

HAND BOOK
ON
THE PREVENTION OF MONEY-LAUNDERING ACT, 2002



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1. INTRODUCTION

Money is any object or record that is generally accepted as payment for goods and services and repayment of debts in a given country or socio-economic context. Money is generally considered to have the following four main functions, which are summed up in a rhyme found in older economics textbooks: "Money is a matter of functions four, a medium, a measure, a standard, a store."

Money is the root cause of many evils like corruption, black marketing, smuggling, drug trafficking, tax evasion etc. The more developed the nation, the more the standard of living of the people. People want more money to cater to their needs and at a point of time they don't hesitate to have money from any source i.e. black or white money. This is the point where the concept of money laundering enters and then prospers.

Although the word "laundering" is generally used for cleaning dirty clothes, the term Money Laundering refers to the conversion or "Laundering" of money which is illegally obtained, in order to make it appear to originate from a legitimate source. Thus it is a process by which proceeds from illegal activities are disguised in order to conceal their illicit origin. Money Laundering is being employed by launderers worldwide to conceal criminal activity associated with it such as drug / arms trafficking, terrorism and extortion.

Money laundering, loosely defined, is the transactional processing or moving of illicitly gained funds (such as currency, cheques, electronic transfers or similar equivalents) towards disguising its source, nature, ownership or intended destination and/or beneficiaries. The desired outcome of this process is "clean" money that can be legally accessed or distributed via legitimate financial channels and credible institutions.

Money laundering, at its simplest, is the act of making money that comes from Source A look like it comes from Source B. In practice, criminals are trying to disguise the origins of money

obtained through illegal activities so it looks like it was obtained from legal sources. Otherwise, they can't use the money because it would connect them to the criminal activity, and law-enforcement officials would seize it.

The most common types of criminals who need to launder money are drug traffickers, embezzlers, corrupt politicians and public officials, mobsters, terrorists and con artists. Drug traffickers are in serious need of good laundering systems because they deal almost exclusively in cash, which causes all sorts of logistics problems. One important aspect of money laundering is the tendency and need for perpetrators to operate cross border schemes for the purpose of concealment and/or to take advantage of the uneven developments in the national anti-money laundering regimes.

Government of India is committed to tackle the menace of Money Laundering and has always been part of the global efforts in this direction. India is signatory to the following UN Conventions, which deal with Anti Money Laundering / Countering the Financing of Terrorism:

1. International Convention for the Suppression of the Financing of Terrorism (1999);
2. UN Convention against Transnational Organized Crime (2000); and
3. UN Convention against Corruption (2003)

A consequence of the political Declaration adopted by the special session of the United Nations General Assembly (UNGASS) held on 8th to 10th June 1998 (of which India is one of the signatories) calling upon member States to adopt Anti-Money Laundering Legislation & Programme, the Parliament has enacted a special law called the 'Prevention of Money Laundering Act, 2002' (PMLA 2002). This Act has been substantially amended, by way of enlarging its scope, in 2009 (w.e.f. 01.06.2009), by enactment of Prevention of Money Laundering (Amendment) Act, 2009. The Act was further amended by Prevention of Money-Laundering (Amendment) Act, 2012 w.e.f. 15-02-2013.

2. HISTORY OF MONEY LAUNDERING

The word "money" is believed to originate from a temple of Hera, located on Capitoline, one of Rome's seven hills. In the ancient world Hera was often associated with money. The temple of Juno Moneta at Rome was the place where the mint of Ancient Rome was located. The name "Juno" may derive from the Etruscan goddess Uni (which means "the one", "unique", "unit", "union", "united") and "Moneta" either from the Latin word "monere" (remind, warn, or instruct) or the Greek word "moneres" (alone, unique).

Money laundering has fairly benign origins in the *hawala* and *hundi* systems of South Asia, which were informal financial systems which allowed people to execute financial transactions in confidence and secrecy. These systems were perfectly legitimate to begin with, and merely reflected institutional underdevelopment or unfamiliarity or lack of confidence in the formal banking system. However, these systems soon attracted criminal organizations, which began to use them along with other means in order to launder money to remove the taint of illegality. In the past century, money laundering has become an international problem.

The term "money laundering" is said to originate from Mafia ownership of Laundromats in the United States. Gangsters there were earning huge sums in cash from extortion, prostitution, gambling and bootleg liquor. They needed to show a legitimate source for these monies. One of the ways in which they were able to do this was by purchasing outwardly legitimate businesses and to mix their illicit earnings with the legitimate earnings they received from these businesses. Laundromats were chosen by these gangsters because they were cash businesses and this was an undoubted advantage to people like Al Capone who purchased them. Al Capone, however, was prosecuted and convicted in October, 1931 for tax evasion. It was this that he was sent to prison for rather than the predicate crimes which generated his illicit income.

Meyer Lansky (affectionately called 'the Mob's Accountant') was particularly affected by the conviction of Capone for something as obvious as tax evasion. Determined that the same fate would not befall him he set about searching for ways to hide money. Before the year was out he

had discovered the benefits of numbered Swiss Bank Accounts. This is where money laundering would seem to have started and according to Lacey Lansky was one of the most influential money launderers ever. The use of the Swiss facilities gave Lansky the means to incorporate one of the first real laundering techniques, the use of the 'loan-back' concept, which meant that hitherto illegal money could now be disguised by 'loans' provided by compliant foreign banks, which could be declared to the 'revenue' if necessary, and a tax-deduction obtained into the bargain.

Even though the term has been used for a fairly long period of time, the first judicial use of the term was only in 1982 in America. Towards the latter half of the last century, money laundering began to be increasingly connected to the offences of drug trafficking and organized crime, and criminal organizations and drug lords began to conduct large operations to launder their profits of their taint of illegality. The conversion or transfer of proceeds from drug trafficking in order to conceal or disguise the illegal origin of the property was made an offence under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Money laundering also was developed in order to facilitate trade. Nigeria is the money-laundering centre of Africa and that Nigerians around the world are engaged in large-scale crime and laundering. The criminals create an illusion that the money they are spending is actually theirs.

In India money laundering is popularly known as Hawala transactions. It gained popularity during early 90's when many of the politicians were caught in its net. Hawala is an alternative or parallel remittance system. The Hawala Mechanism facilitated the conversion of money from black into white. "Hawala" is an Arabic word meaning the transfer of money or information between two persons using a third person. The system dates to the Arabic traders as a means of avoiding robbery. It predates western banking by several centuries.

3. IMPORTANT DEFINITIONS

Sec.2 of Prevention of Money-laundering Act, 2002 deals with definitions.

Section 2 Definitions.—

(1) In this Act, unless the context otherwise requires,—

(a) “**Adjudicating Authority**” means an Adjudicating Authority appointed under sub-section (1) of section 6;

(b) “**Appellate Tribunal**” means the Appellate Tribunal established under section 25;

(c) “**Assistant Director**” means an Assistant Director appointed under sub-section (1) of section 49;

(d) “**attachment**” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

(da) “**authorised person**” means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);

(e) “**banking company**” means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(f) “**Bench**” means a Bench of the Appellate Tribunal;

(fa) “**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;]

(g) “**Chairperson**” means the Chairperson of the Appellate Tribunal;

(h) “**chit fund company**” means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in section 2 of the Chit Funds Act, 1982 (40 of 1982);

(ha) “**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;

(i) **“co-operative bank”** shall have the same meaning as assigned to it in clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961);

(ia) **“corresponding law”** means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;]

(ib) **“dealer”** has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956 (74 of 1956);

(j) **“Deputy Director”** means a Deputy Director appointed under sub-section (1) of section 49;

(k) **“Director”** or **“Additional Director”** or **“Joint Director”** means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 49;

(l) **“financial institution”** means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a nonbanking financial company and the Department of Posts in the Government of India

(m) **“housing finance institution”** shall have the meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987 (53 of 1987);

(n) **“intermediary”** means,— a stock-broker, sub-broker share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992); or

- i. an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 (74 of 1952) or any member of such association; or
- ii. intermediary registered by the Pension Fund Regulatory and Development Authority; or
- iii. a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);]

(na) **“investigation”** includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence.

(o) **“Member”** means a Member of the Appellate Tribunal and includes the Chairperson;

(p) “**money-laundering**” has the meaning assigned to it in section 3;
(q) “**non-banking financial company**” shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
(r) “**notification**” means a notification published in the Official Gazette;

(ra) “**offence of cross border implications**”, means— 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 ¹¹[transfers in any manner] the proceeds of such conduct or part thereof to India; or

- i. 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.
Explanation.—Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2009.]

(rb) “**payment system**” means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. Explanation.— For the purposes of this clause, “payment system” includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;]

(rc) “**payment system operator**” means a person who operates a payment system and such person includes his overseas principal.

Explanation.—For the purposes of this clause, “overseas principal” means,—

(A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing

outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;]

(s) **“person”** includes;—

- an individual,
- ii. a Hindu undivided family,
- iii. a company,
- iv. a firm,
- v. an association of persons or a body of individuals, whether incorporated or not,
- vi. every artificial juridical person, not falling within any of the preceding sub-clauses, and
- vii. any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

(sa) **“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. a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;
- iii. real estate agent, as may be notified by the Central Government;
- iv. dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- v. person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- vi. person carrying on such other activities as the Central Government may, by

notification, so designate, from time-to-time;]

(sb) **“precious metal”** means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;

(sc) **“precious stone”** means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;

(t) **“prescribed”** means prescribed by rules made under this Act;

(u) **“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;

(v) **“property”** means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located; Explanation.—For the removal of doubts, it is hereby clarified that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

(va) **“real estate agent”** means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;]

(w) **“records”** include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

(wa) **“reporting entity”** means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;.

(x) **“Schedule”** means the Schedule to this Act;

(y) **“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 thirty lakh rupees or more; or (iii) the offences specified under Part C of the Schedule;

(z) **“Special Court”** means a Court of Session designated as Special Court under sub-section (1) of section 43;

(za) **“transfer”** includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer

of right, title, possession or lien;

(zb) “**value**” means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

4. WHAT IS MONEY LAUNDERING?

Money laundering is the processing of criminal proceeds to disguise their illegal origin, given that the goal of a large number of criminal activities is to generate profit for an individual or a group.

Examples of money laundering activities are as follows –

- ✓ Illegal arms sales,
- ✓ Smuggling,
- ✓ Drug trafficking and
- ✓ Prostitution Rings
- ✓ Embezzlement,
- ✓ Insider trading,
- ✓ Bribery
- ✓ Computer Fraud Schemes

The money so generated is tainted and is in the nature of ‘dirty money’. Money Laundering is the process of conversion of such proceeds of crime, the ‘dirty money’, to make it appear as ‘legitimate’ money.

There are various definitions available which describe the phrase ‘Money Laundering’.

Financial Action Task Force on Money Laundering (FATF) defines money laundering as “the processing of criminal proceeds to disguise their illegal origin in order to legitimize the ill-gotten gains of crime.”

According to **Section 3 of Prevention of Money Laundering Act, 2002** – “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 and projecting it as untainted property shall be guilty of offence of money-laundering.

In **Black's Law of Lexicon** "the term laundering is referred to as investment or other transfer of money flowing from racketeering, drug transactions and other sources (illegal sources) into legitimate channels so that its original source cannot be traced."

Article 1 of the draft European Communities (EC) Directive of March 1990 defines it as – “the conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement rights with respect to, or ownership of property, knowing that such property is derived from serious crime.”

Allied Laws connected with Anti -Money Laundering

1. Indian Penal Code,1860
2. Prevention of Corruption Act,1988
3. Right to Information Act,2005
4. Central Vigilance Commission Act, 2003
5. Lokayukta Acts of States.....
6. The Right to Information Act, 2005
7. Smugglers and Foreign Exchange Manipulators Forfeiture of Property Act, 1976
8. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)
9. The Benami Transactions (Prohibition) Act, 1988 (Bill, 2011)
10. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

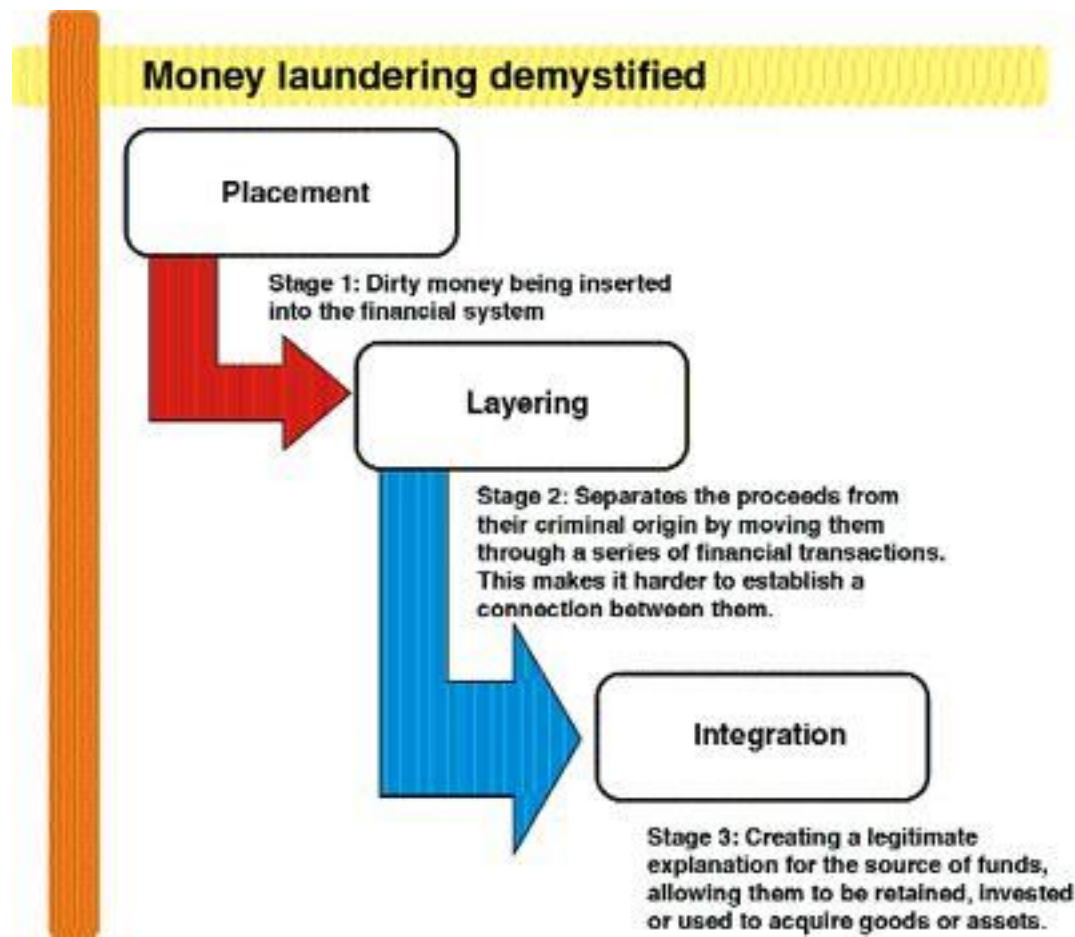
4.1. Why is money laundered?

There are several reasons why people launder money. These include:

- **hiding wealth:** criminals can hide illegally accumulated wealth to avoid its seizure by authorities;
- **avoiding prosecution:** criminals can avoid prosecution by distancing themselves from the illegal funds;
- **evading taxes:** criminals can evade taxes that would be imposed on earnings from the funds;
- **increasing profits:** criminals can increase profits by reinvesting the illegal funds in businesses;
- **becoming legitimate:** criminals can use the laundered funds to build up a business and provide legitimacy to this business.

5. MONEY LAUNDERING PROCESS AND METHODS

Money laundering is not a single act but is in fact a process that is accomplished in three basic steps. These steps can be taken at the same time in the course of a single transaction, but they can also appear in well separable forms one by one as well. The steps are explained hereunder –



1) Placement

The first stage is the physical disposal of cash. The launderer introduces his illegal profits into the financial system. This placement is accomplished by depositing the cash in domestic banks or in other types of formal or informal financial institutions. This is done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank

account, or by purchasing a series of monetary instruments (cheques, money orders, etc.). The cash is usually siphoned off across borders for deposit in foreign financial institutions, or used to buy high-value goods, such as artwork, aeroplanes, and precious metals and stones, that can then be resold for payment by cheque or bank transfer.

2) Layering

The Second stage in money laundering is layering. The launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channelled through the purchase and sale of investment instruments such as bonds, stocks, and traveller's cheques or the launderer might simply wire the funds through a series of accounts at various banks across the globe, particularly to those jurisdictions that do not cooperate in anti-money laundering investigations. In some instances, the launderer might disguise the transfer as payments for goods or services, thus giving them a legitimate appearance. A number of rotations to slush funds are given through banks and this complex layer of financial transactions are carried out to divorce the illicit proceeds from their source and mislead the investigating agencies. The high-value goods and monetary instruments are resold and the proceeds are invested in real estate and legitimate businesses, particularly in the leisure and tourism industries. Shell companies i.e. paper companies/bogus companies) serve as front and are registered in offshore havens. They are a common tool in the layering phase.

3) Integration

This is the stage where the funds are returned to the legitimate economy for later extraction. Examples include investing in a company, purchasing real estate, luxury goods, etc. This is the final stage in the process. The launderer makes it appear to have been legally earned and accomplishes integration of the "cleaned" money into the economy. By this stage, it is exceedingly difficult to distinguish legal and illegal wealth. It involves making the wealth derived from crime appear legitimate.

The following methods show the means or medium using which, launderers carry out their activities:

- a) **Structuring ("Smurfing"):** Smurfing is possibly the most commonly used money laundering method. It involves many individuals who deposit cash into bank accounts or buy bank drafts in amounts in small amounts to avoid the reporting threshold.
- b) **Bank Complicity:** Bank complicity occurs when a bank employee is involved in facilitating part of the money laundering process.
- c) **Money Services and Currency Exchanges:** Money services and currency exchanges provide a service that enables individuals to exchange foreign currency that can then be transported out of the country. Money can also be wired to accounts in other countries. Other services offered by these businesses include the sale of money orders, cashiers cheques, and traveller's cheques.
- d) **Asset Purchases with Bulk Cash:** Money launderers may purchase high value items such as cars, boats or luxury items such as jewellery and electronics. Money launderers will use these items but will distance themselves by having them registered or purchased in an associate's name.
- e) **Electronic Funds Transfer:** Also referred to as a telegraphic transfer or wire transfer, this money laundering method consists of sending funds electronically from one city or country to another to avoid the need to physically transport the currency.
- f) **Postal Money Orders:** The purchase of money orders for cash Allows money launderers to send these financial instruments out of the country for deposit into a foreign or offshore account.
- g) **Credit Cards:** Overpaying credit cards and keeping a high credit balance gives money launderers access to these funds to purchase high value items or to convert the credit balance into cheques.
- h) **Casinos:** Cash may be taken to a casino to purchase chips which can then be redeemed for a casino cheque.
- i) **Refining:** This money laundering method involves the exchange of small denomination bills for larger ones and can be carried out by an individual who converts the bills at a number of different banks in order not to raise suspicion. This serves to decrease the bulk of large quantities of cash.

- j) **Legitimate Business / Co-mingling of Funds:** Criminal groups or individuals may take over or invest in businesses that customarily handle a high cash transaction volume in order to mix the illicit proceeds with those of the legitimate business. Criminals may also purchase businesses that commonly receive cash payments, including restaurants, bars, night clubs, hotels, currency exchange shops, and vending machine companies. They will then insert criminal funds as false revenue mixed with income that would not otherwise be sufficient to sustain a legitimate business.
- k) **Value Tampering:** Money launderers may look for property owners who agree to sell their property, on paper, at a price below its actual value and then accept the difference of the purchase price "under the table". In this way, the launderer can, for example, purchase a 2 million rupee property for 1 million rupee, while secretly passing the balance to the seller. After holding the property for a period of time, the launderer then sells it for its true value of 2 million rupees.
- l) **Loan Back:** Using this method, a criminal provides an associate with a sum of illegitimate money and the associate creates the paperwork for a loan or mortgage back to the criminal for the same amount, including all of the necessary documentation. This creates an illusion that the criminal's funds are legitimate. The scheme's legitimacy is further reinforced through regularly scheduled loan payments made by the criminal, and providing another means to transfer money.

5.1. Why is money laundering punishable?

The socio-economic effects of money laundering are crippling: Illicit funds generated from criminal activities such as gun running, drug and human trafficking and other forms of organised crime is laundered into clean currency, and in turn used to fund new criminal operations or expand existing ones. This translates into more drug trafficking and dealing, more illegal firearms, more violent crimes, and – most disconcertingly – more international terrorism.

