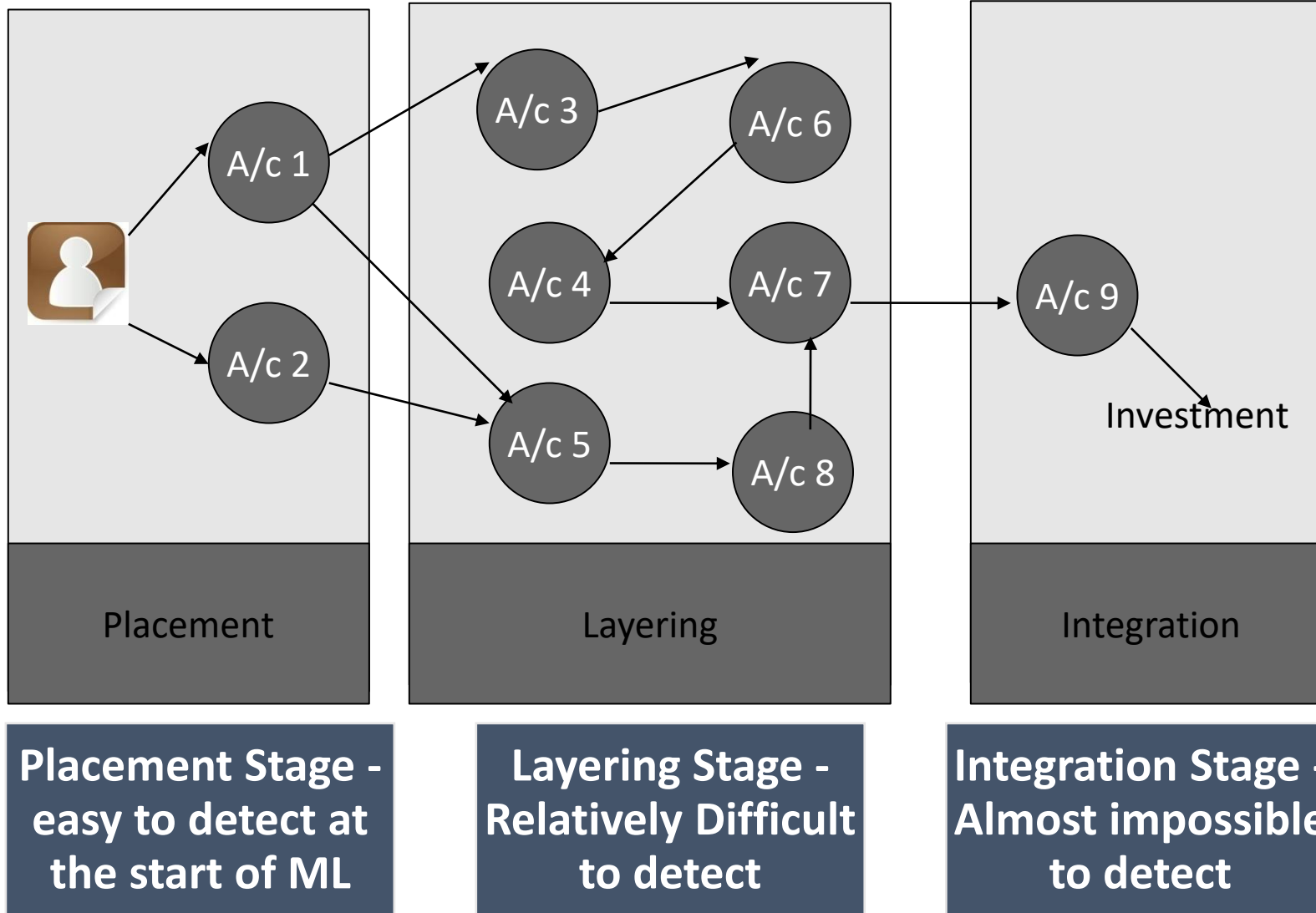
Undermines Financial System: Money laundering expands the black economy, undermines the financial system and raises questions of credibility and transparency.
- 

Expands Crime: Money laundering encourages crime because it enables criminals to effectively use and deploy their illegal funds.
- 

'Criminalise Society: Criminals can increase profits by reinvesting the illegal funds in businesses.
- 

Reduces Govt Revenue and Control: Money laundering diminishes government tax revenue and weakens government control over the economy.

