Chapter 5: Prevention of Money Laundering

Definitions

Money-Laundering: 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 & projecting it as untainted property shall be guilty of offence of money laundering.

Proceeds of crime: 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.

Payment System: A system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

Scheduled Offence: means: (a) the offences specified under Part A of the Schedule; or (b) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or (c) The offences specified under Part C of the Schedule. The Schedule to the Act gives a list of all the above offences.

Part A, B, C

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PART B: NIL

PART C: An offence which is the offence of cross border implications and is specified in, - (i) Part A; or (ii) the offences against property (Theft) under chapter XVII of the Indian Penal Code.

Punishment for the Offence of Money Laundering:

Section 3: Offence of money laundering.

Section 4: Punishment for Money-Laundering: rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine.

If the offence is specified under paragraph 2 of Part A of the Schedule (Narcotics), the maximum punishment may extend to 10 years instead of 7 years.

Sec 12: Obligation of Banking Companies, Financial Institutions and Intermediaries or a person carrying on a designated business or profession

a. Maintain a record of all transactions. This shall be maintained for a period of 5 years from the date of transaction between a client and the reporting entity.

b. Furnish to the Director within time 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 in manner and subject to conditions as may be prescribed;

d. identify the beneficial owner, if any, of its clients as prescribed;
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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. This shall be maintained for a period of 5 years after the business relationship between a client & the reporting entity has ended or the account has been closed, whichever is later.

Maintenance
Every information maintained, furnished or verified shall be kept confidential.

Section 13: Powers of the Director
1. The Director may make such inquiry, as he thinks fit to be necessary, with regard to the obligations of the reporting entity.
2. The Director may direct reporting entity to get its records audited by CA, from amongst a panel of accountants, maintained by CG. Expenses of any audit specified above shall be borne by the CG.
3. If the Director finds that a reporting entity or its designated director or any of its employees has failed to comply with the obligations, then he may:
   a. issue a warning in writing; or
   b. direct such reporting entity or its designated director to comply with specific instructions; or
   c. direct such reporting entity or its designated director or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
   d. impose a monetary penalty on such reporting entity or its designated director or any of its employees, which shall not be less than Rs. 10,000 but may extend to Rs. 1,00,000 for each failure.
4. The Director shall forward a copy of the order passed to every banking company, financial institution or intermediary or person who is a party to the proceedings.

Sec 26: Appeal to the Appellate Tribunal
1. Director or person aggrieved by an order of AA or reporting entity aggrieved by order of the Director, may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date order is received.
2. It shall be in such form and be accompanied by such fee as prescribed.
3. The Appellate Tribunal may allow an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.
4. Appellate Tribunal may give the parties an opportunity of being heard. It shall then pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.
5. The Appellate Tribunal shall send copy of order to the parties to the appeal & to concerned AA or the Director. The appeal filed shall be dealt with by it as expeditiously as possible and dispose off the appeal finally within 6 months from the date of filing of the appeal.

Sec 35: Power of the Appellate Tribunal
1. The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. Subject to other provisions of the Act, the Appellate Tribunal shall have powers to regulate its own procedure.
2. The Appellate Tribunal shall have the same powers as are vested in a Civil Court while trying a suit in respect of the following:
   a. summoning and enforcing the attendance of any person and examining him on oath
   b. setting aside any order of dismissal of any representation for default or any ex-parte order
   c. requiring the discovery and production of documents;
   d. dismissing a representation for default or deciding it ex parte;
   e. receiving evidence on affidavits
   f. reviewing its decisions;
   g. requisitioning any public record or document or copy of same from any office;
   h. any other matter prescribed by the CG
   i. issuing commissions for the examination of witnesses or documents;

Sec 38: Decision to be by majority
If the Members of a Bench consisting of 2 Members differ in opinion on any point they shall make a reference to the Chairperson.
The Chairperson shall either hear the points himself or refer the case for hearing by the 3rd Member of the
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Appellate Tribunal and shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 42: Appeal to High Court

Any person aggrieved by order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of order on any question of law or fact arising out of such order. The High Court if it is satisfied that the appellant had reasonable cause for not filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Sec 43: Special Courts

Central Government is empowered to notify one or more Courts of Sessions as Special Court/s in consultation with the Chief Justice of the High Court for trial of offence of money laundering.

Sec 44: Offences Triable by Special Courts

2. An offence punishable u/s 4 and any scheduled offence connected to the offence shall be triable only by the Special Court constituted for the area in which the offence has been committed;
3. A Special Court may take cognizance of the offence for which the accused is committed to it for trial.
4. Requirement of police report of the facts which constitute an offence under this Act is no more applicable.