Left unchecked, money laundering can undermine the integrity of entire financial systems, and embroil individual financial institutions in share-crippling financial scandals.

Moreover, the amounts of money generated from criminal activities and laundered throughout the world amount several billions of dollars – up to as much as 5% of the global GDP. This gives the beneficiaries of money laundering a lot of muscle, and certainly enough means to threaten political stability worldwide.

In essence, regulatory compliance seeks to curb this criminal proliferation by holding financial systems providers and banking institutions accountable for the financial activities of the clients they deal with. Money laundering poses a very real threat to the reputation and financial well-being of banks, law firms, accountants and asset management houses around the world, as these institutions are often unwitting accomplices in the laundering of dirty money.

5.2. Fundamental laws of money laundering

The United Nations Global Programme against money laundering has identified ten fundamental laws of money laundering. They are:

1. The more successful a money laundering apparatus is in imitating the patterns and behaviour of legitimate transactions, the less the likelihood of it being exposed.
2. The more deeply embedded illegal activities are within the legal economy and the less their institutional and functional separation, the more difficult it is to detect money laundering.
3. The lower the ratio of illegal to legal financial flows through any given business institution, the more difficult it is to detect money laundering.
4. The higher the ratio of illegal “services” to physical goods production in any economy, the more easily money laundering can be conducted in that economy.
5. The more the business structure of production and distribution of non-financial goods and services is dominated by small and independent firms or self-employed individuals, the more difficult the job of separating legal from illegal transactions.
6. The greater the facility of using cheques, credit cards and other non-cash instruments for effecting illegal financial transactions, the more difficult it is to detect money laundering.

7. The greater the degree of financial deregulation for legitimate transactions, the more difficult it is to trace and neutralize criminal money.
8. The lower the ratio of illegally to legally earned income entering any given economy from outside, the harder the job of separating criminal from legal money.
9. The greater the progress towards the financial services supermarket and the greater the degree to which all manner of financial services can be met within one integrated multi-divisional institution, the more difficult it is to detect money laundering.
10. The greater the contradiction between global operation and national regulation of financial markets, the more difficult the detection of money laundering

6. OVERVIEW OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002

In India, before the enactment of the Prevention of Money Laundering Act 2002, the following statutes addressed inadequately the issue of money laundering -

- The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- The Income Tax Act, 1961
- The Benami Transactions (Prohibition) Act, 1988
- The Indian Penal Code and Code of Criminal Procedure, 1973
- The Narcotic Drugs and Psychotropic Substances Act, 1985
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

This was not sufficient to tackle the growing menace of money laundering in India. In view of the urgent need for the enactment of a comprehensive legislation inter alia for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money-laundering etc., the PML Bill was introduced in the Lok Sabha on 4th August 1998, which ultimately was passed on 17th January 2003.

The Prevention of Money Laundering Act, 2002 (PMLA 2002) and the Rules notified thereunder came into effect on July 1, 2005. The Act was amended by the Prevention of Money Laundering (Amendment) Act, 2009 w.e.f. 01.06.2009. The Act was further amended by the Prevention of Money-Laundering (Amendment) Act, 2012 w.e.f. 15-02-2013. It extends to the whole of India including the state of Jammu & Kashmir.

The Prevention of Money Laundering Act, 2002 consists of ten chapters containing 75 sections and one Schedule. Amendments were made to this Act vide The Prevention of Money laundering (Amendment) Act, 2005(20 of 2005) and Prevention of Money laundering (Amendment) Act, 2009 (21 of 2009).

The following table provides an insight into the scheme of the Act:

Chapter No	Sections	Title
I	1-2	Preliminary
II	3-4	Offence of Money Laundering
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IX	55-61	Reciprocal, arrangements for assistance in certain matters and procedure for confiscation of property.
X	62-75	Miscellaneous
Schedule	Part A	Offences which are covered regardless of the value
Schedule	Part B	Nil
Schedule	Part C	Offences involving cross border transactions

Object of the Act

The object of the Act is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

Offence of and punishment for Money Laundering

Whoever 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 and projecting it as untainted property will be guilty of offence of money-laundering. (Sec.3)

Whoever commits the offence of money-laundering will be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and will also be liable to fine which may extend to five lakh rupees. But if the proceeds of crime involved in money laundering relates to any offence specified under paragraph 2 of Part A of the Schedule i.e. offences specified under the Narcotic Drugs and Psychotropic Substances Act, 1985, then the term of imprisonment may extend to ten years. (Sec.4)

Any person who willfully and maliciously gives false information and causes an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both. (Sec.63(1))

If any person legally bound to give information relating to any offence of money laundering, refuses to answer any question put forth by the authorities or give evidence or produce books of accounts or other documents at a certain place or time, shall pay by way of penalty a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure. (Sec.63(2))

Proceeds of Crimes

“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 [Section 2(1)(u)].

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 of 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 thirty 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.*

PMLA deals with



Scheduled Offences in Part A of PMLA, 2002 covers the followed enactments

1. The Indian Penal Code 1860
2. The Narcotics Drugs and Psychotropic Substances Act, 1985
3. The Explosive Substances Act, 1908
4. The Unlawful Activities (Prevention) Act, 1967
5. The Arms Act, 1959
6. The Wild Life (Protection) Act, 1972
7. The Immoral Traffic (Prevention) Act, 1956
8. The Prevention Of Corruption Act, 1988
9. The Explosives Act, 1884
10. The Antiquities and Arts Treasures Act, 1972
11. The Securities and Exchange Board Of India Act, 1992
12. The Customs Act, 1962
13. The Bonded Labour System (Abolition) Act, 1976
14. The Child Labour (Prohibition and Regulation) Act, 1986

15. The Transplantation Of Human Organs Act, 1994
11. The Juvenile Justice (Care and Protection Of Children) Act,2000
12. The Emigration Act,1983
13. The Passport Act,1967
14. The Foreigners Act,1946
15. The Copyright Act,1957
21. The Trade Marks Act,1999
22. The Information Technology Act, 2000
23. The Biological Diversity Act,2002
24. The Protection Of Plant Varieties and Farmers' Rights Act,2001
25. The Environment Protection Act,1986
26. The Water (Prevention and Control Of Pollution) Act,1974
27. The Air (Prevention And Control Of Pollution) Act,1981
28. The Suppression of Unlawful Acts Against Safety Of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002

Attachment of property involved in money laundering

According to Section 5 of the Act, where the Director or any other officer but not below the rank of Deputy Director authorized by him, has reason to believe on the basis of material in his possession that any person is in possession of any proceeds of money laundering or such person has been charged of having committed a scheduled offence or 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, then such officer may by order in writing, provisionally attach such property for a period not exceeding 150 days from the date of the order, in the manner provided in the Second Schedule of the Income Tax Act, 1961.

But no order of attachment should be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Sec.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 cognizance of the scheduled offence, as the case may be. Further apart from the above, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised

by him has reason to believe (reasons to be recorded in writing) on the basis of the material in his possession, that if the property involved in money laundering is not attached immediately, then the non-attachment of the property is likely to frustrate any proceeding under the Act.

Every order of attachment will cease to have effect after the expiry of 150 days from the date of the order or on the date of the order made by the Director, whichever is earlier.

The Director or any other officer who provisionally attaches the property should, within a period of 30 days from such attachment, file a complaint, stating the facts of such attachment before the Adjudicating Authority.

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

(a) Attachment of property under Section 5, seizure/ freezing of property and records under Section 17 or Section 18. Property also includes property of any kind used in the commission 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 [Section 4].

(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.

Process of Adjudication

Section 8 deals with the process of adjudication. On receipt of a complaint from the Director or any other officer who provisionally attaches any property or an application made by such officer for retention of seized record or property, the Adjudicating Authority may, on reason to believe that any person has committed an offence of money laundering or is in possession of proceeds of crime, serve a notice of not less than thirty 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 or seized, the evidence on which he relies and other relevant information and particulars and show cause why all or any of such property should not be declared to be the

properties involved in money laundering and confiscated by the Central Government. Where a notice specifies any 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. Similar notice is required to be served on all persons when more than one person holds such property jointly.

Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record and net income, if any, shall cease to have effect.

Where the attachment of any property or retention of the seized property or record becomes final, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.

Maintenance of records

Obligations of banking companies, financial institutions and intermediaries are covered under Chapter IV of the Prevention of Money Laundering Act, 2002.

Summons, Searches and Seizures

The power of the authorities to survey, search and seize property is covered under Chapter V of the Prevention of Money Laundering Act, 2002.

Appellate Tribunal

Chapter IV of the Prevention of Money Laundering Act, 2002 deals with the establishment of the Appellate Tribunal and appeals to be made to the Appellate Tribunal.

The Tribunal consists of a Chairperson and two other Members. The Chairman and one Member of ATFP (Appellate Tribunal for Forfeited Property) holds additional charge of the post of Chairman and Member of Tribunal under PMLA, 2002.

Nature of Offences under the Act

The offences under the Act will be cognizable and non-bailable.

Authorities under the Act

The Director, Financial Intelligence Unit, India, under the Ministry of Finance, Department of Revenue, will act as the Director to exercise the exclusive powers conferred under clause (b) of sub-section (1) of section 12 and its proviso, section 13, sub-section (2) of section 26 and sub-section (1) of section 50 of the Prevention of Money Laundering Act, 2002 and the said Director, Financial Intelligence Unit, India, shall also concurrently exercise powers conferred by sub-section (3) and sub-section (5) of section 26, section 39, section 40, section 41, section 42, section 48, sub-section (2) of section 49, section 66 and section 69 of the aforesaid Act.

The Director, FIU-IND is the competent authority for the purpose of the provisions relating to maintenance of records and filing of information. The Directorate of Enforcement is the competent authority for the provisions relating to search, seizure, confiscation of property, prosecution, etc.

6.1. Prevention of Money Laundering (Amendment) Act, 2009

The Prevention of Money Laundering Bill, 2008 was introduced in the Rajya Sabha on October 17, 2008. The Bill was then referred to the Parliamentary Standing Committee on Finance (Chairperson – Shri Ananth Kumar), which submitted its report on December 19, 2008. The Bill was then again introduced in the Rajya Sabha on February 19, 2009 and passed by the Lok Sabha on February 24, 2009. The Prevention of Money Laundering (Amendment) Act, 2009 came into force from June 1, 2009.

Summary of the Standing Committee’s report

- The Committee believed that enacting the Bill was an essential step to strengthen the country’s legal framework for preventing money laundering and counter financing of terrorism.
- Apart from plugging other avenues generating illegal funds such as hawala, etc., international guidelines should be taken into account for effective enforcement of anti-money laundering law.
- In order to comprehensively cover money transfer service providers, full fledged money changers and international payment gateways, the definitions of “authorised person” and

“payment system operator” need to be aligned with the definitions of the Payment and Settlement System Act, 2007.

- The government should consider expanding the ambit of the law to cover Financial Action Task Force (FATF) recommended Designated Non Financial Businesses such as gold or gem dealers, lawyers, real estate agents, etc.
- Since it was difficult to track the transfer of funds and financing of terrorist activity in the absence of bilateral agreements with other countries, the Committee recommended that MoUs for mutual co-operation should be concluded with other countries.
- Enforcement agencies should strengthen their machinery to keep abreast of the emerging trends of money laundering and terror funding. This includes having appropriate software especially with regard to suspicious transactions, strong reporting instruments to monitor transactions, quarterly audit to verify Know Your Customer information, etc.
- Inclusion of “prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control” may deprive investors of refund of shares. The Bill should have a specific provision to make the proceeds from such offence not liable to confiscation and to enable refund of such proceeds.
- An appropriate threshold may be fixed with regard to possession of counterfeit currency to protect genuine bank dealings.
- Adequate safeguards should be put in place to ensure that the enforcement authorities use their power of search and seizure in a judicious manner so that it does not result in any undue harassment of individuals.
- Only a sitting or retired judge of the Supreme Court or High Court should be eligible for appointment as Chairperson of the Appellate Tribunal. Other than Chartered Accountants, similar professionals such as Company Secretaries should be eligible to become members of the Tribunal.
- The government must take necessary steps to become a full fledged member of FATF to enable sharing of information and multi-lateral intelligence.

Important changes brought out by the amendment Act of 2009

- New definitions of authorised person; designated business or profession; offence of cross border implications; and Payment system operator was introduced.
- Changes were made in the definition of financial institution, non-banking financial company and scheduled offence.
- Provisions with regard to attachment of property involved in money laundering and search and seizure were amended.
- The age of retirement of Chairperson and Members of the Adjudicating Authority was increased from 62 years to 65 years.
- Provision was made for mandatory consultation with the Chief Justice of India before removal of the Chairperson or a Member of the Appellate Tribunal.
- Amendment was made with regard to provision for attachment, seizure and confiscation, etc., of property in a contracting State or India.
- Certain offences added in Part A and Part B of the Schedule to the Act. Offences added include those pertaining to insider trading and market manipulation as well as smuggling of antiques, terrorism funding, human trafficking other than prostitution, and a wider range of environmental crimes.
- A new category of offences which have cross-border implications was introduced as Part C.

6.2 Prevention of Money Laundering (Amendment) Act, 2012

The following are the key amendments to the PMLA Act:

- Expanded the definition of offence of money laundering to include activities like concealment, acquisition, possession and use of proceeds of crime.
- Removed the upper limit of fine of Rs. 5 Lakhs.
- Expanded the scope and duration of Attachment of property to 180 days
- Introduced the concept of Reporting Entity
- Increased the powers of the Director to call for records and conduct inquiries
- Provided that special courts can release property in case of decision by a foreign court
- Clarified that prosecution extends not only to individuals but to Companies as well

- Deleted the monetary threshold that applied to the offence of money-laundering

1. Offence of money-laundering definition expanded

The Act states that whoever indulges in any activity connected with proceeds of crime and projects it as untainted property shall be guilty. The definition of the offence of money laundering has been expanded to include further activities. By this amendment, the actions of placement, layering and integration that are usually assumed to constitute money laundering are included within the scope of the definition. [Section 3]

2. Upper limit for fine has been removed

The Act provided for a penalty of fine which may extend to five lakh rupees as punishment for money-laundering. The 2012 amendment Act has removed the upper limit of such fine. After the amendment, the quantum of fine proportionate to the gravity of the offence will be determined by the court on a case to case basis. The limit of Rs.5 lakh is therefore deleted altogether.

The Standing Committee has also suggested that the courts could consider a percentage of the amount of money laundered as fine for the offence. This would ensure that each offender has to pay a fine according to the gravity of his offence. [Section 4]

3. Scope and duration of Attachment of property expanded - The Act provided that the person from whom property is attached must have been charged of having committed a scheduled offence. The 2012 amendment expands the scope of attachment by stating that any proceeds of crime which are even likely to be concealed or transferred can be attached. Also that if any proceeds are to be used for any purpose which will frustrate the confiscation of proceeds of crime, then such property will also be attached. Further, the Act originally provided for attachment of property for 150 days. It has been increased the same to 180 days. [Section 5]

4. The concept of Reporting Entity and Beneficial Owner introduced

The Act provided for banking companies, financial institutions and intermediaries to maintain records of the transactions they sanction. The 2012 amendment Act has introduced a new concept of “reporting entity” which would maintain records of various transactions sanctioned by

banking companies and financial institutions etc. Also that, these entities would identify their clients and the client's beneficial owners [Clause 2 (1) (c) and (d)].

For this purpose, reporting entity has been defined in the amendment Act to include banking companies, financial institutions, intermediaries and persons carrying on designated business or profession [Clause (wa) of Section 2]. Further, persons carrying on designated business or profession have also been defined to include persons carrying on activities for playing games of chance, real estate agents and dealers of precious metal and precious stones etc. [Clause (sa) of Section 2] This clearly shows that the amendment Act mandates many other categories of persons to maintain records, unlike the mandate in the Principal Act. This expansion to other categories of persons would ensure reporting of many such transactions which earlier would have gone unnoticed. Also, a very significant step taken towards amending the Principal Act is not only expanding the categories of persons required to maintain records but also the kind of records that have to be maintained i.e. the maintenance of records of beneficial owner. The FATF had released a Mutual Evaluation Report ("MER") in June 2010, on the basis of findings of which, India was admitted as a member of FATF. One of the deficiencies highlighted by MER during evaluation of India was the lack of identification and verification of beneficial ownership of legal persons. Since the original Act did not have any provision, the Government of India had to prepare and submit an action plan to FATF stating that it would take appropriate measures to bring the same within the ambit of law. After this, the 2012 amendment Act proposed that a reporting entity should identify and maintain records of the "beneficial owner" of their clients. It can therefore be clearly noticed that if beneficial owners are identified and their records are maintained, the chances of money laundering would be strictly reduced.

On an analysis of the aforementioned sections, it can be noted that the amendment Act in its present form does not impose any obligation on clients, and it casts responsibility only on the reporting entities to ascertain "beneficial ownership. The Standing Committee, however, was of the opinion that clients as well should be required to declare beneficial ownership while undertaking transaction with the bank as considering the large volume of transactions, which banks are required to deal with, it may not be practically possible for them to ascertain "the beneficial owners".

Also, the Standing Committee had recommended in their report that if the reporting entities are not able to find the beneficial owner then there should be an obligation upon the reporting entity

to not to open the relevant client's account. It is worth noting that in spite of the standing committee suggesting that, in those cases where beneficial owner cannot be identified, an account should not be opened, the bill does not have any provision with regard to the same. Therefore, currently no action will be taken even if beneficial owner is not identified in any case. This renders the new provision otiose.

Further, the amendment Act provides that reporting entity has to report even an attempted transaction. These are done in order to cut down suspicious transactions from the very beginning.

[Section 12]

5. Director's power to call for records and conduct inquiries

In order to make sure that reporting entities comply with Section 12 requirements, the amendment Act provides that the director will have the power to call for any records from reporting entities and will also have the power to make inquiries for non-compliance of reporting entities to the obligations cast upon them. [Section 12A]

6. Penalty for non-compliance by reporting entity, its designated director or any of its employees

If a reporting entity or its designated director on the Board or any of its employees does not comply with the obligations under the amendment Act, a monetary penalty extending upto one lakh rupees for each failure can be imposed upon them. (Section 13)

7. Freezing of property

The Act provided for attachment of property after the charge sheet u/s 173 CrPC has been filed in scheduled offence case and seizure of property after FIR u/s 157 CrPC has been filed in scheduled offence case. However, in a number of situations it may not be practicable to file charge sheet or FIR to attach or seize property as this may happen after a prolonged gap and chances of disappearance of proceeds of crime cannot be ruled out. To obviate this problem, the amendment Act provides for freezing such property, so that it can be seized or attached and confiscated later. [Section 8 and Section 17A]

8. Burden of Proof on accused

The amendment Act states that in the proceedings relating to money laundering, the funds shall be presumed to be involved in the offence, unless proven otherwise by the person charged with the offence. [Section 24]

9. Release of the property by special court in case of decision by foreign court

The Act did not have any provision regarding release of property by a special court. Thus, the amendment Act expands the powers of special courts by suggesting that where on 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 has not taken place or the property in India is not involved in money-laundering, the designated Special Court may on an application moved by a concerned person order release of such property. This power is purely discretionary due to the presence of the word “may” suggesting that the local court in India will still have power to decide matters on its merits, even when the person is acquitted by an overseas court. The 2012 amendment Act introduces the concept of “corresponding law” to link the provisions of Indian law with the laws of foreign countries [Clause (ia) of Section 2]. [Section 58A]

10. Clarification that prosecution extends to Companies as well

The Act did not clearly provide for the prosecution of companies and thus to remove doubts, the amendment Act adds an explanation to Section 70 to state that a company can be prosecuted irrespective of whether an individual has been prosecuted or not. Hence, prosecution or conviction of legal person is not contingent on prosecution of any individual [Section 70]

11. No Monetary threshold applies to the offence of money-laundering - Schedule I

Part B of the Schedule in the Principal Act included only those crimes that are above Rs. 30 lakh or more whereas Part A did not specify any monetary limit of the offence. The amendment brings all the offences under Part A of the Schedule to ensure that the monetary thresholds do not apply to the offence of money

7. RULES UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002

The following rules have been notified under the Prevention of Money Laundering Act, 2002 –

- 1) The Prevention of Money-laundering (the Manner of forwarding a copy of the Order of Provisional Attachment of Property along with the Material, and copy of the Reasons along with the Material in respect of Survey, to the Adjudicating Authority and its period of Retention) Rules, 2005 - Notification No. GSR 442(E), dated 01-07-2005
- 2) The Prevention of Money-Laundering (Receipt and Management of Confiscated Properties) Rules, 2005 - Notification No.GSR 443(E), dated 01-07-2005
- 3) The Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 Prevention of Money-Laundering Rules, 2005 - Notification No. GSR 444 (E), dated 01-07-2005.
- 4) The Prevention of Money-laundering (Forms, Search and Seizure and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005 - Notification No. GSR 445 (E), dated 01-07-2005.
- 5) The Prevention of Money-laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its period of Retention) Rules, 2005 - Notification No. GSR 446(E), dated 01-07-2005.