STAGES OF MONEY LAUNDERING



DEFINITIONS

- “**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;
- “**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;
- “**Reporting entity**” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession; (now include CAs, CS and CMA).

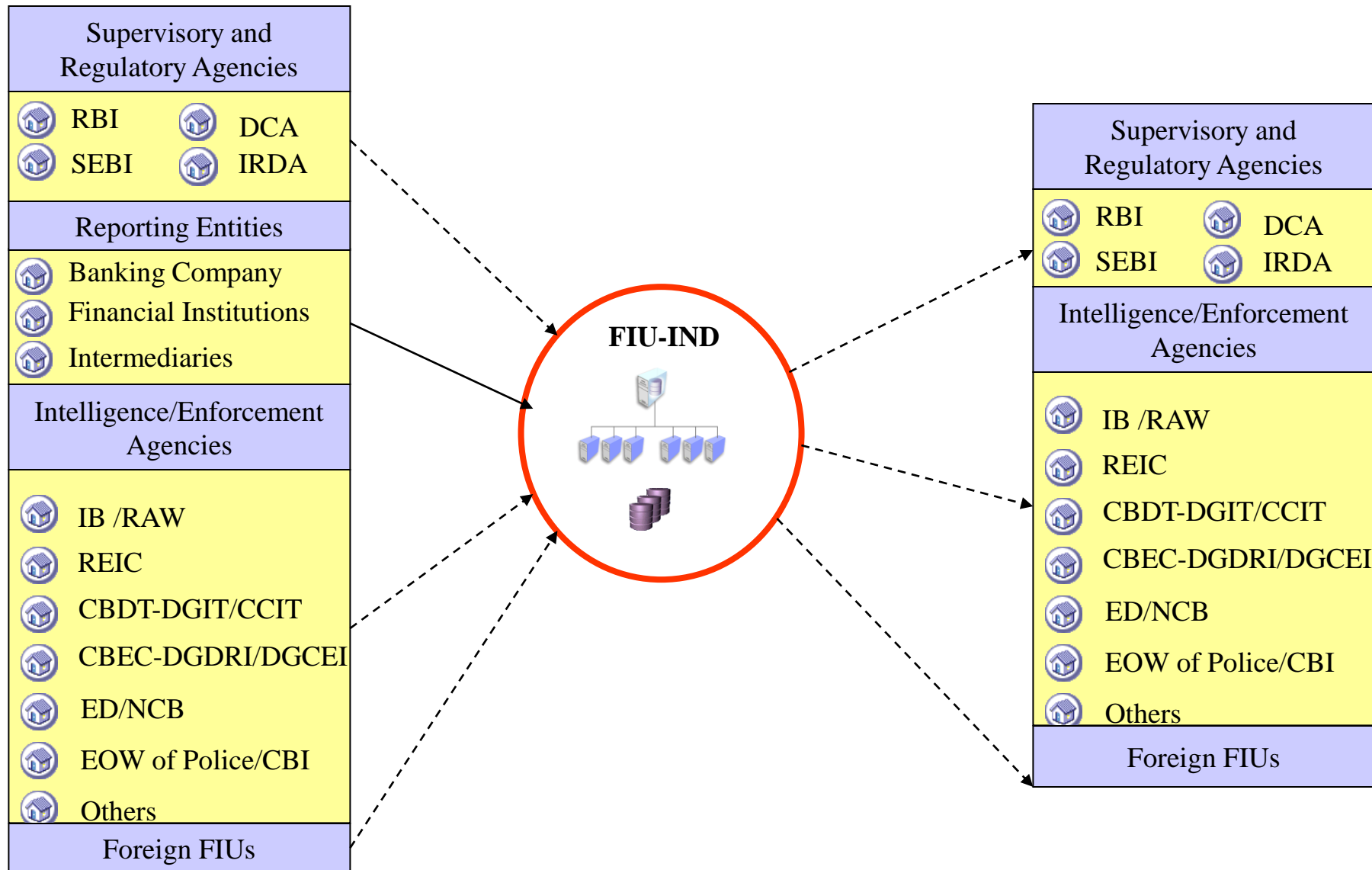
DEFINITIONS

- **“Person carrying on designated business or profession”** means,--
 - (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
 - (ii) Inspector-General of Registration...;
 - (iii) real estate agent....
 - (iv) dealer in precious metals, precious stones and other high value goods...;
 - (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons....; or
 - (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time**
- **“Reporting entity”** means a banking company, financial institution, intermediary or a person carrying on a **designated business or profession**;

PENAL CONSEQUENCES OF MONEY LAUNDERING

- Section 4 of PMLA 2002 prescribes the punishment for the offence of Money laundering as described in section 3.
- [A rigorous imprisonment of 3 to 10 years has been prescribed.
- The culprit can also be fined upto 5 Lakh Rupees.] Following to be substituted.
- **Punishment -**
- Para 2 of Part A Schedule – Rigorous punishment for a term of 3 to 10 years and imposition of fine;
- For other offences - Rigorous punishment for a term of 3 to 7 years and imposition of fine;

FRAMEWORK OF FIU



FUNCTIONS OF FIU - IND



Collection of Information: Act as the central reception point for receiving Cash Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) from the banking companies, financial institutions and intermediaries of securities market.



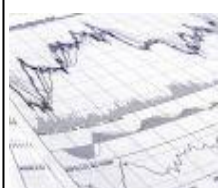
Analysis of Data: Analyse received information to uncover patterns of transactions suggesting suspicion of money laundering.



Information Sharing: Share information with regulatory agencies (RBI, SEBI etc.), intelligence/enforcement agencies and foreign FIUs.