Sec 45: Offences under the Act shall be cognizable and non-bailable

2. Person accused of an offence punishable for a term of imprisonment of more than 3 years under Part A of the Schedule shall not be released on bail or on his own bond unless:
   i. The Public Prosecutor has been given an opportunity to oppose the application for such release and;
   ii. Court is satisfied that he is not guilty of such offence & is not likely to commit any offence when on bail.
3. In case of any person who is under the age of 16 years or in case of a woman or in case of a sick, the Special Court can direct the release of such person on bail.
4. The Special Court can take cognizance of an offence only on receiving complaint in writing from:
   a. The Director or;
   b. Any officer of CG or a SG authorised in writing in this behalf.
5. No police officer shall investigate into an offence under this Act unless specifically authorised, by the CG.

Sec 5: Attachment of property involved in money-laundering

1. Where the Director, or any officer of the rank or above of Deputy Director believes that:
   a. any person is in possession of any proceeds of crime;
   b. such proceeds of crime are likely to be concealed, transferred or dealt with in any such manner
2. he may order in writing to provisionally attach such property for a period not exceeding 180 days from the date of the order.
3. No such order shall be made unless 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 investigating the offence, before a Magistrate or court for taking cognizance of the scheduled offence.
4. Any property of any person may be attached under this section if the Director or any other officer believes that if such property involved in money-laundering is not attached immediately then the non-attachment of the property is likely to frustrate any proceeding under this Act.
5. Immediately after attachment copy of the order shall be forwarded, along with the material in his possession to the AA, in a sealed envelope and such AA shall keep such order & material for such period as prescribed.
6. Every order of attachment shall cease to have effect after the expiry of the period specified.
7. No interested person (entitled to claim interest) shall be prevented from availing benefits of the immovable property attached.
8. The Director or any other officer who provisionally attaches any property within a period of 30 days file a complaint stating the facts of such attachment before the AA.

Sec 6: Adjudicating Authorities, composition, powers, etc

1. The CG shall appoint an AA to exercise jurisdiction, powers and authority conferred.
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2. An AA shall consist of a Chairperson and 2 other members. One member having experience in the field of law, administration, finance or accountancy.

Sec 9: Vesting of property in Central Government
1. Where an order of confiscation has been made in respect of any property of a person, all the rights and title in such property shall vest absolutely in the CG free from all encumbrances.
2. If AA is of the opinion that any encumbrance on the property or leasehold interest has been created with a view to defeat the provisions of this Chapter, it may declare such encumbrances or leasehold interest to be void and the said property shall vest in the CG free from such encumbrances or leasehold interest.
3. No person shall be discharged from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Reciprocal Arrangements

Offence of Cross border implications: Offence committed outside India and remitted to India or; Offence committed in India and remitted outside India or; Other permutations possible

Contracting State: any country or place outside India for which arrangements have been made by the CG of other Country through a treaty or otherwise.

Sec 56: Agreements with Foreign countries
CG enters into an agreement with other country for:
a. Enforcing the provisions of this Act and;
b. Exchange of information for prevention of any offence under this Act, or under corresponding law in force in that country & investigation of cases relating to any offence under this Act.

Sec 57: Letter of request to a contracting State (V. imp)

Sec 58: Assistance to a contracting State (V. imp)

When: an application is received by Special Court that any evidence is required in respect of investigation

Received by: CG

From whom: the Investigating Officer or any officer superior in rank to the Investigating Office

From: Contracting State

Opinion of matter: such evidence may be available with Contracting State

For: Request of investigation into an offence or proceedings under this Act.

Satisfaction of Special Court is necessary

Forward to: CG shall forward the request to:
- Special Court
- To any Authority as it thinks fit for execution of such request.

Sec 66: Disclosure of information
The Director can demand any information from any person regarding compliance of this Law and other Laws as per Schedule by giving notification in Official Gazette.

Recovery of Fine or Penalty

Sec 62: Vexatious (vague/no reason) search
Any authority or officer exercising powers who without reasons recorded in writing:
a. searches or causes to be searched any place; or
b. detains or arrests any person, shall for every offence be liable on conviction for imprisonment extending to 2 years or fine which may extend to Rs.

Sec 63: False info. or failure to give info.
1. Any person intentionally giving false information and causing an arrest or a search shall 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:
50,000 or both. a. being legally bound to state the truth refuses to answer any question put to him; or b. refuses to sign any statement made by him in 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 shall be liable to penalty of not be less than Rs. 5,000 but which may extend to Rs. 10,000 for each such default or failure. 3. An opportunity of being heard shall be given to such authority.

Sec 70: Offences by Companies (*Same as seen in FEMA/FCRA*)
1. In case of Company committing a contravention, person responsible to such Company shall be liable to be proceeded against and punished accordingly.
2. The said person shall not be held liable if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent the contravention.
3. Further, if it is proved that the contravention has taken place with the consent or connivance of any director, manager, secretary or other officer of the Company, they shall be deemed to be guilty of the contravention and be punished accordingly.

Sec 71: Act to have overriding effect
Any inconsistent provision of other Acts will be overridden by this Act.

Sec 72: Continuation of proceedings in the event of death or insolvency
If a person has filed the appeal or being adjudicated at the High Court or Appellate Tribunal then such an appeal will still continue against such an insolvent or deceased person and recovery will be made from his asset through his legal heir.