- 6) The Prevention of Money-laundering (the Manner of Forwarding a Copy of the Order of Retention of Seized Property along with the Material to the Adjudicating Authority and the period of its Retention) Rules, 2005 - Notification No. GSR 447(E), dated 01-07-2005.
- 7) The Prevention of Money-laundering (Manner of Receiving the Records authenticated Outside India) Rules, 2005 - Notification No. GSR 448(E), dated 1-7-2005.
- 8) The Prevention of Money-laundering (Appeal) Rules, 2005 - Notification No. GSR 449(E), dated 1-7-2005.
- 9) The Prevention of Money-laundering (appointment and conditions of service of chairperson and members of adjudicating authorities) Rules, 2007 - Notification number GSR 520(E), dated 1-8-2007.
- 10) The Prevention of Money-laundering (appointment and conditions of service of chairperson and members of Appellate Tribunal) Rules, 2007 - Notification number GSR 519(E), dated 1-8-2007.
- 11) The Prevention of Money-laundering (Salaries, Allowances and other Conditions of The employees of Appellate Tribunal) Rules, 2008 - Notification number GSR 430(E), dated 5-6-2008

Notification of PMLA Rules

27.08.2013 - Notification No. 12/2013 - Amendment to Rules

12.11.2009 - Notification No. 13/2009 - Amendment to Rules

01.06.2009 - Notification for bringing the Prevention of Money Laundering (Amendment) Act, 2009 into force

24.05.2007 - Notification No. 4/2007 - Amendment to Rules

27.06.2006 - Notification No. 6/2006 - Dissemination of Information

13.12.2005 - Notification No. 15/2005 - Amendment to Rules

01.07.2005 - Notification No. 9/2005 - Rules for Record Keeping and Reporting

01.07.2005 - Notification No. 5/2005 - Powers of Director, FIU-IND

8. OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Section 12 of the Prevention of Money Laundering Act, 2002 lays down the following obligations on banking companies, financial institutions and intermediaries.

Every banking company, financial institution and intermediary should –

- maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
- furnish information of such transactions to the Director;
- verify and maintain the records of the identity of all its clients.

Where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer should furnish information in respect of such transactions to the Director within the prescribed time.

The records referred above should be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

(b) The records of all clients should be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other

provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. The Director shall forward a copy of the order passed above to every banking company, financial institution or intermediary or person who is a party to the proceedings.

9. MAINTENANCE OF RECORDS

"Records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed. (Sec 2(1)(w) of PMLA, 2002)

Section 12 (1) (a) of the Act makes it mandatory for every banking company, financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month.

In exercise of the powers conferred under sub section (1) and (2) of Section 73 of the Act the Central Government in consultation with the RBI notified vide Notification number 9/2005 dated 1st July, 2005, "The Prevention of Money-Laundering (Maintenance of Records of the nature and value of transactions, the procedure and manner of maintaining and time of furnishing information and verification and maintenance of records of the identity of clients of the banking companies, financial institutions and intermediaries) Rules 2005". Maintenance and retention of records are covered under Rules, 3, 4, 5 and 6.

Records of transactions to be maintained

Rule 3 deals with the nature and value of transactions and its records to be maintained by every banking company, financial institution or intermediary.

The following records should be maintained –

- 1) all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
- 2) 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;

- 3) all transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency;
- 4) all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions;
- 5) all suspicious transactions whether or not made in cash and by way of –
 - a. deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of:
 - i. cheques including third party cheques, pay orders, demand drafts, cashiers cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or
 - ii. travellers cheques, or
 - iii. transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to Nostro and Vostro accounts, or
 - iv. any other mode in whatsoever name it is referred to
 - b. credits or debits into or from any non-monetary accounts such as d-mat account, security account in any currency maintained by the banking company, financial institution and intermediary, as the case may be;
 - c. money transfer or remittances in favour of own clients or non-clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following –
 - i. payment orders, or
 - ii. cashiers cheques, or
 - iii. demand drafts, or
 - iv. telegraphic or wire transfers or electronic remittances or transfers, or
 - v. internet transfers, or
 - vi. Automated Clearing House remittances, or
 - vii. lock box driven transfers or remittances, or
 - viii. remittances for credit or loading to electronic cards, or
 - ix. any other mode of money transfer by whatsoever name it is called;

- d. loans and advances including credit or loan substitutes, investments and contingent liability by way of –
 - i. subscription to debt instruments such as commercial paper, certificate of deposits, preferential shares, debentures, securitized participation, inter bank participation or any other investments in securities or the like in whatever form and name it is referred to, or
 - ii. purchase and negotiation of bills, cheques and other instruments, or
 - iii. foreign exchange contracts, currency, interest rate and commodity and any other derivative instrument in whatsoever name it is called, or
 - iv. letters of credit, standby letters of credit, guarantees, comfort letters, solvency certificates and any other instrument for settlement and/or credit support.
- e. collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.

Information in the records

Apart from the records of transactions to be maintained, the records should also contain the following information (Rule 4) –

- 1) The nature of the transaction(s);
- 2) the amount of the transaction and the currency in which it was denominated;
- 3) the date on which the transaction was conducted; and
- 4) the parties to the transaction.

Procedure and manner of maintaining information

Rule 5 lays down the procedure for maintaining information. Every banking company, financial institution and intermediary should maintain information in respect of transactions with its clients in accordance with the procedure and manner as may be specified by its Regulator, from time to time.

Every banking company, financial institution and intermediary should evolve an internal mechanism for maintaining such information in such form and at such intervals as may be specified by its Regulator from time to time.

It is the duty of every banking company, financial institution and intermediary to observe the procedure and manner of maintaining information as specified by its Regulators.

Preservation of records

According to Rule 6, all the records should be preserved for a period of 10 years from the date of transactions between the client and the banking company, financial institution or intermediary as the case may be.

Obligations of Reporting Entity

(i) Every reporting entity have to maintain a record of all transactions covered as per the nature and value of which may be prescribed, in such manner as to enable it to reconstruct individual transactions;

(ii) They shall furnish to the Director (FIU) 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;

(iii) They shall verify the identity of its clients in such manner and subject to such conditions as may be prescribed;

(iv) They shall identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(v) They shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients for a period of five years in case of record and information relating to transactions; and

(vi) They shall maintain the same for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later [Section 12].

Monetary Penalties for Non Maintenance of Records

Monetary penalties can be imposed on defaulting reporting entity or its designated Director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure [Section 13(2)(d)].

10. FURNISHING OF INFORMATION

Section 12 (1) (b) of the Prevention of Money Laundering Act, 2002, makes it mandatory for every banking company, financial institution and intermediary to furnish information of transactions to the Director within such time as may be prescribed. However, if the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value; such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

Procedure and manner of furnishing information

Rule 7 lays down the procedure and manner of furnishing information.

- 1) Every banking company, financial institution and intermediary, as the case may be, should communicate the name, designation and address of the Principal Officer to the Director. (Principal Officer is an officer designated by a banking company, financial institution and intermediary for the purpose of Section 12 of PMLA, 2002.)
- 2) The Principal Officer should furnish the information referred to in rule 3 to the Director on the basis of information available with the banking company, financial institution and intermediary, as the case may be. A copy of such information should be retained by the Principal Officer for the purposes of official record.
- 3) Every banking company, financial institution and intermediary may evolve an internal mechanism for furnishing information referred to in Rule 3 in such form and at such intervals as may be directed by its Regulators.
- 4) It is the duty of every banking company, financial institution and intermediary to observe the procedure and the manner of furnishing information as specified by its Regulator.

Reports prescribed under PMLA, 2002

The Prevention of Money laundering Act, 2002 and the Rules there under requires every reporting entity (banking company, financial institution and intermediaries) to furnish the following reports:

- Cash Transaction reports (CTRs)
- Suspicious Transaction Reports (STRs)
- Counterfeit Currency Reports (CCRs)
- Non Profit Organisation reports (NPRs)

Due dates for furnishing information to the Director

Description	Due Date
All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency.	15th day of the succeeding month
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 lakh, or its equivalent in foreign currency	
All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place for facilitating the transactions	Not later than seven working days from the date of occurrence of such transaction
All suspicious transactions whether or not made in cash	Not later than seven working days on being satisfied that the transaction is suspicious

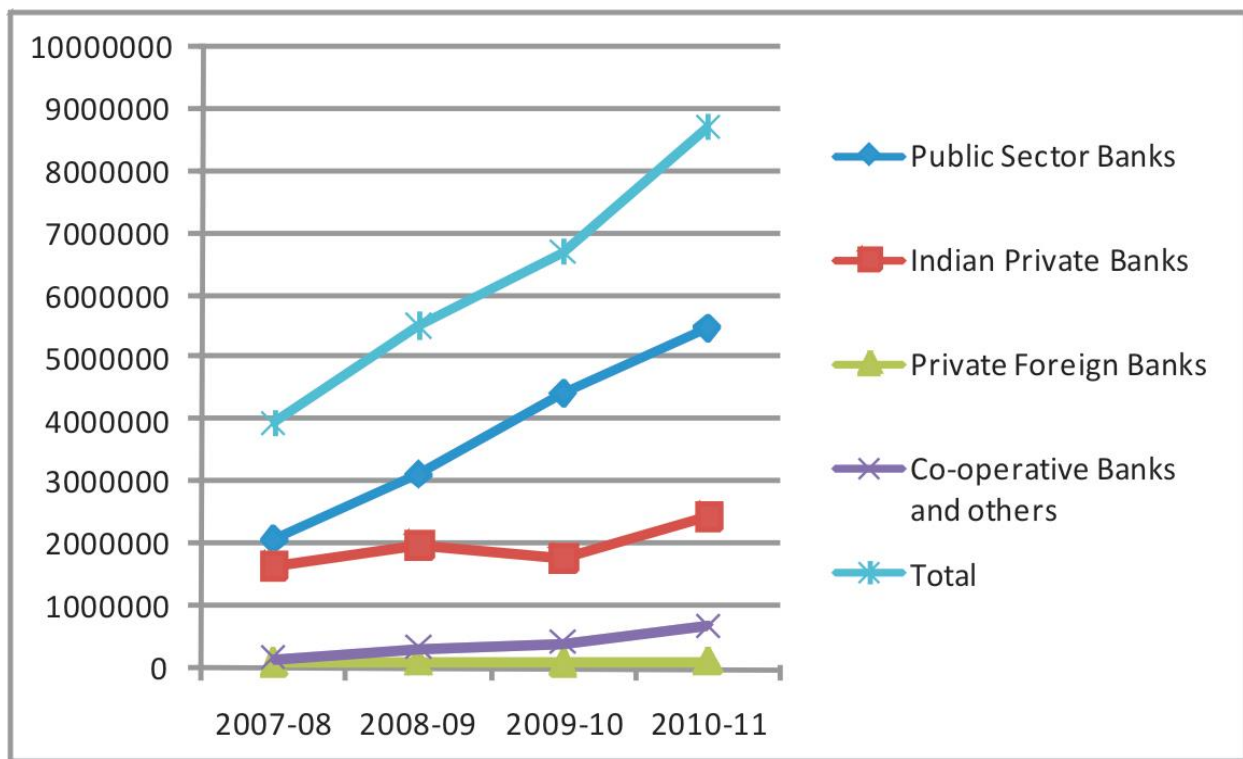
The fact of submitting information on all suspicious transactions to the Director should be kept strictly confidential.

Cash transaction reports

Cash transaction reports refer 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.

Cash transaction reports received by FIU-IND over the years



Suspicious transaction reports

Suspicious transaction means a 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 the proceeds of crime;
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.

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 organization or those who finance or are attempting to finance terrorism.

Examples of suspicious transactions for a banking company -

Identity of client

- False identification documents
- Identification documents which could not be verified within reasonable time
- Accounts opened with names very close to other established business entities

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
- Unexplained transfers between multiple accounts with no rationale

Activity in accounts

- Unusual activity compared with past transactions
- Sudden activity in dormant accounts
- Activity inconsistent with what would be expected from declared business

Nature of transactions

- Unusual or unjustified complexity
- No economic rationale or bonafide purpose
- Frequent purchases of drafts or other negotiable instruments with cash

- Nature of transactions inconsistent with what would be expected from declared business

Value of transactions

- Value just under the reporting threshold amount in an apparent attempt to avoid reporting
- Value inconsistent with the client's apparent financial standing

Examples of suspicious transactions for an intermediary -

Identity of Client

- False identification documents
- Identification documents which could not be verified within reasonable time
- Non-face to face client
- Doubt over the real beneficiary of the account
- Accounts opened with names very close to other established business entities

Suspicious Background

- 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
- Unexplained transfers between multiple accounts with no rationale

Activity in Accounts

- Unusual activity compared to past transactions
- Use of different accounts by client alternatively
- Sudden activity in dormant accounts
- Activity inconsistent with what would be expected from declared business
- Account used for circular trading

Nature of Transactions

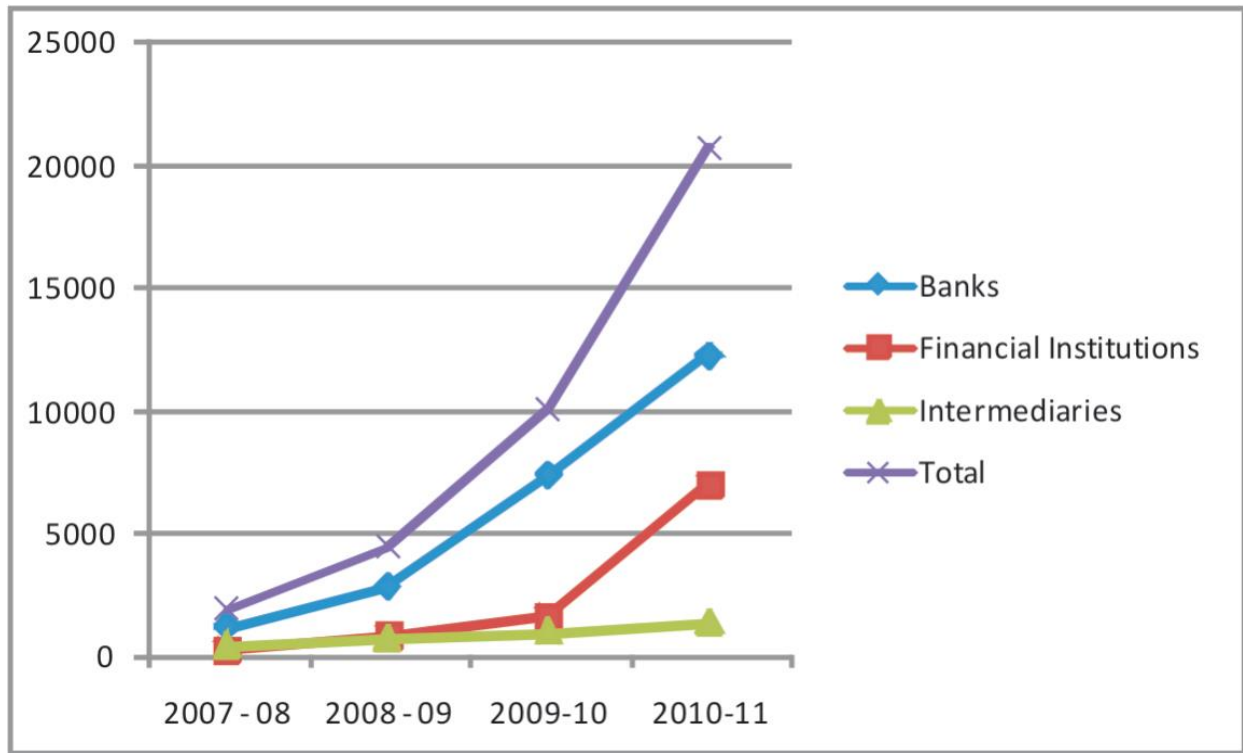
- Unusual or unjustified complexity
- No economic rationale or bonafide purpose
- Source of funds are doubtful

- Appears to be case of insider trading
- Investment proceeds transferred to a third party
- Transactions reflect likely market manipulations
- Suspicious off market transactions

Value of Transactions

- Value just under the reporting threshold amount in an apparent attempt to avoid reporting
- Large sums being transferred from overseas for making payments
- Inconsistent with the clients apparent financial standing
- Inconsistency in the payment pattern by client
- Block deal which is not at market price or prices appear to be artificially inflated/deflated

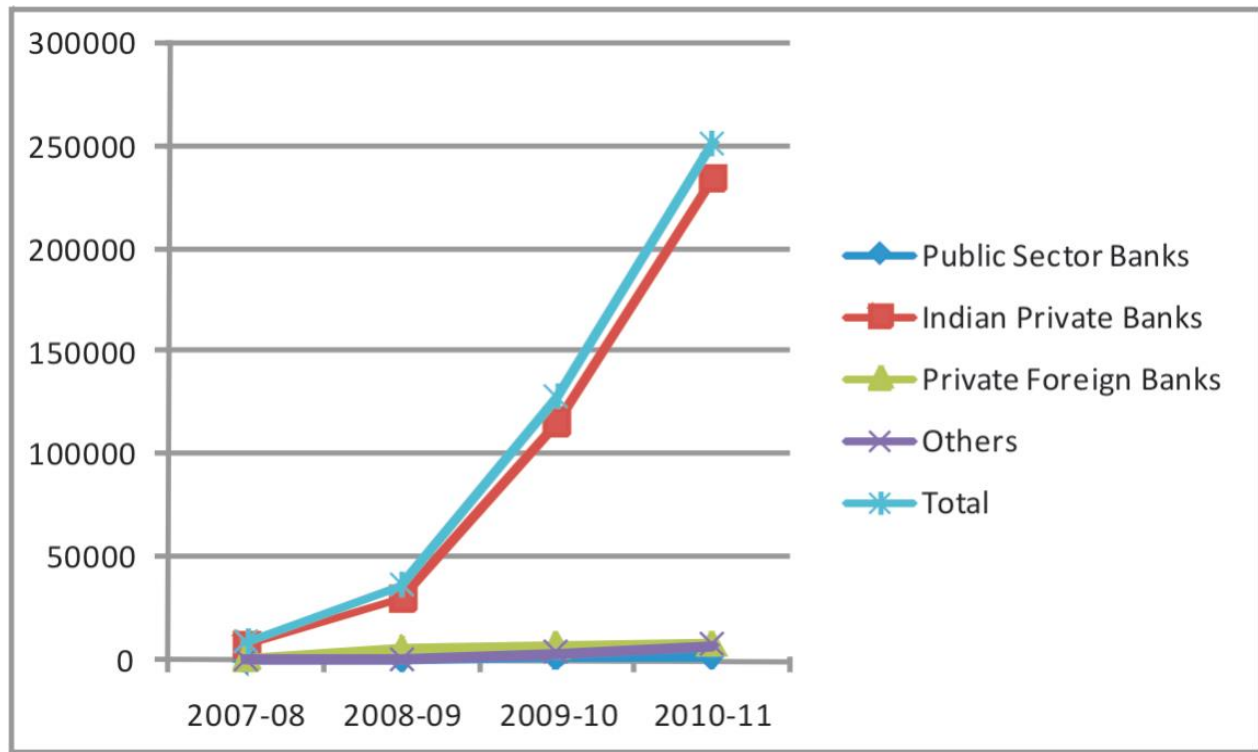
Suspicious transaction reports received by FIU-IND over the years



Counterfeit Currency reports

The Prevention of Money-laundering Act, 2002, and rule thereunder require banking companies to report all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions.

Counterfeit Currency reports received by FIU-IND over the years



Preparation of reports

The reporting entities are required to submit reports to FIU-IND which is compliant with the XML format specifications. Reporting entities which have necessary technical capabilities may generate XML reports directly from their systems. The reporting format guide, 2011 also specifies text file format specifications to assist in the extraction of data from the information system of reporting entities before preparation of XML reports. Reporting entities are encouraged to shift to the fixed width data structure version 2.0 before generating XML reports at their end. FIU-IND has developed a Report Generation Utility to assist the reporting entities in generation of XML reports.