Combating Money Laundering: Coordinate and strengthen collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and related crimes.



Research and Analysis: Monitor and identify strategic key areas on money laundering trends, typologies and developments.

OBLIGATIONS UNDER PMLA

The PMLA 2002 and the Rules notified there under impose obligation on

- banking companies
- financial institutions
- intermediaries of the securities market
- Reporting Entity**

to

- verify identity of clients
- maintain records
- furnish information
- undertake enhanced due diligence**

OBLIGATIONS OF REPORTED ENTITY UNDER PMLA

- Section 11A – Verification of Identity of client or BO by Reporting Entity (RE)
 - Aadhaar, if RE is banking company
 - Passport
 - Other officially valid document notified by CG
- Section 12 – **Reporting Entity to maintain records-**
 - To enable to reconstruct individual transactions,
 - **Furnish to the Director such information, as prescribed**
 - Evidencing identity of clients and Bos, account files, business correspondence relating to clients
 - **To be maintained for 5 years** from date of transaction

OBLIGATIONS OF REPORTED ENTITY UNDER PMLA

- **Section 12A – Access to information**

- Director may call for records & any additional information,
- Confidentiality to be ensured

- **Section 12AA – Enhanced Due Diligence**

- Specified transactions –
 - Any withdrawal or deposit in cash, exceeding such amount;
 - Any transaction in foreign exchange, exceeding such amount;
 - Any transaction in any high value imports or remittances;
 - Other transactions in the interest of revenue or where there is a high-risk or money laundering or terrorist financing;
- Verify with Aadhaar
- Take additional steps to examine ownership and financial position, sources of funds;
- Record the purpose behind conducting specified transaction
- Intended nature of relationship between transaction parties;

WHAT ARE SUSPICIOUS TRANSACTIONS UNDER PMLA?