Submission of reports

With the implementation of Project FINnet (Financial Intelligence Network) by FIU-IND in 2010, the primary mode of submission of reports to FIU-IND will be through the FINnet Gateway Portal. The FINnet Gateway Portal is designed as a comprehensive interface between the reporting entities and FIU-IND. The user guide for the FINnet Gateway Portal provides detailed documentation on using the portal. The broad features are:

- ‘Login’ Page to allow access to registered users using credentials provided by the user. This page also has links to register a new user.
- ‘Home’ page to display summary of actionable items (unread messages, pending reports, overdue reports etc.) and new content (Downloads, Discussions, FAQs, Events, Tips, Alerts and Surveys).
- ‘Users’ module to view and manage the users of the reporting entity, FIU users and user groups.
- ‘Profiles’ module to manage the profile information of the reporting entity, principal officer and other users.
- ‘Reports’ module with facility to uploads report and view the upload history, rejected reports, reports where additional information is required and overdue reports. A report summary of reports submitted by the reporting entity is also provided.
- ‘Messages’ module which is a messaging system between authorised users and FIU users.
- ‘Resources’ module which is a comprehensive knowledge repository consisting of Downloads, FAQs, Problems and Solutions, Discussion Forums, Surveys, Events, Alerts and Tips.

All users of the reporting entities have to register on the FINnet Gateway Portal. After registration, the authorised users will be given credentials for login. The authorised users can upload the reports in prescribed XML reports using the reports module of the FINnet Gateway Portal. Before uploading the hashed XML report file, Reporting Entities should ensure that all

errors detected by the utilities are rectified. On successful upload, the portal shall generate and display a unique Batch ID.

The principal officer can attach the digital signature while uploading the file. If the submitted batch is as per prescribed schema and if the file is uploaded with digital signature, the submission of the report will be treated as complete and the status of the batch will be 'Submitted'. The date of submission of the batch will be the date of upload.

If the file is uploaded without digital signature, the portal would generate a single page report upload confirmation (RUC) form. The principal officer would be required to print the RUC form and post it to FIU-IND after signing. The signed copy of the RUC form should be received by FIU-IND within 10 days of upload. After confirmation, the date of upload would be taken as date up submission. If the RUC form is not received at FIU-IND within 10 days, it will be treated as non compliance with the reporting obligation. All reporting entities are encouraged to upload reports with digital signature.

Reporting Entities are expected to submit reports in electronic form. However if the reporting entity does not have the capability to generate report in electronic form, reports may be submitted in manual paper-based forms. Reporting Entities should use the FIU-IND provided PDF Form based utilities to capture data and print the report as per the specified format. The paper based report should be duly signed by the Principal Officer and posted to FIU-IND. However, Reporting Entities should make all reasonable efforts to send reports in electronic rather than the paper based format.

Rule 8 of the Prevention of Money Laundering (Maintenance of records) Rules, 2005 (as amended) specifies the time limits of various kinds of reports to be submitted to Director, FIU-IND

8. Furnishing of information to the Director.—(1) The Principal Officer of a reporting entity shall furnish the information in respect of transactions referred to in clauses (A), (B), (BA), (C) and (E) of sub-rule (1) of rule 3 every month to the Director by the 15th day of the succeeding month.

(2) The Principal Officer of a reporting entity shall furnish the information promptly in writing or by fax or by electronic mail to the Director in respect of transactions referred to in clause (D) of sub-rule (1) of rule 3 not later than seven working days on being satisfied that the transaction is suspicious.

(3) The Principal Officer of a reporting entity shall furnish, the information in respect of transactions referred to in clause (F) of sub-rule (1) of rule 3, every quarter to the Director by the 15th day of the month succeeding the quarter.

(4) For the purpose of this rule, delay of each day in not reporting a transaction or delay of each day in rectifying a mis-reported transaction beyond the time limit as specified in this rule shall constitute a separate violation.

Description	Due date
Cash Transaction reports (CTRs)	Every month by the 15th day of the succeeding month
Suspicious Transaction Reports (STRs)	Not later than seven working days on being satisfied that the transaction is suspicious
Counterfeit Currency Reports (CCRs)	Every month by the 15th day of the succeeding month
Non-Profit Organisation Transaction reports (NTRs)	Every month by the 15th day of the succeeding month

Purchase and sale by any person of immovable property valued at fifty lakh rupees or more

Every quarter by the 15th day of the month succeeding the quarter

Cross Border Wire Transfer Reports

All Reporting Entities are required to furnish to Director, FIU-IND the report of all cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India.

Report on sale/purchase of immovable property

All Reporting Entities are required to furnish to Director, FIU-IND the report on all purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity as the case may be

Reporting Formats

Whether reporting entity has to file report in manual or electronic format?

Reports can be filed either in manual or electronic format. However, a reporting entity must submit all reports to FIU-IND in electronic format if it has the technical capability to do so. The required technical capability is defined as follows:

- i) A personal computer with 32 MB memory RAM, 800 x 600 VGA video display, Windows® 98/Me/NT/2000/XP; and
- ii) An Internet connection.

It must be noted that every reporting entity has to ensure reporting by all its branches either in

manual or electronic format. Thus, a reporting entity has to adopt only one format for all its branches

What are the forms in the manual format of Cash Transaction Report?

Cash Transaction Reports in manual format consists of following forms:

- (i) Summary of Cash Transaction Reports
- (ii) Cash Transaction Report
- (iii) Annexure A- Individual Detail Sheet
- (iv) Annexure B- Legal Person/ Entity Detail Sheet

What are the forms in the manual format of Suspicious Transaction Report?

Suspicious Transaction Reports in manual format consists of following forms:

- (i) Suspicious Transaction Report
- (ii) Annexure A- Individual Detail Sheet
- (iii) Annexure B- Legal Person/ Entity Detail Sheet
- (iv) Annexure C- Account Detail Sheet

What data files are required to be submitted in electronic reporting?

In case of electronic filing, the reporting formats consist of following six data files:

- (i) ***CTL.txt Control File
- (ii) ***BRC.txt Branch Data File
- (iii) ***ACC.txt Account Data File
- (iv) ***TRN.txt Transaction Data File
- (v) ***INP.txt Individual Data File
- (vi) ***LPE.txt Legal Person/Entity Data File

Note: The naming convention of the data files is as under

	***	Type of Report
(i)	CBA	CTR for a banking company
(ii)	SBA	STR for a banking company
(iii)	CIN	CTR for an intermediary
(iv)	SIN	STR for an intermediary

How to submit electronic reports?

FIU-IND is in the process of developing technological infrastructure to enable submission of electronic return over a secure gateway. In the interim, the reporting entities exercising the electronic option should submit the following to Director, FIU-IND:

- (i) One CD containing six data files in prescribed data structure with a prescribed label.
- (ii) Each CD should be accompanied by prescribed manual form in physical form duly signed by the principal officer.

How to submit data files if the size of data files exceeds the capacity of one CD?

In case the size of data files exceeds the capacity of one CD, the data files should be compressed by using Winzip 8.1 or ZipItFast 3.0 (or higher version) compression utility only to ensure quick and smooth acceptance of the file.

What are the steps in preparation of data files?

- (i) The records containing details of cash/suspicious transactions to be reported are extracted in Transaction Data File (***TRN.txt).
- (ii) The records containing details of bank accounts containing the cash/suspicious transactions are extracted in Accounts Data File (***ACC.txt).
- (iii) If the account is for Individuals, the records containing details of Individuals who are account holders are extracted in Individual Data File (***INP.txt). The Relation Flag should be set to "A".

- (iv) If the account is for a Legal Person /Entity, the records containing details of Legal Persons /Entities who are account holders are extracted in Legal Persons /Entities Data File (**LPE.txt). The Relation Flag should be set to “A”.
- (v) If the account is for a Legal Person /Entity, the records containing details of Directors/ Partner/ Members etc. of Legal Persons /Entities are appended to Individual Data File (**INP.txt). The Relation Flag should be set to “C”.
- (vi) The records containing details of authorised signatories if not an account holder are appended to Individual Data File (**INP.txt) or Legal Persons /Entities Data File (**LPE.txt) as the case may be. The Relation Flag should be set to “B”.
- (vii) The records containing details of account introducers are appended to Individual Data File (**INP.txt) or Legal Persons /Entities Data File (**LPE.txt) as the case may be. The Relation Flag should be set to “D”.
- (viii) The records containing details of account guarantors are appended to Individual Data File (**INP.txt) or Legal Persons /Entities Data File (C**LPE.txt) as the case may be. The Relation Flag should be set to “E”.
- (ix) The records containing details of bank branches which have reported cash transactions are extracted in Branch Data File (**BRC.txt).
- (x) The report level details and summary of other five tables is entered in Control file. (**CTL.txt).

What are the steps in validation of data files?

- (i) There should be six data files with appropriate naming convention.
- (ii) The data files should be as per specified data structure and business rules.
- (iii) None of the mandatory fields should be left blank.
- (iv) In case of CTR, month and year of report should be same in all data files. In case of STR, date of report should be same in all data files.
- (v) The summary figures in control file should match with the totals in other data files.

- (vi) The primary key integrity should be validated as under:
 - a. [Branch Reference Number/Code] should be unique in Branch Data File (**BRC.txt)
 - b. [Branch Reference Number/Code + Account Number] should be unique in Account Data File (**ACC.txt).
- (vii) The foreign key integrity should be validated as under:
 - a. All values of [Branch Reference Number/Code] in Account Data File (**ACC.txt) should have a matching [Branch Reference Number/Code] value in Branch Data File (**BRC.txt).
 - b. All values of [Branch Reference Number/Code + Account Number] in Transaction Data File (**TRN.txt) should have matching [Branch Reference Number/Code + Account Number] value in Account Data File (**ACC.txt).
 - c. All values of [Branch Reference Number/Code + Account Number] in Individual Data File (C**INP.txt) should have matching [Branch Reference Number/Code + Account Number] value in Account Data File (**ACC.txt).
 - d. All values of [Branch Reference Number/Code+ Account Number] in Legal Person / Entity Data File (**LPE.txt) should have matching [Branch Reference Number/Code + Account Number] value in Account Data File (**ACC.txt).
- (viii) The data sufficiency should be validated as under:
 - a. All values of [Branch Reference Number/Code + Account Number] in Account Data File (**ACC.txt) should have at least one matching [Branch Reference Number/Code + Account Number] value in Transaction Data File (**TRN.txt).
 - b. All values of [Branch Reference Number/Code+ Account Number] in Account Data File (**ACC.txt) should have at least one matching [Branch Reference Number/Code + Account Number] value in Individual Data File (**INP.txt). (As account for legal person/entity would have individuals as authorised signatories).
 - c. All values of [Branch Reference Number/Code + Account Number] in

Account Data File (**ACC.txt) with Type of Account Holder = "B" (Legal Person/Entity) should have at least one matching [Branch Reference Number/Code+ Account Number] value in Legal Person / Entity Data File (**LPE.txt).

What are the general guidelines for all data files?

- (i) All Data Files should be generated in ASCII Format with ".txt" as filename extension.
- (ii) Each Record (including last record) must start on new line and must end with a newline character. Hex Values: "0D" & "0A".
- (iii) All CHAR fields must be left justified.
- (iv) If CHAR field has no data or less data with respect to defined length, then the entire field (in case of no data) or the remaining field (in case of less data) has to be filled with right justified blank characters (Spaces).
- (v) All NUM fields must be right justified.
- (vi) If NUM field has no data or less data with respect to defined length, then the entire field (in case of no data) or the remaining field (in case of less data) has to be filled with left justified zeroes.
- (vii) If DATE field has no data then the entire field has to be filled with blank characters (Spaces).
- (viii) Fields with an asterisk (*) have to be compulsorily filled up.

What is a Data Quality Report?

Data Quality Report summarizes the errors in an electronic report such as data structure errors, mandatory field validation errors, data integrity errors and data sufficiency errors.

11. IDENTITY OF CLIENTS

Section 12 of the Prevention of Money Laundering Act, 2002 and rules thereunder require every reporting entity to verify and maintain the records of the identity of all its clients including beneficial owners, in such manner as may be prescribed. Rules 9 and 10 of the Rules provide for verification and maintenance of the records of the identity of clients.

It is mandatory for every banking company, financial institution and intermediary, at the time of opening an account or executing any transaction with it, to verify the record of identity and current address or addresses including permanent address or addresses of the client, the nature of business of the client and his financial status. If it is not possible to verify the identity of the client at the time of opening an account or executing any transaction, the banking company, financial institution and intermediary are required to verify the identity of the client within a reasonable time after the account has been opened or the transaction has been executed.

Every banking company, financial institution and intermediary, as the case may be, should exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the customer, his business and risk profile.

No banking company, financial institution or intermediary, as the case may be, should keep any anonymous account or account in fictitious names.

Rule 9 of the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 deals with the verification of the identity of clients.

“Client” means a person who engages in a financial transaction or activity with a banking company, or financial institution or intermediary. The term also includes a person on whose behalf the person that engages in the transaction or activity is acting.

“Transaction” includes deposit, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means.

Documents required for verification of an individual

1. One certified copy of an officially valid document containing details of his/her identity and address;
2. One recent photograph; and
3. Such other documents including the ones related to the nature of business and financial status of the client, as may be required by the banking company or the financial institution or the intermediary.

Officially valid document includes the passport, the driving license, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by the Election Commission of India or any other document as may be required by the banking company, or financial institution or an intermediary.

Documents needed for the verification of a Company:

1. Certificate of incorporation;
2. Memorandum and Articles of Association;
3. A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and
4. An officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf.

Documents needed for the verification of a Partnership Firm:

1. Registration certificate;

2. Partnership deed; and
3. An officially valid document in respect of the person holding an attorney to transact on its behalf.

Documents needed for the verification of a Trust:

1. Registration certificate;
2. Trust deed; and
3. An officially valid document in respect of the person holding an attorney to transact on its behalf.

Documents needed for the verification of an Association of Persons (AOP) or a Body of Individuals (BOI):

1. Resolution of the managing body of such an association or a body of individuals;
2. Power of attorney granted to (the authorized person) to transact on its behalf;
3. An officially valid document in respect of the person holding an attorney to transact on its behalf; and
4. Such information as may be required by the banking company or the financial institution or the intermediary to collectively establish the legal existence of such an association or a body of individuals.

Where the client is a juridical person, the banking company, financial institution and intermediary, as the case may be, should verify that any person purporting to act on behalf of such client is so authorised and verify the identity of that person.

The regulator should issue guidelines incorporating the requirements of Rule 9 and prescribe enhanced measures to verify the client's identity taking into consideration type of client, business relationship or nature and value of transactions.

Every banking company, financial institution and intermediary as the case may be, should formulate and implement a Client Identification Programme to determine the true identity of its clients.

Maintenance of records of identity of clients

Rule 10 require records of identity of the clients to be maintained.

- Every banking company or financial institution or intermediary, as the case may be, should maintain records of the identity of its clients.
- The records of the identity of clients should be maintained in hard and soft copies in a manner as may be specified by its regulator from time to time.
- The records of the identity of clients should be maintained for a period of ten years from the date of cessation of the transactions between the client and the banking company or financial institution or intermediary, as the case may be.

Know Your Customer Guidelines

The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities. It was introduced in the late 1990s in the United States. The US government became very strict after 9/11 and all regulations for KYC were finalised before 2002. The US has made changes in its major legislations -- Bank Secrecy Act, USA Patriot Act, et cetera - to make KYC norms really effective for the banking sector.

Taking a leaf out of the US book, the Reserve Bank of India too directed all banks to implement KYC guidelines for all new accounts in the second half of 2002. For existing accounts, imposing KYC norms was a little difficult, so the RBI issued guidelines for it at the end of 2004.

For the purpose of KYC policy, a 'Customer' is defined as:

- a. a person or entity that maintains an account and/or has a business relationship with the bank;
- b. one on whose behalf the account is maintained (i.e. the beneficial owner);
- c. beneficiaries of transactions conducted by professional intermediaries such as Stock Brokers, Chartered Accountants, Solicitors etc. as permitted under the law, and
- d. Any person or entity connected with a financial transaction which can pose significant reputational or other risks to the bank, say, a wire transfer or issue of a high value demand draft as a single transaction.

In order to prevent identity theft, identity fraud, money laundering, terrorist financing, etc., the RBI had directed all banks and financial institutions to put in place a policy framework to know their customers before opening any account. This involves verifying customers' identity and address by asking them to submit documents that are accepted as relevant proof. Mandatory details required under KYC norms are proof of identity and proof of address. Passport, voter's ID card, PAN card or driving license are accepted as proof of identity, and proof of residence can be a ration card, an electricity or telephone bill or a letter from the employer or any recognised public authority certifying the address. Some banks may even ask for verification by an existing account holder. Though the standard documents which are accepted as proof of identity and residence remain the same across various banks, some variations are permitted, which differ from bank to bank. So, all documents shall be checked against banks requirements to ascertain if those match or not before initiating an account opening process with any bank. Thus opening a new bank account is no longer an easy task.

To prevent the possible misuse of banking activities for anti-national or illegal activities, the RBI has given various directives to banks:

1. Strengthening the banks' 'Internal Control System' by allocating duties and responsibilities to their staff and periodically monitoring them.
2. Before giving any finance at branch level, making sure that the person has no links with notified terrorist entities and reporting any such 'suspect' accounts to the government.
3. Regular 'Internal Audit' by internal and concurrent auditors to check if the KYC guidelines are being properly adhered to by the banks.

Most important, banks must keep a keen watch on all banking transactions and identify suspicious ones. Such transactions will be immediately reported to the bank's head office and authorities and norms shall also be laid down for freezing such accounts. In 2004, the RBI had come up with more specific guidelines regarding KYC. These were divided into four parts:

Customer Acceptance Policy:

Every bank should develop a clear Customer Acceptance policy laying down explicit criteria for Acceptance of customers. The Customer Acceptance policy must ensure that explicit guidelines are in place on the following aspects of customer relationship in the bank:-

1. No account is opened in anonymous or fictitious benami name.
2. Not to open an account or close an existing account where the bank is unable to apply appropriate customer due diligence measures.
3. Necessary checks before opening a new account so as to ensure that the identity of the customer does not match with any person with known criminal background or with banned entities such as individual terrorists or terrorist organisations etc.
4. Bank should prepare a profile for each new customer based on risk categorization.

It is important to bear in mind that the adoption of customer acceptance policy and its implementation should not become too restrictive and must not result in denial of banking services to general public especially to those who are financially or socially disadvantaged.

Customer Identification Procedure (CIP):

The policy approved by the Board of banks should clearly spell out the Customer Identification Procedure to be carried out at different stages i.e. while establishing a banking relationship; carrying out a financial transaction or when the bank has a doubt about the authenticity/veracity or the adequacy of the previously obtained customer identification data. Customer Identification means identifying the customer and verifying his/her identity by using reliable, independent source documents, data or information.

Monitoring of Transactions:

Ongoing monitoring of transactions is an essential element of effective KYC procedures. Banks should pay special attention to all complex, unusually large transactions and all unusual patterns which have no apparent economic or visible lawful purpose. Very high account turnover inconsistent with the size of the balance maintained may indicate that funds are being washed through the account. High-risk accounts have to be subjected to intensified monitoring.

Risk management:

The Board of directors of the bank should ensure that an effective KYC programme is put in place by establishing appropriate procedures and ensuring their effective implementation. It should cover proper management oversight, systems and controls, segregation of duties, training and other related matters. Responsibility should be explicitly allocated within the bank for ensuring that the bank's policies and procedures are implemented effectively. Banks should, in consultation with their boards, devise procedures for creating risk profiles of their existing and new customers and apply various anti money laundering measures keeping in view the risks involved in a transaction, account or banking/business relationship.

Banks internal audit and compliance function have an important role in evaluating and ensuring adherence to the KYC policies and procedures. As a general rule, the compliance function should provide an independent evaluation of the bank's own policies and procedures, including legal and regulatory requirements. Banks should ensure that their audit machinery is staffed adequately with individuals who are well-versed in such policies and procedures. Concurrent/Internal Auditors should specifically check and verify the application of KYC procedures at the branches and comment on the lapses observed in this regard. The compliance in this regard should be put up before the Audit Committee of the Board on quarterly intervals.

12. CLIENT DUE DILIGENCE

- “Client due diligence” means due diligence carried out on a client
- Mandatory for every reporting entity, at the time of opening an account or executing any transaction with it –
 - to verify the record of identity and current address or addresses including permanent address or addresses of the client,
 - the nature of business of the client and
 - his financial status

Know Your Customer (KYC) Norms/Guidelines

KYC means “Know Your Customer”. It is a process by which banks obtain information about the identity and address of the customers. This process helps to ensure that banks’ services are not misused. The KYC procedure is to be completed by the banks while opening accounts and also periodically update the same.

KYC requirements for opening a bank account

To open a bank account, one needs to submit a ‘proof of identity and proof of address’ together with a recent photograph.

Banks are required to classify the customers into ‘low’, ‘medium’ and ‘high’ categories depending on their AML risk assessment.

E-KYC refers to electronic KYC

E-KYC is possible only for those who have Aadhaar numbers. While using e-KYC service, you have to authorise the Unique Identification Authority of India (UIDAI), by explicit consent, to release your identity/address through biometric authentication to the bank branches/business correspondent (BC). The UIDAI then transfers your data comprising name, age, gender, and photograph of the individual, electronically to the bank/BC. Information thus provided through

e-KYC process is permitted to be treated as an ‘Officially Valid Document’ under PML Rules and is a valid process for KYC verification.

Documents to be given as ‘Proof of Identity’ and ‘Proof of Address’

The Government of India has notified six documents as ‘Officially Valid Documents (OVDs)’ for the purpose of producing proof of identity. These six documents are Passport, Driving Licence, Voters’ Identity Card, PAN Card, Aadhaar Card issued by UIDAI and NREGA Card. You need to submit any one of these documents as proof of identity. If these documents also contain your address details, then it would be accepted as ‘proof of address’. If the document submitted by you for proof of identity does not contain address details, then you will have to submit another officially valid document which contains address details.

Highlights of KYC Norms/Guidelines prescribed by RBI

- Aadhaar card is now accepted as a proof of both, identity and address
- No introduction necessary while opening a bank account
- It is possible to transfer an account from one branch to another branch of the same bank. There is no need for KYC exercise again to transfer a bank account from one branch to another branch of the same bank. However, if there is a change of address, then one would have to submit a declaration about the current address.
- If you have opened an account with a bank, which is KYC compliant, then for opening another account with the same bank, furnishing of documents is not necessary.
- Full KYC exercise is necessary for Credit/Debit/Smart/for purchaser of Gift Cards and also in respect of add-on/ supplementary cards.
- KYC exercise needs to be done for all those who want to make domestic remittances of Rs. 50,000 and above and all foreign remittances.
- Demand Draft/Payment Order/Travellers Cheques for Rs.50,000/- and above can be issued only by way of debiting the customer's account or against cheques

- All customers who do not have accounts with the banks (known as walk-in customers) have to produce proof of identity and address while purchasing third party products from banks if the transaction is for Rs.50,000 and above
- Banks are required to periodically update KYC records. This is a part of their ongoing due diligence on bank accounts. The periodicity of such updation would vary from account to account or categories of accounts depending on the bank's perception of risk. Periodical updation of records also helps prevent frauds in customer accounts
- Different periodicities have been prescribed for updation of KYC records depending on the risk perception of the bank. KYC is required to be done at least every two years for high risk customers, at least every eight years for medium risk customers and ten years for low risk customers. This exercise would involve all formalities normally taken at the time of opening the account
- If one does not provide your KYC documents at the time of periodic updation bank has the option to close your account.

13. ROLE OF FINANCIAL INTELLIGENCE UNIT- INDIA

Finance Intelligence Units (FIUs) are specialised 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.

The definition of an FIU has been formalized by the Egmont Group of FIUs as –

“A central, national agency responsible for receiving, (and as permitted, requesting), analysing and disseminating to the competing authorities, disclosures of financial information:

- i) Concerning suspected proceeds of crime and potential financing of terrorism, or
- ii) Required by national legislation or regulation in order to combat money laundering and terrorism financing.”

Financial Intelligence Unit – India (FIU-IND) was set by the Government of India vide O.M. dated 18th November 2004 as the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister. For administrative purposes, FIU-IND is under the control of the Department of Revenue, Ministry of Finance.

FIU-IND in order to achieve its mission of providing quality financial intelligence for safeguarding the financial system from the abuse of money laundering, terrorist financing and other economic offences, has set three strategic objectives as under:

- Combating money laundering, financing of terrorism and other economic offences;
- Deterring money laundering and financing of terrorism;
- Building and strengthening organisational capacity.

The main function of FIU-IND is to receive cash/suspicious transaction reports, analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities.

The functions of FIU-IND are –

- **Collection of Information:** Act as the central reception point for receiving Cash Transaction reports (CTRs) and Suspicious Transaction Reports (STRs) from various reporting entities;
- **Analysis of Information:** Analyze received information in order to uncover patterns of transactions suggesting suspicion of money laundering and related crimes.
- **Sharing of Information:** Share information with national intelligence/law enforcement agencies, national regulatory authorities and foreign Financial Intelligence Units.
- **Act as Central Repository:** Establish and maintain national data base on cash transactions and suspicious transactions on the basis of reports received from reporting entities.
- **Coordination:** 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.

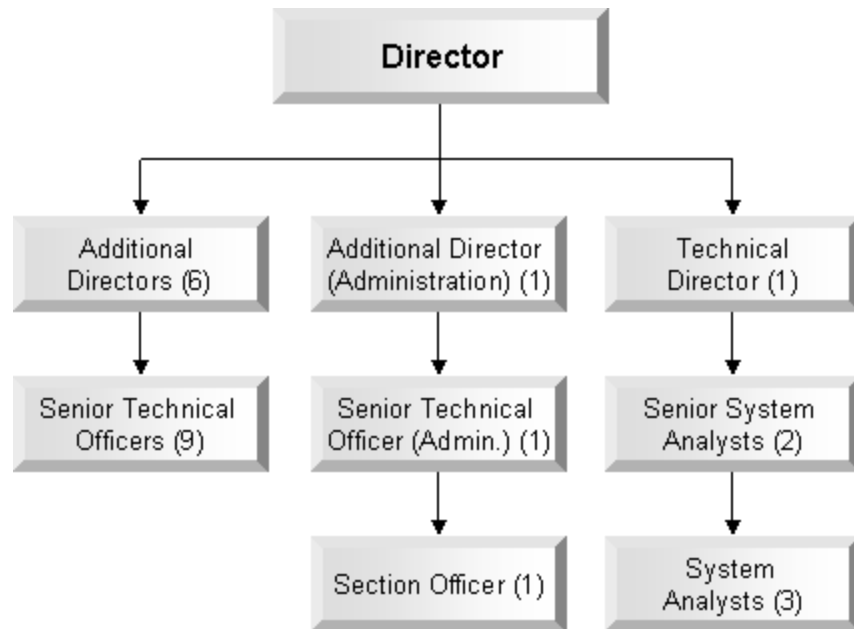
FIU-IND is a multi disciplinary body headed by the Director with a sanctioned strength of 74 personnel. These are being inducted from different organizations namely Central Board of Direct Taxes (CBDT), Central Board of Excise and Customs (CBEC), Reserve Bank of India (RBI), Securities Exchange Board of India (SEBI), Department of Legal Affairs and Intelligence agencies.

FIU-IND is not a regulatory authority. Its prime responsibility is to gather and share financial intelligence in close cooperation with the regulatory authorities including RBI, SEBI and IRDA.

FIU-IND will process and analyse received financial information disseminate actionable intelligence in appropriate cases to relevant enforcement agencies.

FIUs exchange information with other FIUs on the basis of reciprocity or mutual agreement and consistent with procedures understood by the requested and requesting party. An FIU requesting information should disclose, to the FIU that will process the request, at a minimum the reason for the request, the purpose for which the information will be used and enough information to enable the receiving FIU to determine whether the request complies with its domestic law.

Organisation structure of FIU-IND



14. AUTHORITIES UNDER PMLA



The Director, Financial Intelligence Unit, India, under the Ministry of Finance, Department of Revenue, will act as the Director to exercise the exclusive powers conferred under clause (b) of sub-section (1) of section 12 and its proviso, section 13, sub-section (2) of section 26 and sub-section (1) of section 50 of the Prevention of Money Laundering Act, 2002 and the said Director, Financial Intelligence Unit, India, shall also concurrently exercise powers conferred by sub-section (3) and sub-section (5) of section 26, section 39, section 40, section 41, section 42, section 48, sub-section (2) of section 49, section 66 and section 69 of the aforesaid Act.

The Director, FIU-IND is the competent authority for the purpose of the provisions relating to maintenance of records and filing of information. The Directorate of Enforcement is the

competent authority for the provisions relating to search, seizure, confiscation of property, prosecution, etc.

The Investigating Officers under the Act

The 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 [Section 5];
- (b) to conduct survey of a place [Section 16];
- (c) to conduct search of building, place, vessel, vehicle or aircraft & seize/freeze records & property [Section 17];
- (d) to conduct personal search [Section 18];
- (e) to arrest persons accused of committing the offence of Money Laundering [Section 19];
- (f) to summon and record the statements of persons concerned [Section 50].

Powers of Authority during Survey

An authority during the survey may—

- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom;
- (ii) make an inventory of any property checked or verified by him; and
- (iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act [Section 16].

Powers of officers / authority during search and seizure

Authorised officer may —

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or properties if required or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) 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; and
- (g) where it is not practicable to seize such record or property, the officer authorized 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 [Section 17].

Time limit for retention of records or property seized during search & seizure

The property / record 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 or record were seized or frozen, unless the Adjudicating Authority under PMLA permits retention of such record or property beyond the period of 180 days [Sections 20 & 21].

Powers of Authorities regarding issuing summons, enforcing production of documents and to give evidence etc.

- (i) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director of the Directorate of Enforcement have the 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.
- (ii) All the persons so summoned are bound to attend in person or through authorised agents, as such officer may direct, and are bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(iii) Such proceedings are deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860) [Section 50].

Retention of record impounded during the proceedings conducted under the PMLA, 2002

Authorities empowered to issue summons 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 cannot—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director [Section 50].

15. DIRECTORATE OF ENFORCEMENT

The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under Prevention of Money Laundering Act, 2002.

Financial Intelligence Unit - India (FIU-IND) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs.

The Directorate of Enforcement, with its Headquarters at New Delhi is headed the Director of Enforcement. There are two Special Directors, one Additional Director and two Deputy Directors at Head Office. There is a Legal Wing at Headquarters Office headed by the Additional Director (Prosecution). In addition, there is one Special Director posted at Mumbai.

There are ten Zonal Offices of the Directorate at Ahmedabad, Bangalore, Chandigarh, Chennai, Cochin, Delhi, Hyderabad, Kolkata, Lucknow and Mumbai. The Zonal Offices are headed by the Deputy Directors.

The Directorate has eleven Sub Zonal Offices at Bhubaneswar, Calicut, Guwahati, Indore, Jaipur, Jalandhar, Madurai, Nagpur, Patna, Srinagar and Varanasi, which are headed by the Assistant Directors.

The main functions of the Directorate are as under

- i. To enforce Foreign Exchange Management Act 1999 and Prevention of money Laundering Act 2002.
- ii. To collect and develop intelligence relating to violation of the provisions of Foreign Exchange Management Act and Prevention of money Laundering Act 2002.

- iii. To conduct searches of suspected persons, conveyances and premises and seize incriminating materials (including Indian and foreign currencies involved).
- iv. To enquire into and investigate suspected violations of provisions of Foreign Exchange Management Act and Prevention of money Laundering Act 2002.
- v. To adjudicate cases of violations of Foreign Exchange Management Act penalties departmentally and also for confiscating the amounts involved in violations.
- vi. To realize the penalties imposed in departmental adjudication.
- vii. To attach and confiscate properties involved in the act of Money laundering.
- viii. To arrest the person suspected to be involved in the act of money laundering.
- ix. To prosecute the person involved in the act of money laundering.

In addition to the above functions relating to the Foreign Exchange Management Act, the Directorate also processes and recommends cases for detention of habitual offender under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974 (COFEPOSA), which provides interalia for detention of a person with a intention of preventing him from acting in a manner prejudicial to the conservation and augmentation of exchange.

16. NOTIFICATIONS/GUIDELINES ISSUED BY VARIOUS AUTHORITIES

A. Reserve Bank of India (RBI)

Dec 01, 2014 : 'Know Your Customer' (KYC) Guidelines /Anti-Money Laundering Standards (AML) / Obligation of NBFCs under Prevention of Money Laundering Act (PMLA), 2002 Obligation of NBFCs – Amendment to Prevention of Money-laundering (Maintenance of Records) Rules 2013

Nov 27, 2014 : Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT)/Obligation of Payment System Operators under Prevention of Money Laundering Act (PMLA), 2002 Obligation of Payment System Operators – Amendment to Prevention of Money-Laundering (Maintenance of Records) Rules 2013

Nov 27, 2014 : Anti-Money Laundering (AML)/ Combating of Financing of Terrorism (CFT) Standards

Nov 26, 2014 : StCBs/CCBs - Anti-Money Laundering (AML) / Combating of Financing of Terrorism (CFT) – Standards

Nov 13, 2014 : Anti-Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards - Primary (Urban) Co-operative Banks

Nov 05, 2014 : Anti-Money Laundering (AML)/ Combating of Financing of Terrorism (CFT) - Standards

Oct 31, 2014 : RRBs/StCBs/CCBs - Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT) guidelines – clarifications on periodic updation of low risk customers, non-requirement of repeated KYC for the same customer to open new accounts and partial freezing of KYC non-compliant accounts

Oct 22, 2014 : Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT) guidelines – clarifications on periodic updation of low risk customers, non-requirement of repeated KYC for the same

- customer to open new accounts and partial freezing of KYC non-compliant accounts-
Primary (Urban) Co-operative banks (UCBs)
- Oct 21, 2014 : Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/
Combating of Financing of Terrorism (CFT) guidelines – clarifications on periodic
update of low risk customers, non-requirement of repeated KYC for the same
customer to open new accounts and partial freezing of KYC non-compliant accounts
- Sep 16, 2014 : 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 (PMLA), 2002 Obligation of banks – Client Due Diligence
measures - UCBs
- Sep 09, 2014 : RRBs/StCBs/CCBs - KYC Norms / AML Standards / CFT / Obligation of banks
under PMLA, 2002 – Client Due Diligence measures
- Sep 04, 2014 : 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 (PMLA), 2002 Obligation of banks – Client Due Diligence
measures
- Sep 03, 2014 : Anti-Money Laundering (AML) / Combating of Financing of Terrorism (CFT) -
Standards
- Aug 05, 2014 : 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 (PMLA), 2002 Obligation of banks - Amendment to
Prevention of Money-laundering (Maintenance of Records) Rules 2013
- Aug 01, 2014 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) -
Standards
- Aug 01, 2014 : Know Your Customer (KYC) norms/Anti-Money Laundering (AML)
standards/Combating of Financing of Terrorism (CFT) - Unique Customer
Identification Code for NBFC Customers in India (UCIC)
- Jul 31, 2014 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) –
Standards – Primary (Urban) Co-operative Banks
- Jul 28, 2014 : RRBs/StCBs/CCBs - Anti-Money Laundering (AML) / Combating of Financing of
Terrorism (CFT) - Standards

- Jul 22, 2014 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards
- Jul 21, 2014 : Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act (PMLA), 2002 – Money Changing Activities – Recognising E-Aadhaar as an ‘Officially Valid Document’ under PML Rules
- Jul 21, 2014 : RRBs/StCBs/CCBs – KYC/AML/CFT - Obligation of Banks under PMLA, 2002 – Amendment to Prevention of Money-Laundering (Maintenance of Records) Rules 2013
- Jul 21, 2014 : Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act (PMLA), 2002 – Money Transfer Service Scheme – Recognising E-Aadhaar as an ‘Officially Valid Document’ under PML Rules
- Jul 14, 2014 : Know Your Customer (KYC) Norms / Anti-Money Laundering (AML) Standards /Combating of Financing of Terrorism (CFT) / Obligation of NBFCs under Prevention of Money Laundering Act (PMLA), 2002 Recognising E-Aadhaar as an 'Officially Valid Document' under PML Rules
- Jul 10, 2014 : Know Your Customer (KYC) Norms / Anti-Money Laundering (AML) Standards /Combating of Financing of Terrorism (CFT) / Obligation of NBFCs under Prevention of Money Laundering Act (PMLA), 2002- Clarification on proof of Address
- Jul 03, 2014 : Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT)/Obligation of Payment System Operators under Prevention of Money Laundering Act (PMLA), 2002 – Clarification on Proof of Address
- Jul 02, 2014 : Know Your Customer (KYC) / Anti-Money Laundering (AML) / Combating of Financing of Terrorism (CFT) Guidelines - Unique Customer Identification Code (UCIC) – Extension of Time – Primary (Urban) Cooperative Banks (UCBs)

- Jul 01, 2014 : Master Circular on Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Measures/Combating of Financing of Terrorism (CFT) / Obligations of banks under Prevention of Money Laundering Act (PMLA), 2002
- Jul 01, 2014 : Master Circular – Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002
- Jul 01, 2014 : RRBs/StCBs/CCBs Master Circular – Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards / Combating of Financing of Terrorism (CFT) / Obligation of Banks under PMLA, 2002
- Jul 01, 2014 : Master Circular – 'Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards (AML) -'Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified thereunder'
- Jun 26, 2014 : Know Your Customer (KYC)/Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) Guidelines - Unique Customer Identification Code (UCIC) for banks' customers in India
- Jun 25, 2014 : Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act (PMLA), 2002 – Money Transfer Service Scheme - Change in period of maintenance and preservation of records
- Jun 25, 2014 : Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act (PMLA), 2002 – Money Changing Activities - Change in period of maintenance and preservation of records
- Jun 16, 2014 : StCBs - 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 (PMLA), 2002 – Harmonization of KYC norms for Foreign Portfolio Investors (FPIs)
- Jun 12, 2014 : RRBs/StCBs/CCBs - 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 (PMLA), 2002 – Clarification on Proof of Address

Jun 10, 2014 : 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 (PMLA), 2002 – Clarification on Proof of Address - Primary (Urban) Co-operative Banks (UCBs)

Jun 04, 2014 : Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT)/Obligation of PSOs under Prevention of Money Laundering Act (PMLA), 2002 – Amendment to Section 13(2)

May 29, 2014 : Know Your Customer (KYC) Norms / Anti-Money Laundering (AML) Standards /Combating of Financing of Terrorism (CFT) / Obligation of NBFCs under Prevention of Money Laundering Act (PMLA), 2002 - Amendment to Section 13(2)

May 26, 2014 : 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 (PMLA), 2002 – Harmonization of KYC norms for Foreign Portfolio Investors (FPIs) – Primary (Urban) Cooperative Banks (UCBs)

Apr 03, 2014 : 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 (PMLA), 2002 – Harmonization of KYC norms for Foreign Portfolio Investors (FPIs)

Mar 19, 2014 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards

Mar 18, 2014 : Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) – Standards

Mar 13, 2014 : Anti-Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Mar 13, 2014 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) – Standards – Primary (Urban) Co-operative Banks

Mar 13, 2014 : RRBs/StCBs/CCBs - 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 (PMLA), 2002 – Recognising e-Aadhaar as an ‘Officially Valid Document’ under PML Rules

Mar 06, 2014 : Know Your Customer (KYC) Norms /Anti-Money Laundering (AML) Standards/ Combating Financing of Terrorism (CFT)/Obligation of banks under Prevention of Money Laundering Act (PMLA), 2002 – Recognising e-Aadhaar as an ‘Officially Valid Document’ under PML Rules – Primary (Urban) Cooperative Banks (UCBs)

Mar 05, 2014 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards

Mar 04, 2014 : 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 (PMLA), 2002 –Recognising E-Aadhaar as an ‘Officially Valid Document’ under PML Rules

Feb 18, 2014 : 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 (PMLA), 2002 – Amendment to Section 13(2) – Primary (Urban) Cooperative Banks (UCBs)

Jan 20, 2014 : Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards / Combating the Financing of Terrorism (CFT) Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009 Money changing activities

Jan 09, 2014 : RRBs/StCBs/CCBs- 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 (PMLA), 2002 – Amendment to Section 13(2)

Jan 07, 2014 : Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Jan 01, 2014 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards

Dec 31, 2013 : 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 (PMLA), 2002 – Amendment to Section 13(2)

Dec 10, 2013 : RRBs/StCBs/CCBs - Anti-Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Dec 06, 2013 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) – Standards – Primary (Urban) Co-operative Banks