Rule 2(g) of PML (Maintenance Of Records) Rules 2005 -

"Suspicious transaction", includes an attempted transaction, whether or not made in cash, which to a person acting in good faith-

- (a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or
- (b) appears to be made in circumstances of unusual or unjustified complexity; or
- (c) appears to have no economic rationale or bona fide purpose; or
- (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;

Explanation. - Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism.

TYPES OF SUSPICIOUS TRANSACTIONS

- **Identity of client**
 - False identification documents
 - Identification documents which could not be verified within reasonable time
- **Background of client**
 - Suspicious background or links with known criminals
- **Multiple accounts**
 - Large number of accounts having a common account holder, introducer or authorized signatory with no rationale
- **Activity in accounts**
 - Unusual activity compared with past transactions
 - Sudden activity in dormant accounts
- **Nature of transactions**
 - Unusual or unjustified complexity
 - No economic rationale or bonafide purpose
- **Value of transactions**
 - Value inconsistent with the client's apparent financial standing

OBLIGATIONS & PROVISIONS UNDER PMLA

- Section 13 - empowers Director of FIU to Scrutinise and Inquire records and impose penalty of a minimum of Rupees 10,000/- to a maximum of Rupees 1,00,000/- for each failure.
- Section 14 - **provides protection to** Banks, FI's, Intermediaries of Securities market, **Reporting Entity** and its officers from any liability in Civil or criminal proceedings for providing the information required by section 12.
- Section 15 - manner of furnishing of information to the Director of FIU under section 11A, section 12(1), section 12AA(1).

SUMMONS, SEARCHES AND SEIZURES

- Section 16 - empowers authority to carry out survey of premises where he has Reason to believe that offence of ML has been committed. Powers similar to 133A of the IT act.
- Section 17 - empowers director where he has reasonable belief, that any person has committed any act of money laundering, or is in possession of proceeds of the crime or is in possession of records relating to money laundering, to authorize any officer to
 - Search Premises,
 - Seize record or property found,
 - Make inventory and
 - Examine person in control on oath.

SUMMONS, SEARCHES AND SEIZURES

- Section 18 - search of persons by the authority empowered and having reason to believe that any person has secreted on his person or anything under his possession, ownership, or control any record or proceeds of crime which may be useful for or relevant to any proceedings under the act.
- Section 19 - appropriate authority may arrest a person if he has reason to believe that the person is guilty of any offence punishable under the act.
- Section 22, 23 - necessary presumptions for the purposes of the act
- Section 24 - burden of proving that proceeds of crime are Untainted property shall be on the accused.

OTHER PROVISIONS OF THE ACT

The other provisions of the act provide for establishment of

- Appellate tribunal (Chapter VI)
- Special Courts (Chapter VII)
- Authorities under the act (Chapter VIII)
- Reciprocal arrangement for assistance in certain matters. (Chapter IX)
- Miscellaneous provisions (Chapter X)

REPORTING UNDER PMLA

Every Reporting Entity including banking company, financial institution and intermediaries of Securities Market, to furnish to FIU-IND information relating to

- **All cash transactions** of the value of **more than rupees ten lakhs** or its equivalent in foreign currency
- **All series of cash transactions** integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month
- All transactions involving receipts by non-profit organisations of value more than rupees ten lakhs, or its equivalent foreign currency
- **All cash transactions where forged or counterfeit currency** notes or bank notes have been used as genuine and where any forgery of a valuable security or a document has taken place facilitating the transaction
- **All suspicious transactions** whether or not made in cash.

PML (MAINTENANCE OF RECORDS ETC.) RULES 2005, RULE 4:

The records referred to above must contain the following information :-

- Nature of the transactions
- The amount and currency of the transaction
- Date of the transaction
- Parties involved in the transaction

Procedure and manner of maintaining information

1. Information to be maintained in hard and soft copy
2. There should be an internal mechanism for maintaining such information
3. Duty of every Reporting **Entity**, banking company, FI and intermediary to ensure information is being maintained as specified in Rules

PML (MAINTENANCE OF RECORDS ETC.) RULES 2005, RULE 4:

CLIENT DUE DILIGENCE

- Verification of records of the identity of clients:
- At the time of account opening verify and maintain the record of identity.
- Where the client is an individual, he shall submit details of his permanent and current address, one copy of his recent photograph, documents in respect of his nature of business and financial status



PML (Maintenance of Records etc.) Rules 2005, Rule 9:

Where the client is a **company**, it shall submit certified copies of

1. Certificate of Incorporation
2. Memorandum and Articles of Association
3. A resolution and power of attorney by the Board of Directors granted to its employees to transact on its behalf
4. An officially valid document for an attorney to transact on behalf of the employees

Where the client is a **partnership firm** it shall submit certified copies of

1. Registration certificate
2. Partnership deed
3. An officially valid document for an attorney to transact on behalf of the firm

PML (Maintenance of Records etc.) Rules 2005, Rule 9:

Where the client is **an unincorporated association** or a **BOI** it shall submit copies of:

1. Resolution of the managing body
2. Power of attorney granted to transact on its behalf
3. An officially valid document for an attorney to transact on its behalf
4. Such other information as may be required to establish its legal existence

Where the client is a **partnership firm** it shall submit certified copies of

1. Registration certificate
2. Partnership deed
3. An officially valid document for an attorney to transact on behalf of the firm

REPORTS TO BE FURNISHED UNDER PMLA

- Reports of cash, suspicious and transactions involving Counterfeit currency or forgery etc. to be furnished to FIU-IND
- Reports of cash transactions (CTR) and suspicious transactions (STR) to be furnished in formats prescribed by SEBI
- Both manual and electronic formats prescribed
- **Time limit-**
 - **by the 15th day of the succeeding month** in respect of cash transactions
 - **within 7 working days** in respect of suspicious transactions and transactions involving forged or counterfeit currency etc.
- **No need to submit nil report**

OTHER LAWS FOR PREVENTION OF MONEY LAUNDERING

- Smugglers and Foreign Exchange Manipulators Forfeiture of Property Act, 1976
- The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)
- The Benami Transactions (Prohibition) Act, 1988
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

Notification by MoF, dated May 3, 2023 - S.O. 2036(E)

Exercise of the powers- section 2(1)(sa)(vi) of PMLA 2002-

- Financial transactions carried out by a relevant person on behalf of his client, in the course of his or her profession, in relation to the following activities-
 - buying and selling of any immovable property;
 - managing of client money, securities or other assets;
 - management of bank, savings or securities accounts;
 - organisation of contributions for the creation, operation or management of companies;
 - creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities,shall be an activity for the purposes of said sub-section.

Notification by MoF, dated May 3, 2023 - S.O. 2036(E)

Relevant Person-

For the purposes of this notification, it includes –

- (i) an individual who is practicing CA;
- (ii) an individual who is practicing CS;
- (iii) an individual who is practicing CWA

and practicing individually or through a firm, in whatever manner it has been constituted.

Section 2(1)(sa)(vi) of PMLA 2002-

- Defines ‘Person carrying on designated business or profession’
- Also makes it a part of “Reporting Entity” defined in section 2(1) (wa) of PMLA 2002

Notification by MoF, dated May 3, 2023 - S.O. 2135(E)

Exercise of the powers- section 2(1)(sa)(vi) of PMLA 2002-

Following activities when carried out in the course of business on behalf of or for another person, shall be an activity -

- acting as a formation agent of companies and LLPs;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and LLPs;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company or a LLP or a trust;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

Notification by MoF, dated May 3, 2023 - S.O. 2135(E)

Following activities shall not be regarded as activity under section 2(1)(sa)(vi)-

- any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section 194-I of Income-tax Act, 1961; or
- any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment; or
- any activity that is carried out by an advocate, CA, CS, CWA in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under section 7(1)(b) of Companies Act, 2013; or
- any activity of a person which falls within the meaning of an intermediary as defined in section 2(1)(n) of PMLA 2002

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