Nov 29, 2013 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards

Oct 29, 2013 : RRBs/StCBs/CCBs - KYC/AML Standards/Combating Financing of Terrorism/Obligation of Banks under PMLA, 2002 - ‘At par’ cheque facility extended to Cooperative Banks/RRBs by Scheduled Commercial Banks

Oct 25, 2013 : KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of PSOs under PMLA, 2002 – e-KYC Service of UIDAI – Recognising on-line Aadhaar authentication (electronic verification process) to be accepted as an ‘Officially Valid Document’ under PML Rules

Oct 22, 2013 : UCBs - KYC/AML Standards/Combating Financing of Terrorism/Obligation of Banks under PMLA, 2002 – ‘At par’ cheque facility extended to Cooperative Banks by SCBs

Sep 13, 2013 : Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Sep 10, 2013 : KYC Norms /AML Standards/Combating Financing of Terrorism/Obligation of Banks under PMLA, 2002 – e-KYC Service of UIDAI – Recognising on-line Aadhaar authentication (electronic verification process) to be accepted as an ‘Officially Valid Document’ under PML Rules - RRBs/StCBs/CCBs

Sep 05, 2013 : KYC/AML Standards/Combating Financing of Terrorism/Obligation of Banks under PMLA, 2002 – Information sought by Banks from Customers – UCBs

Sep 04, 2013 : AML Standards/Combating Financing of Terrorism CFT Standards - Cross Border Inward Remittance under Money Transfer Service Scheme

Sep 04, 2013 : AML Standards/Combating Financing of Terrorism CFT Standards - Money Changing Activities

Sep 03, 2013 : KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of Banks under PMLA, 2002 – Information sought by Banks from Customers

- Sep 02, 2013 : KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)/Obligation of Banks under PMLA, 2002 - e-KYC Service of UIDAI – Recognising on-line Aadhaar authentication to be accepted as an ‘Officially Valid Document’ under PML Rules
- Jul 31, 2013 : KYC/AML Standards/Combating Financing of Terrorism/Obligation of Banks under PMLA, 2002 – Simplifying Norms for Periodical Updation of KYC -UCBs
- Jul 25, 2013 : RRBs/StCBs/DCCBs - KYC Norms /AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002 - Simplifying Norms for Periodical Updation of KYC
- Jul 23, 2013 : KYC Norms AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002 - Simplifying norms for Periodical Updation of KYC
- Jul 23, 2013 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards
- Jul 09, 2013 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) – Standards – Primary (Urban) Co-operative Banks
- Jul 05, 2013 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards
- Jul 01, 2013 : Master Circular on Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Measures/Combating of Financing of Terrorism (CFT) / Obligations of banks under Prevention of Money Laundering Act (PMLA), 2002
- Jul 01, 2013 : Master Circular – 'Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards (AML) -'Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified thereunder'
- Jul 01, 2013 : Master Circular – Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002
- Jun 06, 2013 : Know Your Customer (KYC)/Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) Guidelines - Unique Customer Identification Code (UCIC) for banks' customers in India – Primary (Urban) Co-operative Bank

Jun 04, 2013 : Know Your Customer (KYC)/Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) Guidelines - Unique Customer Identification Code (UCIC) for banks' customers in India

May 31, 2013 : KYC/AML/CFT Guidelines - Unique Customer Identification Code for banks' customers in India

May 09, 2013 : Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Feb 22, 2013 : KYC norms/AML Standards/CFT Standards – Obligation of Authorised Persons under PMLA, 2002

Jan 31, 2013 : RRBs/StCBs/DCCBs - KYC Norms /AML Standards/Combating of Financing of Terrorism/Obligation of banks under PMLA, 2002

Jan 29, 2013 : 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 (PMLA), 2002

Jan 28, 2013 : Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Measures/Combating of Financing of Terrorism (CFT) / Obligations of banks under Prevention of Money Laundering Act (PMLA), 2002

Jan 22, 2013 : KYC norms /AML Standards/CFT/Obligation of banks under Prevention of Money Laundering Act (PMLA), 2002

Jan 18, 2013 : KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002

Jan 10, 2013 : AML standards/CFT) Standards - Cross Border Inward Remittance under Money Transfer Service Scheme

Jan 10, 2013 : AML standards/CFT) Standards - Money changing activities

Jan 08, 2013 : Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Dec 28, 2012 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standard

Dec 19, 2012 : KYC norms /AML Standards/CFT)/Obligation of banks under PMLA, 2002

Dec 13, 2012 : KYC norms /AML Standards/CFT/Obligation of banks under PMLA, 2002

Nov 15, 2012 : KYC/AML standards /CFT)/Obligation of Authorised Persons under Prevention of Money Laundering Act

Oct 09, 2012 : KYC/AML/CFT Guidelines - Unique Customer Identification Code – Primary (Urban) Co-operative Banks

Sep 24, 2012 : KYC norms/AML standards/CFT Obligation of Authorised Persons under PMLA 2002, as amended by PML Amendment Act, 2009 – Money changing activities

Sep 13, 2012 : KYC/AML/CFT - Risk Categorization and Updation of Customer Profiles – Primary UCBs

Sep 06, 2012 : Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Aug 23, 2012 : AML /CFT Standards – Cross Border Inward Remittance under MTSS

Aug 23, 2012 : AML /CFT Standards - Money changing activities

Jul 26, 2012 : KYC Norms/AML Standards/Combating Financing of Terrorism -Risk Categorisation and Updation of Customer Profiles

Jul 02, 2012 : Master Circular – Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002

Jul 02, 2012 : Master Circular on Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Measures/Combating of Financing of Terrorism (CFT) / Obligations of banks under Prevention of Money Laundering Act (PMLA), 2002

Jul 02, 2012 : Master Circular – 'Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards (AML) -'Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified thereunder'

Jun 11, 2012 : Know Your Customer (KYC)/Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) Guidelines - Unique Customer Identification Code (UCIC) for banks' customers in India

Jun 11, 2012 : Know Your Customer (KYC)/Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Risk Categorization and Updation of Customer Profiles

Jun 08, 2012 : Know Your Customer (KYC)/Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Risk Categorization and Updation of Customer Profiles

Jun 08, 2012 : Know Your Customer (KYC)/Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) Guidelines - Unique Customer Identification Code (UCIC) for banks' customers in India

Apr 17, 2012 : Anti-Money Laundering (AML) / Combating the Financing of Terrorism (CFT) Standards - Money changing activities

Apr 17, 2012 : AML/CFT Standards - Cross Border Inward Remittance under MTSS

Apr 11, 2012 : Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Apr 04, 2012 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) – Standards

Mar 21, 2012 : NBFCs - KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002- Assessment and Monitoring of Risk

Mar 14, 2012 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) – Standards

Mar 05, 2012 : UCBs - KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002- Assessment and Monitoring of Risk

Feb 29, 2012 : KYC Norms /AML Standards/Combating Financing of Terrorism/Obligation of Authorised Persons under (PMLA, 2002 - Assessment and Monitoring of Risk - Cross Border Inward Remittance under MTSS

Feb 29, 2012 : KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of Authorised Persons under (PMLA), 2002 - Assessment and Monitoring of Risk – Money Changing Activities

Feb 27, 2012 : Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) – Standards – Primary (Urban) Co-operative Banks

Feb 15, 2012 : Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Money changing activities

Feb 15, 2012 : Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Cross Border Inward Remittance under Money Transfer Service Scheme

Feb 09, 2012 : Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT)- Standards

Dec 30, 2011: KYC Norms/AML Standards/CFT/Obligation of Banks under PMLA 2002 – Assessment and Monitoring of Risk

Dec 22, 2011: KYC Norms/AML Standards/CFT – Obligation of Authorised Persons under PMLA, 2002

Dec 22, 2011: 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 (PMLA), 2002- Assessment and Monitoring of Risk

Dec 19, 2011: 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 (PMLA), 2002- Assessment and Monitoring of Risk

Oct 28, 2011: KYC Guidelines – AML standards – Prevention of Money Laundering Act (PMLA), 2002 – Obligations of NBFCs – Revised reporting format

Sep 22, 2011: Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) Standards

Sep 19, 2011: Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Cross Border Inward Remittance under Money Transfer Service Scheme

Sep 19, 2011: Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Money changing activities

Sep 19, 2011: Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Cross Border Inward Remittance under Money Transfer Service Scheme

Sep 19, 2011: Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Money changing activities

Sep 15, 2011: Know Your Customer (KYC) Norms/ Anti- Money Laundering (AML) Standards/ Combating the Financing of Terrorism (CFT)

Aug 18, 2011: Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) - Standards

Aug 03, 2011: Anti- Money Laundering (AML) / Combating of Financing of Terrorism (CFT) – Standards

July 28, 2011: RRBs -Anti-Money Laundering AML / Combating Financial Terrorism – Standards

July 27, 2011: AML / Combating Financing of Terrorism – Standards

July 01, 2011: 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

July 01, 2011: Master Circular on Know Your Customer (KYC) Guidelines / Anti-Money Laundering (AML) Standards / Prevention of Money Laundering Act, 2002 – Obligations of NBFCs

May 20, 2011: Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Cross Border Inward Remittance under Money Transfer Service Scheme

May 20, 2011: Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Money changing activities

April 08, 2011: Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Cross Border Inward Remittance under Money Transfer Service Scheme

April 08, 2011: Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards - Money changing activities

April 08, 2011: KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of Authorised Persons under PMLA, 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009- Cross Border Inward Remittance under MTSS

April 08, 2011: KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of Authorised Persons under PMLA, 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009- Money changing activities

April 01, 2011: Anti-Money Laundering (AML) / Combating of Financial Terrorism (CFT) – Standards

March 24, 2011: Anti-Money Laundering (AML) / Combating of Financial Terrorism (CFT) – Standards

March 17, 2011: Anti-Money Laundering (AML) / Combating of Financial Terrorism (CFT) – Standards

Feb 18, 2011: KYC Norms /AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002

Feb 14, 2011: Know Your Customer (KYC) Norms/ Anti- Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT)

Feb 02, 2011: StCBs/DCCBs - KYC Norms / AML Standards/Combating Financing of Terrorism /Obligation of banks under PMLA, 2002

Jan 18, 2011: Anti-Money Laundering (AML) / Combating of Financial Terrorism (CFT) – Standards

Jan 17, 2011: RRBs - Anti-Money Laundering (AML) / Combating of Financial Terrorism (CFT) – Standards

Jan 12, 2011: RRBs - KYC Norms/AML Standards/Combating Financing of Terrorism/obligation of banks under PMLA 2002

Jan 11, 2011: Anti-Money Laundering (AML) / Combating of Financial Terrorism (CFT) – Standards

Dec 30, 2010: KYC Norms /AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002

Oct 04, 2010: Know Your Customer (KYC) Norms/ Anti- Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT)

Sep 22, 2010: NBFCs - KYC Norms/AML Standards/Combating Financing of Terrorism, July 01, 2010 : Master Circular – 'Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards (AML) -'Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified thereunder'

Aug 09, 2010: NBFCs - KYC Norms/Anti-Money Laundering Standards

Jul 01, 2010: Master Circular – Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002

Jun 15, 2010: Know Your Customer Norms/AML Standards/Combating Financing of Terrorism /Obligation of Banks under PMLA, 2002

Jun 10, 2010: KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002

Jun 09, 2010: KYC Norms/AML Standards/Combating Financing of Terrorism/Obligation of banks under PMLA, 2002

Apr 30, 2010: Know Your Customer (KYC) Norms/ Anti-Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT)

Apr 23, 2010: NBFCs - Prevention of Money-laundering Amendment Rules, 2009 – Obligation of Banks/FIs

Apr 23, 2010: SCBs/AIFIs - Prevention of Money-laundering Amendment Rules, 2009 – Obligation of Banks/FIs

Jan 12, 2010: Prevention of Money-laundering Rules - Amendment – Obligation of Banks/FIs

Dec 02, 2009: NBFCs - KYC Norms/AML Standards/Combating Financing of Terrorism

Sep 18, 2009: Combating financing of terrorism- Unlawful Activities (Prevention) Act, 1967- Obligation of banks

Sep 11, 2009: Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002

Jul 01, 2009: Master Circular – Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002

05.08.2008 - Obligations of NBFCs under PMLA and Counterfeit Currency Report

01.07.2008 - Master Circular-KYC norms/AML standards/CFT obligation of Banks under PMLA, 2002

01.07.2008 - Master Circular-KYC norms/AML standards/CFT obligation of Banks under PMLA, 2002

25.06.2008 - Obligations of State and Central Cooperative Banks under PMLA and Counterfeit Currency Report

18.06.2008 - Obligations of Regional Rural Banks under PMLA and Counterfeit Currency Report

22.05.2008 - Obligations of Banks under PMLA and Counterfeit Currency Report

28.02.2008 - KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)-State and District Central Cooperative Banks

27.02.2008 - KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)-Regional Rural Banks

25.02.2008 - KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)-Primary (Urban) Cooperative Banks

18.02.2008 - KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)-Scheduled Commercial Banks

20.04.2007 - Compliance Function in Banks

13.04.2007 - KYC Norms/AML Guidelines/Combating Financing of Terrorism- Wire Transfers

16.11.2006 - Compliance Function in Banks

26.06.2006- Amendments to Anti-Money Laundering Guidelines for Authorised Money Changers

21.03.2006 - Prevention of Money Laundering Act, 2002 – Obligation of Primary (Urban) Cooperative Banks

09.03.2006 - Prevention of Money Laundering Act, 2002 – Obligation of Regional Rural Banks

03.03.2006 - Prevention of Money Laundering Act, 2002 – Obligation of State and District Central Cooperative Banks

15.02.2006 - Prevention of Money Laundering Act, 2002 – Obligation of Scheduled Commercial Banks Excluding RRBs

25.01.2006 - Financial inclusion by Extension of Banking Services – Scheduled Commercial Banks Including RRBs

02.12.2005 - Anti-Money Laundering Guidelines for Authorized Money Changers

21.11.2005 - Credit Card Operations of Banks - Commercial Banks/NBFCs (Excluding RRBs)

11.10.2005 - KYC for Persons Authorized by NBFCs to collect public Deposit on Behalf of NBFCs

23.08.2005 - KYC Guidelines – AML Standards - Scheduled Commercial Banks (Excluding RRBs)

23.08.2005 - KYC guidelines – AML Standards - State and District Central Cooperative Banks

23.08.2005 - KYC Guidelines – AML Standards - Regional Rural Banks

23.08.2005 - KYC Guidelines – AML Standards – Primary (Urban) Cooperative Banks

21.02.2005 - KYC Guidelines – AML Standards – NBFCs, Miscellaneous NBCs, and Residuary NBCs

18.02.2005 - KYC Guidelines – AML Standards - State and District Central Cooperative Banks

18.02.2005 - KYC Guidelines – AML Standards - Regional Rural Banks

15.12.2004 - KYC Guidelines – AML Standards - Primary (Urban) Cooperative Banks

29.11.2004 - KYC Guidelines – AML Standards -Commercial Banks

B. Securities and Exchange Board of India (SEBI)

1. 24th January 2013: SEBI Circular On Guidelines On Identification Of Beneficial Ownership
2. 31st Dec 2010- AML/CFT- Master Circular
3. June 14 2010: Anti Money Laundering/Combating Financing of Terrorism Standards- Additional Requirements/Clarifications
4. Sept 01 2009 Anti Money Laundering/Combating Financing of Terrorism Standards Additional Requirements/Clarifications.
5. ISD/AML/CIR-1/2008 dated December 19, 2008 on Anti Money Laundering (AML) Standards/Combating Financing of Terrorism (CFT)/Obligations of Securities Market Intermediaries under Prevention of Money Laundering Act, 2002 and Rules Framed There-under- Master Circular on AML/CFT
6. MRD/DoP/Cir- 05/2007 dated- April 27, 2007 Permanent ACCOUNT NUMBER (PAN) TO BE THE SOLE IDENTIFICATION NUMBER FOR ALL TRANSACTIONS IN THE SECURITIES MARKET
7. SEBI's Circular ISD/CIR/RR/AML/2/06 dated 20th Mar 2006 on Obligations of Intermediaries Under PMLA
8. SEBI's Circular ISD/CIR/RR/AML/1/06 dated 18th Jan 2006 on Guidelines for Anti Money Laundering Measures

C. Insurance Regulatory and Development Authority (IRDA)

1. IRDA/SDD/GDL/CIR/019/02/2013 - AML/CFT guidelines-Procedures for Determination of Beneficial Ownership dated 05-02-2013
2. IRDA/F&I/CIR/AML/028/01/2012 – AML/CFT guidelines dated 27 January 2012
3. IRDA/F&I/CIR/AML/231/10/2011 - AML/CFT Guidelines-Cash Acceptance Threshold dated 5 October 2011
4. IRDA/F&I/CIR/AML/151 /07/2011 - Prevention of Money Laundering dated 5 July 2011
5. IRDA/F&I/CIR/AML/ 145 /07/2011 - Reporting Formats under clause 3.2 of Master Circular 2010 on AML/CFT guide dated 4 July 2011
6. Circular No: IRDA/F&I/CIR/AML/180/11/2010 - Anti Money Laundering/Counter-Financing of Terrorism (AML/CFT) Guidelines dated 12th November 2010
7. Circular No: IRDA/F&I/CIR/AML/158/09/2010 - Master Circular on Anti-Money Laundering / Counter-Financing of Terrorism dated 24th Sept 2010
8. Circular No: IRDA/F&I/CIR/AML/99/06/2010 - Anti Money Laundering (AML) Guidelines dated 16th June 2010
9. Circular No: IRDA/F&I/CIR/AML/ 80 /05/2010 - Prevention of Money Laundering dated 13th May 2010
10. Circular No: IRDA/ F&I/CIR/AML/ 33 /09/2009 - The Prevention of Money Laundering (Amendment) Act, 2009 dated 9th Sept 2009
11. Circular No: 30/IRDA/AML/CIR/AUG-09 - Anti Money Laundering (AML) guidelines dated 24th Aug 2009
12. Circular No: 022/IRDA/Master AML/Nov-08 - Master Circular on Anti-Money Laundering Programme for Insurers dated 2nd Dec 2008
13. Circular No: 043/IRDA/LIFE/AML/MAR-06 dated 31/03/06

17. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING (FATF)

The Financial Action Task Force (FATF), also known by its French name, Groupe d'action financière (GAFI), is an intergovernmental organization founded in 1989 on the initiative of the G7. The purpose of the FATF is to develop policies to combat money laundering and terrorism. The FATF Secretariat is housed at the headquarters of the OECD in Paris.

In response to mounting concern over money laundering, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Summit that was held in Paris in 1989. Recognising the threat posed to the banking system and to financial institutions, the G-7 Heads of State or Government and President of the European Commission convened the Task Force from the G-7 member States, the European Commission and eight other countries. (G-7 is a forum created by France in 1975, for the government of seven major economies namely Canada, France, Germany, Italy, Japan, the United Kingdom and the United States. In 1997, the group added Russia, thus becoming the G8.)

The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering. In April 1990, less than one year after its creation, the FATF issued a report containing a set of *Forty Recommendations*, which provide a comprehensive plan of action needed to fight against money laundering.

In 2001, the development of standards in the fight against terrorist financing was added to the mission of the FATF. In October 2001 the FATF issued the *Eight Special Recommendations* to deal with the issue of terrorist financing. The continued evolution of money laundering techniques led the FATF to revise the FATF standards comprehensively in June 2003. In October 2004 the FATF published a Ninth Special Recommendations, further strengthening the agreed international standards for combating money laundering and terrorist financing - the *40+9 Recommendations*.

During 1991 and 1992, the FATF expanded its membership from the original 16 to 28 members. In 2000 the FATF expanded to 31 members, and has since expanded to its current 36 members. India became member of the FATF in 2010.

Nine Special Recommendations of FATF

1. Take immediate steps to ratify and fully implement the 1999 United Nations Convention for the Suppression of the Financing of Terrorism, as well as United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373;
2. Criminalize the financing of terrorism, terrorist acts and terrorist organizations;
3. Freeze without delay funds or other assets of terrorists and those who finance terrorism and terrorist organizations;
4. Require that financial institutions or other entities subject to anti-money laundering obligations report their suspicions to the competent authorities, when they suspect that funds may be linked, related to or are to be used for financing terrorism, terrorist acts or terrorist organizations;
5. Afford other countries the greatest possible assistance in connection with criminal, civil or administrative inquiries, investigations or proceedings in this area;
6. Ensure that they do not provide safe havens for individuals being sought for financing terrorist, terrorist acts or terrorist organizations
7. Institute supervisory measures applicable to individuals or legal entities that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, particularly “Hawala” networks;
8. Require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on fund transfers and related messages that are sent, and;
9. Give particular attention to non-profit organizations, such as charitable organizations, that can be used or exploited by terrorist organizations.

18. CASES RELATED TO MONEY LAUNDERING

i. Money laundering case – Hasan Ali and associates

The adjudicating authority under the Prevention of Money Laundering Act (PMLA) on November 3rd 2011, confirmed attachment of flats in posh areas of Mumbai, Pune and Delhi and luxury Porsche and Mercedes cars owned by alleged hawala operator Hasan Ali Khan and his associate Kashinath Tapuria. The authority under PMLA headed by P K Misra prima facie accepted the evidence and ordered, "The director of enforcement or any officer authorized by him in this regard will forthwith take over possession of the provisionally attached property."

Accepting for the time being Enforcement Directorate's argument that these properties were bought using funds obtained through money laundering, the three-member authority said, "We come to the conclusion that properties attached are involved in money laundering. We therefore, confirm the attachment order of June 30, 2011." The provisional attachment will continue to hold good during pendency of the proceedings relating to any of the scheduled offences alleged against the accused, the authority said.

The properties of Hasan Ali Khan and his wife Rheema Khan which will be out of bounds for them till adjudication of the case includes a flat in Pune's Koregaon Park valued at Rs 8.64 crore, another at Mumbai's Peddar Road worth Rs 6 crore, a Porsche Cayenne car valued at Rs 65.5 lakh and three Mercedes cars valued at Rs 77 lakh. Kashinath Tapuria, an associate of Khan, will see attachment of a flat owned by his firm R M Investment and Trading Company. The authority confirmed attachment of a Prithviraj Road flat in New Delhi, which has been valued by ED at Rs 27 crore.

What clinched the case for ED was a letter from UBS AG, Zurich, addressed to Khan, mentioning that "Khan can withdraw \$6 billion out of total balance of \$8,000,453,000 and balance amount of \$2,000,453,000 will remain bound with UBS until January 15, 2007".

The authority noted that the documents produced by ED counsel included large number of transfer instructions from the account of Khan in UBS AG, Zurich, to various accounts of his own and associates and companies controlled by them and located in US, UK, UAE, Singapore, Hong Kong and Switzerland. "The total amounts of these transactions run into billions of dollars," the authority said.

ii. German money laundering case

German prosecutors indicted five men, including four German banking executives, on charges of laundering \$150 million for a former Russian telecommunications minister in one of the highest-level criminal probes of a Russian official outside Russia. The indictments follow a six-year investigation into allegations that four current or former Commerzbank AG executives and a Danish lawyer assisted former Russian telecommunications minister Leonid Reiman in selling telecommunications assets he allegedly controlled in offshore companies, while concealing who the true owner was. From 1996 to 2001, the German bank held the telecom assets in trust for a Danish lawyer, Jeffrey Galmond. Prosecutors contend Mr. Galmond acted as a front for Mr. Reiman, who, they say, had converted telecom businesses from state ownership to that of a number of foreign companies that Mr. Reiman allegedly set up and controlled after the collapse of communism in the 1990s. In January 2008, Commerzbank accepted a Frankfurt civil-court verdict that ordered the bank to pay €7.3 million (\$9.6 million), including a €1 million fine and the confiscation of €6.3 million of profits derived from illegal activity. The ruling found Commerzbank's annual reports between 1996 and 2001 failed to accurately disclose that assets the bank claimed to own were held in trust on behalf of Mr. Galmond.

iii. Russian money laundering scandal

This scandal became public during the summer of 1999, with media reports of \$7 billion in suspect funds moving from two Russian banks through a U.S. bank to thousands of bank accounts throughout the world. Two Russian banks deposited more than \$7 billion in correspondent bank accounts at a New York bank. After successfully gaining entry for these funds into the U.S. banking system, the Russian banks transferred amounts from their New York bank correspondent accounts to commercial accounts at the bank that had been opened for three shell corporations. In February 2000, guilty pleas were submitted by a bank employee and spouse and the three corporations for conspiracy to commit money laundering, operating an unlawful banking and money transmitting business in the United States.

iv. Operation Wire Cutter

The U.S. Customs Service, in conjunction with the Drug Enforcement Administration (DEA) and Colombian Departamento Administrativo de Seguridad, arrested 37 people in January 2002

as a result of a two-and-one-half-year undercover investigation of Colombian peso brokers and their money laundering organizations. These people are believed to have laundered money for several Colombian narcotics cartels. Laundered monies were subsequently withdrawn from banks in Colombia in Colombian pesos. Investigators seized more than \$8 million in cash, 400 kilos of cocaine, 100 kilos of marijuana, 6.5 kilos of heroin, nine firearms, and six vehicles.

v. Wire Remittance Company

Both a wire remittance company and a depository institution filed SARs outlining the movement of about \$7 million in money orders through the U.S. account of a foreign business. The wire remittance company reported various persons purchasing money orders at the maximum face value of \$500 to \$1,000 and in sequential order. They received amounts ranging from \$5,000 to \$11,000. The foreign business identified by the wire remittance company also was identified as a secondary beneficiary. The money orders cleared through a foreign bank's cash letter account at the U.S. depository institution.

19. THE ADJUDICATING AUTHORITY PROCEDURE REGULATIONS

Adjudicating Authority

The Adjudicating Authority is the authority appointed by the central government. It decides whether any of the property attached or seized is involved in money laundering. The Enforcement Directorate (ED) carries out investigations. The ED is also empowered to attach property of entities involved in money laundering. The investigation begins with filing an Enforcement Case Information Report (ECIR), which is comparable with an FIR. The Adjudicating Authority under PMLA then decides whether the attachment is valid or not. The courts take the final call on punishment and confiscation of property from the money launderers.

18.1 THE ADJUDICATING AUTHORITY (PROCEDURE) REGULATIONS, 2013

In exercise of the powers conferred by sub-section (15) of section 6 of the Prevention of Money-Laundering Act, 2002 (15 of 2003), the Adjudicating Authority, in supersession of the Adjudicating Authority Regulations, 2006, except as respects things done or omitted to be done before such supersession, makes the following regulations regulating its procedure, namely the Adjudicating Authority (Procedure) Regulations, 2013

Important Definitions

1) Unless the context otherwise requires

- (a) “Act” means the Prevention of Money-laundering Act, 2002 (15 of 2003);
- (b) “application” means an application filed under sub-section (4) of section 17 or sub-section (10) of section 18 of the Act and includes a miscellaneous application;
- (c) “Bench” means a Bench of the Adjudicating Authority constituted by the Chairperson of the Adjudicating Authority;
- (d) “complaint” means a complaint made under sub-section (5) of section 5 of the Act;
- (e) “Form” means a Form appended to these regulations.

(2) The words and expressions used herein and not defined in these regulations but defined in the Prevention of Money-laundering Act, 2002 shall have the meanings assigned to them in that Act.

Highlights of Adjudication Authority Guidelines

- ✓ Applications, complaints, pleading, affidavit and other papers shall be filed before the Adjudicating Authority in the manner prescribed in Sec 3 (1)
- ✓ The complainant or the applicant, as the case may be, shall file a soft copy in CD form, along with the Complaint or Application (Sec 3(3))
- ✓ The attestation of document annexed to a complaint or application or reply shall be made at the end of the document (Sec (5))
- ✓ Every pleading, original application, miscellaneous application, original complaint and papers shall be received in the office hours on the working days and the officer in charge of the receiving branch shall issue receipt thereof in Form 1
- ✓ The receiving branch shall immediately, on receipt of an or complaint or application other pleading or papers, affix the date and stamp of the Adjudicating Authority on all pages on the main or first copy and on the first page of each other copy of the application or complaint or other pleading or papers.
- ✓ The Official authorised by the Adjudicating. Authority to receive the complaint or application under the Act, shall immediately enter in the receipt register and shall put serial number (receipt number) on the application or complaint, as the case may be (Sec(8))
- ✓ The Registrar or Administrative Officer or any officer authorised by the Chairperson of the Adjudicating Authority on examining the complaint or application, as the case may be, shall direct registration. (Sec 9(1))
- ✓ A daily cause list in Form 2 containing cases fixed for hearing on a day by the Adjudicating Authority shall be prepared under the signature of Registrar or Administrative Officer in triplicate and shall be pasted on the previous working day on the notice board of the Adjudicating Authority

- ✓ The Registrar shall have the custody of records of the Adjudicating Authority and shall exercise such other functions including weeding out of old records as may be assigned to him under these regulations by the Chairperson. (Sec11(1))
- ✓ The function of the Registrar shall be as follows
 - (a) all complaints and applications and miscellaneous applications as well as the other documents;
 - (b) endorse on such complaints and applications-the date of receipt;
 - (c) check whether the complaints or applications are barred by limitation;
 - (d) fix the date of hearing of the complaint and application subject to the directions of the Chairperson or Senior Member or Member of the Bench, as the case may be, and direct the issue of notices therefor;
 - (e) bring on record legal representatives, in case of death of any party, to proceedings;
 - (f) verify the service of notice or other processes and to ensure that the parties are properly served;
 - (g) requisition on the direction of Adjudicating Authority records from the custody of any authority;
 - (h) allow inspection of records of the Adjudicating Authority;
 - (i) return the documents filed by any authority on orders of the Bench;
 - (j) certify and issue copies of the orders of the Adjudicating Authority to the parties;
 - (k) grant certified copies of documents filed in the proceedings to the parties, in accordance with these regulations;
 - (l) ensure that remand reports are submitted in time whenever called for by the Bench by issuing necessary reminders to the authority concerned.
- ✓ Every summon or notice shall be issued in Form 3 or Form 4 or Form 5 or Form 6, as the case may be, signed by the Registrar or Administrative Officer Section(13(1))
- ✓ Every summon and notice shall be served in the same manner as provided in Order V of Schedule 1 of the Civil Procedure Code, 1908 (5 of 1908), and the provisions of that Order shall apply, mutatis mutandis, to the proceedings before the Adjudicating Authority (Section 13(2))

- ✓ Notwithstanding anything in sub-regulation (2), a summon or notice may be communicated through electronic mode as provided in section 13 of the Information Technology Act, 2000 (21 of 2000) and transmission of such communication shall be regarded as valid service. (Section 13(3))
- ✓ If any summon or notice is returned unserved, the complainant or applicant shall take steps for service of summon or notice, as ordered, failing which, the matter shall be placed before the Bench hearing the case. (Section 14)
- ✓ The reply shall be filed by the defendants on or before the date fixed for hearing, with a copy delivered to the complainant or applicant, as the case may be (Section 15)
- ✓ Inspection of records, upon the application in Form 7 shall be allowed under the orders of the Chairperson of the Adjudicating Authority, or the Registrar or the Administrative Officer, as the case may be. (Section 16)
- ✓ **Fees for inspection of records-** (1) Fees for inspecting records and registers of the Adjudicating Authority shall be-

(a)		one hundred rupees for the first hour of inspection or part thereof; and
(b)		fifty rupees for every additional hour of inspection or part thereof.

Fees for inspection shall be recovered in advance in cash.

- ✓ **Fees for Copying** - Fees for supply of certified copies of the documents shall be charged at the rate of twenty rupees for a full page or part thereof, irrespective of whether the copy is typed or xeroxed. (Section 18)
- ✓ **Maintenance of application for inspection** - Every application for inspection of records shall be maintained by the officer authorised by the Chairperson of the Adjudicating Authority and he shall obtain therein the signatures of the persons making such inspection.
- ✓ The provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to the issuing of commissions for examination of witnesses and documents shall, as far as may be applicable, apply in the matters of summoning and enforcing attendance of any person as witness and issuing a commission for examination of such witness. (Section 21)
- ✓ The deposition of the witness whenever necessary shall be recorded in Form 8. A Certificate of attendance, if requested for, will be issued in Form 9. (Section 22)

- ✓ The witness called by the applicant shall be numbered consecutively as P.Ws and those by the defendant or any other persons not being applicants as D.Ws. and any witness examined at the instance of the complainants shall be numbered consequently as CWs, and the witness called by the Adjudicating Authority shall be numbered as A.Ws (Section 23)
- ✓ The Adjudicating Authority may, if it considers necessary, direct the concerned party for the payment of expenses to the witness, as the case may be.(Section 24)
- ✓ The order supported by reasons recorded shall be pronounced in open court and on the date fixed in that behalf. Every sheet of the order shall bear the signature of the Chairperson and Members constituting the Bench. (Section 26)
- ✓ An application for a copy shall be filed in the Form 12 by the parties along with required copying fee. (Section 29)

List of Forms prescribed under the Guidelines

FORM 1

(See regulation 6)

RECEIPT SLIP

An application/complaint has been received on.....from Shri.

.....
Signature of Authorized Official/Officer

FORM 2

[See regulation 10(1)]

DAILY CAUSE LIST

Adjudicating Authority

Date.....

Serial Number	Application Number	Name of Applicant or Complainant	Name of Defendants	Name of Applicant's or Complainant's Counsel	Name of Defendant's Counsel	Posted for
1	2	3	4	5	6	7

FORM 3

[See regulation 13(1)]

Before the Adjudicating Authority (Under
The Prevention of Money-Laundering Act, 2002)

New Delhi

NOTICE TO SHOW CAUSE

.....Complainant

Versus

.....Defendants

Above named Complainant has filed a complaint under sub-section (5) of section 5 of the Prevention of Money-Laundering Act, 2002 (15 of 2003) against you.

You are called upon to indicate the source of your income, earning or assets out of which or by means of which you have acquired the property attached under sub-section (1) of section 5 of the Prevention of Money-Laundering Act, 2002 (15 of 2003) the evidence on which you rely and other relevant information and particulars and show cause why

all or any of such property should not be declared to be the properties involved in money-laundering and consequently why the attachment order should not be confirmed.

or

You are called upon to show cause why the provisional attachment order in respect of properties should not be confirmed as representing proceeds of crime being value of properties involved in money-laundering.

You are directed to appear before the Adjudicating Authority in person or through an advocate/authorized representative, duly instructed on.....day of..... year..... at (time)....., at (place), failing which the Complaint shall be heard and decided in your absence.

Given under my hand and the seal of the Adjudicating Authority, this.....day of.....

Registrar/Administrative Officer
Adjudicating Authority

Address:
.....

Date.....

Seal

FORM 4

[See regulation 13(1)]

Before the Adjudicating Authority (Under the
Prevention of Money-Laundering Act, 2002)

New Delhi

NOTICE TO SHOW CAUSE

.....Applicant

Versus

.....Defendants

Above named applicant has filed an application under sub-section (10) of section 18 read with section 17(4) of Prevention of Money-Laundering Act, 2002 (15 of 2003) against you.

You are called upon to show cause why the properties or records seized or frozen under section 17 should not be retained as involved in money laundering and required for the purposes of confiscation under Prevention of Money-Laundering Act, 2002 (15 of 2003).

You are directed to appear before the Adjudicating Authority in person or through an advocate/authorized representative, duly instructed on.....day of.....year.....at (time)....., at (place), failing which the Application shall be heard and decided in your absence.

Given under my hand and the seal of the Adjudicating Authority, this.....day of.....

Registrar/Administrative Officer
Adjudicating Authority

Address:
.....

Date.....

Seal

FORM 5

[See regulation 13(1)]

Before the Adjudicating Authority (Under the
Prevention of Money-Laundering Act, 2002)

New Delhi

NOTICE TO SHOW CAUSE

(Under the 3rd proviso of section 8(1) of the Prevention of Money-Laundering Act, 2002)

.....Applicant/Complainant

Versus

.....Defendants

Above named Complainant has filed a complaint under sub-section (5) of section 5 of the Prevention of Money Laundering Act, 2002 (15 of 2003).

Above named applicant has filed an application under sub-section (10) of section 18 read with section 17(4) of Prevention of Money-Laundering Act, 2002 (15 of 2003) against you.

Whereas it appears that you have claimed the property provisionally attached under section 5(1) or seized or frozen under section 17 of the Prevention of Money-Laundering Act, 2002 (15 of 2003).

You are hereby called upon to indicate and to show cause why such property/properties should not be declared to be the properties involved in money laundering, and why the order of provisional attachment or seizure or frozen should not be confirmed.

You are directed to appear before the Adjudicating Authority, Prevention of Money Laundering, in person or through an advocate/authorized representative, duly instructed on.....day of.....year.....at (time), at (place), failing which the application/complaint shall be heard and decided in your absence.

Given under my hand and the seal of the Adjudicating Authority, this.....day of.....

Registrar/Administrative Officer
Adjudicating Authority

Address:
.....

Date.....

Seal

FORM 6

[See regulation 13(1)]

SUMMONS TO WITNESS

(Under section 11 of the Prevention of Money-Laundering Act, 2002)

Ref:—OC./OA No.of (year).....

.....Joint Director

Versus

.....Defendants

To

.....
.....
.....

Whereas your attendance is required to examine you on oath/for production of records/for receiving evidence on affidavit in the above mentioned case you are hereby required to appear personally/through Authorized Representative before this Authority on the.....day of.....at.....o'clock and to bring with you or to send to this Authority the records mentioned hereunder.

If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

Given under my hand and the seal of the court, this.....day of.....

Registrar
Adjudicating Authority

Note: (1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this court on the day and hour aforesaid.

(2) Details of records to be produced:—

- 1.
- 2.
- 3.
- 4.

FORM 7

[See regulation 16(1)]

APPLICATION FOR INSPECTION OF RECORDS

To

The Registrar/Administrative Officer,
Adjudicating Authority,
New Delhi.

Kindly grant permission to inspect the record of the case mentioned below. Particulars of the record for which inspection is sought.

- (i) Kind of case.
- (ii) Number and year.
- (iii) Name of Parties.
- (iv) Date of decision (or hearing), if pending
Order of the Registrar/Administrative Officer.

.....
Signature of the Applicant/
Defendant/Counsel/
Authorized Agent

Office Report:

Inspection commenced at.....on.....20.....

Inspection concluded.....

Inspection fee already paid with application Rs.

Additional fee, if any, paid Rs.

.....
Signature of the Clerk

Date.....

FORM 8

(See regulation 22)

Before Adjudicating Authority
Original Application No.
STATEMENT OF WITNESS

Oath Administered

Name.....
Father's/Husband's Name.....age.....
Occupation.....Place of residence and
address.....
Statement was read over to the witness who admitted it to be correct.

.....
Signature, Chairman/Member
Adjudicating Authority

New Delhi

Date.....

FORM 9

(See regulation 22)

CERTIFICATE OF ATTENDANCE

Certified that Shri.....appeared before this Authority as a witness on O.A./O.C.
No...../20....., on behalf of the.....on..... He was relieved at.....
on..... He was paid/not paid any T.A. and D.A.

.....
Signature of Registrar/Administrative Officer

Date.....

FORM 10

(See regulation 28)

GENERAL - INDEX

Records

Part	Description of paper	No. of sheets in paper	State of document	Date of weeding	Remarks
A B				A B	

FORM 11

(See regulation 28)

LIST OF RECORDS TRANSMITTED TO THE RECORD ROOM

List of cases disposed by the Adjudicating Authority, in the month
of.....year.....

Sl. No.	Date of Disposal	Number and year of suit or case	Date of institution	Name of parties	Number of papers on record		Details of additions to record made in the record room	Remarks
				Part A	Part B	Date	Particulars	Number of Papers

FORM 12

[See regulation 29(1)]

APPLICATION FOR COPY OF RECORD

To

The Registrar/Administrative Officer,
Adjudicating Authority,
New Delhi.

Applicant/Case No.(Applicant/Complainant)

Versus

..... (Non-applicant/Defendants)

Decided/Fixed for hearing on.....

Kindly grant Photostat/typed certified Copy/Copies of the paper named in the following list from the record of the above mentioned case, for which I tender copying fee of the value of Rs.

My address is.....

List.....

Serial No	Full Particulars of the paper of which a copy is sought	No. of copies required	The purpose for which the copy is sought	Remarks
1	2	3	4	5

18.2 THE PREVENTION OF MONEY-LAUNDERING (ISSUANCE OF PROVISIONAL ATTACHMENT ORDER) RULES, 2013

In exercise of the powers conferred by sub-section (1) read with clause (aa) of subsection (2) of section 73 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby makes the following rules relating to the issuance and service of provisional attachment order, namely:—

1. Short title and commencement.—(1) These rules may be called the Prevention of Money-laundering (Issuance of Provisional Attachment Order) Rules, 2013.

(2) They shall come into force on the date² of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the context otherwise requires,—

(a) “Act” means the Prevention of Money-laundering Act, 2002 (15 of 2003);

(b) “Adjudicating Authority” means an Adjudicating Authority appointed under sub-section (1) of section 6 of the Act;

(c) “Authorized Officer” means an officer not below the rank of Deputy Director authorized by the Director for the purpose of section 5 of the Act;

(d) “corresponding law” shall have the same meaning as assigned to it in clause (ia) of sub-section (1) of section 2 of the Act;

(e) “Director” means the Director appointed under sub-section (1) of section 49 of the Act;

(f) “Proceeds of Crime” shall have the same meaning as assigned to it in clause (u) of sub-section (1) of section 2 of the Act;

(g) “Provisional Attachment Order” means an order passed under subsection (1) of section 5 of the Act;

(h) “Schedule” means the Schedule to the Act; and

(i) “section” means a section of the Act.

(2) All other words and expressions used and not defined in these rules, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Manner of issuance of provisional attachment order.—(1) Where the Director or any officer authorised in this behalf has reason to believe on the basis of material in his possession

that the proceeds of crime or the property involved in money-laundering has to be provisionally attached, the said officer shall make a provisional attachment order.

(2) The authorized officer shall endorse a copy of the provisional attachment order to all concerned including the persons in possession of the properties and the Adjudicating Authority.

(3) The service of provisional attachment order shall be served in the following manner:—

(a) by delivering or tendering the provisional attachment order to the owner or person; or

(b) if it cannot be delivered to such owner or person, by delivering it to the person duly authorised by such owner or person; or

(c) if the owner or person is absent from his residence at the time when service of the provisional attachment order is being effected on him, and there is no likelihood of his being found at the residence within a reasonable time and he has not duly authorised any person to accept the service on his behalf, service may be made on any adult member in the family of such owner or person who is residing with him; or

(d) if the service cannot be effected as provided in clauses (a) to (c), the serving officer shall affix one of the duplicate of the provisional attachment order at some conspicuous part of the premises in which the person or owner resides or is known to have last resided or carried on business or personally works or has worked for gain and that the written report thereof shall be witnessed by two persons.

(4) If the provisional attachment order cannot be served under clause (a) or clause (b) or clause (c) or clause (d) of sub-rule (3), then by publishing it in a leading newspaper (both in vernacular and in English) having wide circulation in the area or jurisdiction in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain.

(5) Notwithstanding anything contained above, the provisional attachment order to the owner or person, in addition to and simultaneously may be sent by speed post with proof of delivery at the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works or last worked for gain.

4. Service of provisional attachment order on corporate bodies, societies and trusts etc.—

(1) (a) The provisional attachment order on corporate bodies, societies and trust etc. shall be effected by serving it on the secretary, local manager or the principal officer of the corporate

bodies, societies and trust etc., or by letter sent by speed post addressed to the chief officer of such bodies in India, in which case the service shall be deemed to have been effected;

(b) If the service cannot be effected as provided in clause (a), the serving officer shall affix one of the duplicate of the provisional attachment order at some conspicuous part of the premises in which the office of the corporate body, society and trust etc. carries on business or have last carried on business

(2) If the provisional attachment order cannot be served under sub-rule (1), then by publishing it in a leading newspaper (both in vernacular and in English) having wide circulation in the area or jurisdiction where the corporate body, society and trust etc. carries on business or have last carried on business.

5. Interpretation.—If any question arises relating to the interpretation of these rules, the matter shall be referred to the Central Government and in this regard, the decision of the Central Government shall be final.

20. OVERVIEW OF THE BENAMI TRANSACTIONS (PROHIBITION) BILL, 2011

Benami transactions are transactions conducted in the name of a person who does not pay any consideration for the underlying asset, but merely lends his name while the real title remains vested in the true owner.

The Benami Transactions (Prohibition) Bill, 2011 was introduced by the Ministry of Finance in the Lok Sabha on August 18, 2011 to enact a new legislation to prohibit Benami transactions. This Bill is to replace the existing Benami Transactions (Prohibition) Act, 1988. The Bill has been referred to the Parliamentary committee on 13th September, 2011.

The Benami Transactions (Prohibition) Act, 1988 was enacted to prohibit benami transactions and the right to recover property held benami. The Act provides that —

- (a) all the properties held benami shall be subject to acquisition by such authority in such manner and after following such procedure as may be prescribed;
- (b) no amount shall be payable for the acquisition of any property held benami;
- (c) the purchase of property by any person in the name of his wife or unmarried daughter for their benefit would not be benami transaction;
- (d) the securities held by a depository as registered owner under the provisions of the Depositories Act, 1996 or participant as an agent of a depository would not be benami transactions.

The Benami Transactions (Prohibition) Act, 1988 comes under the purview of the Department of Revenue, Ministry of Finance, Government of India.

Drawbacks of the earlier Act

The Act was inadequate to deal with benami transactions as the Act, -

- (i) does not contain any specific provision for vesting of confiscated property with the Central Government;
- (ii) does not have any provision for an appellate mechanism against an action taken by the authorities under the Act, while barring the jurisdiction of a Civil Court;

(iii) does not confer the powers of the Civil Court upon the authorities for its implementation.

(iv) Unfortunately, in the last 18 years, Rules have not been prescribed by the government for the purposes of sub-section (1) of Section 5, with the result that the government is not in a position to confiscate properties acquired by the real owner in the name of his benamidars.

(v) The Act contains only 9 sections.

History of benami transactions in India

Benami transactions were noticed as early as the year 1778 in Mr. Justice Hyde's notes after the establishment of British rule in India. In 1854 the committee on a review of cases in *Gopeekrist Gosain Vs. Gungapersuad*, (1854) 6 MLA 53, held that benami transaction is a custom of the country and must be recognized till otherwise ordered by law. In 1882 sections 81 and 82 of Indian Trusts Act gave legislative recognition to the practice of benami transactions and the courts were bound to enforce it.

Some of the factors accounting for the origin of benami are –

- The Joint Hindu Family system and a desire to make secret provisions.
- Fraud on creditors.
- Desire to evade taxes.
- Desire to avoid certain political and social risks.

Such benami transactions abused and defrauded public revenues and creditors. The Parliament for the first time intervened in 1976 when it introduced section 281A in the Income-tax Act, 1961 barring the institution of suit in relation to benami properties. But this too did not stop benami transactions and its consequences, this time the Parliament totally prohibited the benami transactions and made it an offence also, prohibiting all suits, claims and actions based upon benami transaction. The Parliament also in order to stop the abuse and fraud by the benami transaction property without compensation repealed section 82 of Indian Trusts Act and section 281A of the Income tax Act along with other consequential repeal. The Law Commission was requested to examine the subject on benami transactions in all its ramifications. The Law Commission submitted its 57th Report. To implement the recommendations of the Law

Commission President promulgated the Benami Transaction (Prohibition of the Right to Recover Property) Ordinance, 1988 on 19th May, 1988 by which it barred all suits and defences based upon benami transactions. This Ordinance was converted into an Act by introduction of a Bill in the Parliament.

To implement the recommendations of the Fifty-seventh Report of the Law Commission in Benami Transactions, the President promulgated the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988, on the 19th May, 1988. The Ordinance provided that no suit, claim or action to enforce any right in respect of any property held benami shall lie and no defence based on any right in respect of any property held benami shall be allowed in any suit, claim or action. It however, made two exceptions regarding property held by a coparcener in a Hindu undivided family for the benefit of the Coparceners and property held by a trustee or other person standing in a fiduciary capacity for the benefit of another person. It also repealed section 82 of the Indian Trusts Act, 1882, section 66 of the Code of Civil Procedure and section 281A of the Income-tax Act, 1961.

The provisions of the Ordinance received a mixed response from the press and the public. There had been criticism also that the Ordinance was a half-hearted measure and had not tackled the problem effectively and completely. It was, therefore, felt that the Bill to replace the Ordinance may be brought out as a comprehensive law on benami transactions touching all aspects and accordingly, the Law Commission was requested to examine the subject in all its ramifications. The Law Commission submitted its 130th Report titled "Benami Transactions – a Continuum" and made certain recommendations.

The Law Commission recommended the inclusion of the following provisions in the Bill to replace the Ordinance, namely –

- (i) benami transactions should cover all kinds of property;
- (ii) Entering into a benami transaction after the commencement of the new law should be declared as an offence. However, an exception should be made for transactions entered into by the husband or father for the transfer of properties in the name of the wife or unmarried daughter for their benefit.
- (iii) Voluntary organisations should be authorised to file complaints about the entering into of benami transaction and the District Judges should be designated as Tribunals.

Even Gram Nayalayas recommended by the Law Commission may also be utilised for this purpose.

- (iv) As both the benamidar and the true owner are equal participants to a criminal transaction, prohibit the true owner's right to recover property held benami. As such, the Commission has suggested that the properties should be acquired from him by resorting to a procedure analogous to Chapter XXA of the Income-tax Act, 1961. It has been suggested that the same action has to be taken when a benamidar retransfers the property back to the true owner for an apparent or no consideration to circumvent the provisions of the Ordinance.
- (v) In addition to section 82 of the Indian Trusts Act, 1882, as provided in the Ordinance, sections 81 and 94 of that Act should also be omitted.
- (vi) Appointment of an authority, like the Charity Commissioner, for supervising private trusts should be provided for.

The Bill was passed by both the Houses of Parliament and it received the assent of the President on 5th September 1988 and became the Benami transaction (Prohibition) Act, 1988 (45 of 1988).

Main objective and important provisions of the Benami Transactions (Prohibition) Bill, 2011

The main objective of the Bill is to prohibit holding property in benami and restrict right to recover or transfer property held benami and also to provide a mechanism and procedure for confiscation of property held benami.

Some of the important provisions of the Bill are –

- (i) It prohibits benami transactions by any person, except in the case of benami transactions entered into in the name of spouse, brother or sister or any lineal ascendant or descendant;
- (ii) It provides that Benami property arising out of prohibited Benami transaction is liable to confiscation by the Central Government and such property shall vest absolutely in the Central Government without paying any compensation;

- (iii) It prohibits right of the benamidar to recover property held benami;
- (iv) It provides that the Initiating Officer, the Approving Authority and the Administrator shall be the authorities for the purposes of the Bill;
- (v) It provides that the Adjudicating Authority and the Appellate Tribunal established under the Prevention of Money-Laundering Act, 2002 shall respectively be the Adjudicating Authority and the Appellate Tribunal for the purposes of the Bill and any person aggrieved by an order of Adjudicating Authority may prefer an appeal to the Appellate Tribunal;
- (vi) It provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court on any question of law;
- (vii) It enables the Central Government, in consultation with the Chief Justice of the High Court, to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Bill;
- (viii) It provides penalty for entering into prohibited benami transactions and for furnishing any false documents in any proceeding under the Bill;
- (ix) It provides for transfer of any suit or proceeding in respect of a benami transaction pending in any Court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal as provided in the Bill;
- (x) It also proposes to make consequential amendments in the Prevention of Money-Laundering Act, 2002.

Overview of the Benami Transactions (Prohibition) Bill, 2011

The Bill consists of 47 clauses under 8 chapters and one Schedule.

The Schedule consists of amendments made to the Prevention of Money Laundering Act, 2002.

Important definitions -

“**Benami property**” means any property which is the subject matter of a Benami transaction;
(clause 2(f))

“**Benami transaction**” means,—

(A) a transaction or arrangement—

(a) where a property is transferred to, or is held by, a person for a consideration provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person providing the consideration, except when the property is held by—

(i) a karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family; or

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, agent, director of a company or legal adviser, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

(B) a transaction or arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership; (clause 2(g))

{Under the Benami Transactions (Prohibition) Act, 1988, benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person}

“**Benamidar**” means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a name lender; (clause 2(h))

“**Beneficial owner**” means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar. (Clause 2(i))

“**Property**” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property and where the property is capable of conversion into some other form, then the property in such converted form. (Clause 2(p))

{Under the Benami Transactions (Prohibition) Act, 1988, property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.}

Prohibition of benami transaction – (Chapter II)

No person should enter into any benami transaction. But this will not apply to a benami transaction entered into by an individual in the name of his spouse, brother or sister or any lineal ascendant or descendant. (Clause 3)

(lineal ascendant will include father, mother, grandfather and grandmother while lineal descendant will include children and grandchildren)

{Under the Benami Transactions (Prohibition) Act, 1988, benami transaction does not cover transactions entered into by a person in the name of his wife or unmarried daughter only.}

The Central Government has the right to confiscate any property which is the subject matter of benami transaction. (Clause 4)

The Bill prohibits the right of any person to recover the property that is held benami. It also prohibits re-transfer of property by benamidar to the beneficial owner. (Clause 5 & 6)

Authorities – (Chapter III)

Following are the authorities –

- (i) the Initiating Officer – means an Assistant Commissioner of Income-tax as defined in clause (9A) of section 2 of the Income-tax Act, 1961;
- (ii) the Approving Authority – means a Joint Commissioner of Income-Tax as defined in clause (28C) of section 2 of the Income-tax Act, 1961;
- (iii) the Administrator – means an Income-Tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961.

The above-mentioned authorities will have the powers of a civil court under the Code of Civil Procedure Code, 1908 with regard to discovery, inspection, summons, production of documents, receiving evidence, etc.

{Under the Benami Transactions (Prohibition) Act, 1988, there is no mention on the authorities.}

The authorities have the power to impound books of account or other documents for any inquiry and can retain the same only for a period of three months from the date of attachment made by the Adjudicating Authority. On expiry of the period of three months, the documents or books should be returned to the person from whom it was impounded unless the Approving Authority or Adjudicating Authority permits retention of such books of account and other documents beyond the said period.

Attachment, Adjudication and Confiscation - (Chapter IV)

The Initiating Officer can within a period of 90 days from the date of issue of notice to the person involved in prohibited benami transaction pass an order for provisional attachment of property till the date of order made by the Adjudicating Authority. (Clause 13)

(Adjudicating Authority” means the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002.)

The Adjudicating Officer, after hearing the person whose property is attached, may make an order for the confiscation of the property held benami. (Clause 15)

No order for attachment should be passed after the expiry of one year from the end of the month in which the reference was received from the Initiating officer under Clause 13.

Once an order of confiscation has been made under all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation will be payable in respect of such confiscation.

The Administrator will have the power to receive and manage the property so confiscated.

{Under the Benami Transactions (Prohibition) Act, 1988, it is only mentioned that all properties held benami will be subject to acquisition by such authority and procedure as prescribed. It also mentions that no amount will be payable for the acquisition of any property.}

Appellate Tribunal – (Chapter V)

The Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002 shall be the Appellate Tribunal for the purposes of this Act also.

Any person aggrieved by the order of the Adjudicating Authority can appeal to the Appellate Tribunal within 45 days from the date of such order. The Appellate Tribunal should as far as possible hear and decide the appeal within a period of 2 years from the last date of the month in which the appeal is filed.

Rectification of mistakes apparent on the face of the record should be done within a period of one year from the end of the month in which the order was passed by the Appellate Tribunal or the Adjudicating Authority.

Any person aggrieved by the order of the Appellate Tribunal can appeal to the High Court within 120 days from the date of communication of the order.

Special Courts – (Chapter VI)

The Central Government, in consultation with the Chief Justice of the High Court can designate one or more Courts of Session as Special Court or Special Courts for trial of an offence punishable under the Bill for such area or areas or for such case or class or group of cases as may be specified in the notification.

The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by (i) the authority; or (ii) any officer of the Central Government or 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.

Every trial should be conducted as expeditiously as possible and conclude the trial within six months from the date of filing of the complaint.

The Code of Criminal Procedure, 1973 will apply to the proceedings before the Special Court.

Offences and penalties – (Chapter VII)

Any person who enters into benami transactions, or abets or induces another person to enter into such transactions shall be punishable with an imprisonment for six months to two years and also liable to a fine of upto 25 per cent of the fair market value of the property held in benami.
(Clause 27)

Any person who willfully gives false information shall be liable to an imprisonment of three months to two years and a fine of upto 10 per cent of the fair market value of the property.
(Clause 28)

Prior sanction of the Approving Authority is required for initiating prosecution under Clause 27.

Miscellaneous – (Chapter VIII)

An offence under this Bill is non-cognizable and bailable.

Where a person dies during the course of any proceeding under this Bill, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal heir

and may be continued against the legal heir from the stage at which it stood on the date of the death of the deceased.

21. OVERVIEW OF THE WHISTLEBLOWERS' PROTECTION ACT, 2011

The Whistle Blowers Protection Bill, 2011 was passed by the Lok Sabha on 27th December, 2011. The Bill as passed by the Lok Sabha was finally passed by the Rajya Sabha on 21st February, 2014 and received the assent of the President on 9th May, 2014. As the Bill was taken up on the last day of the last Session of the 15th Lok Sabha, the official amendments to the Bill (aimed at safeguarding against disclosures affecting sovereignty and integrity of India, security of the State, etc.) were not moved. The proposed amendments are of crucial nature and, therefore, the Act can be brought into force only after necessary amendments are carried out. Rules under the Act can be notified only after the Act is brought into force.

The Act provides for adequate safeguards against victimization of the person making disclosure on any allegation of corruption or willful misuse of power or willful misuse of discretion against any public servant. It is also provided that if the Competent Authority is of the opinion that either the complainant or public servant or the witnesses, etc. need protection, the Competent Authority shall issue appropriate directions to the concerned Government authorities (including police) which shall take necessary steps, through its agencies, to protect such complainant or public servant or persons concerned.

- The Whistleblowers Protection Act, 2011, which provides a mechanism for protecting the identity of whistleblowers — a term given to people who expose corruption
- Whistleblowers may make complaints about corruption (as defined in the Prevention of Corruption Act, 1983), willful misuse of power or discretion which may lead to demonstrable loss to the Government or wrongful gain to any person including a public servant; and commission of or attempts to commit offences recognized under law by any public Servant to the competent authority
- Authorities are competent to receive whistleblower complaints include
 - The Prime Minister at the Centre and the Chief Minister in the States against Ministers of the Union or the States respectively; -
 - The respective Chairpersons of the House against members of Parliament or the State Legislatures (other than those who may be Ministers); -

- The High Court in relation to any judge or judicial officer or arbitrator in the States (judges of the High Courts and the Supreme Courts are not covered by this law as the Judicial Standards and Accountability Bill is pending.
 - The Central Vigilance Commission or such other authority as the Central Government may notify for all other public authorities and public sector undertakings at the Union level; and
 - The State Vigilance Commission or such other authority as the State Government may notify in due course to receive complaints against public authorities and state level public sector undertakings
- As per the law, a person can make a public interest disclosure on corruption before a competent authority — which is at present the Central Vigilance Commission (CVC). The government, by notification, can appoint any other body also for receiving such complaints about corruption, the Act says.
 - The Act, however, lays down punishment of up to two years in prison and a fine of up to Rs 30,000 for false or frivolous complaints.
 - The Act says that every disclosure shall be made in good faith and the person making the disclosure shall provide a personal declaration stating that he reasonably believes that the information disclosed by him and the allegation contained therein is substantially true
 - The definition of ‘disclosure’ has also been amended to include wilful misuse of power or discretion, which leads to a demonstrable loss to the government or a demonstrable gain to a public servant or any third party. The definition of competent authority to which a complaint can be made has also been expanded.
 - Disclosures can be made in writing or by email or email message in accordance with the procedure as may be prescribed and contain full particulars and be accompanied by supporting documents, or other material, the Act states
 - No action shall be taken on a disclosure if it does not indicate the identity of the complainant or public servant or if “the identity of the complainant or public servant is found to be incorrect”.
 - Information related to national security has been kept out of the purview of the Act. The Act is not applicable to Jammu and Kashmir, the armed forces and the Special Protection

Group mandated to provide security to the Prime Minister and former prime ministers, among others.

22. PROFESSIONAL OPPORTUNITIES UNDER PREVENTION OF MONEY LAUNDERING ACT, 2002

1. As a consultant providing
 - a. His vast expertise in handling huge quantitative data for verification of the exact nature of transactions.
 - b. Building effective AML programs for the financial organisations to protect them from the potential threats.
 - c. Assist reporting entities in preparation of transactions reports under the PML Act
2. As the trusted partner of the government,
 - a. Ensuring implementation of the Act in letter and spirit.
 - b. KYC AUDIT
3. KYC audit
 - a. Customers due diligence procedures to confirm identity of Client from the records produced by him.
 - b. Systems audit for checking Identity from external database.
 - c. Formulating and implementing the programme of KYC which is to be forwarded to Director in PMLA [Rule 9 sub rule (7) of the PML maintenance of records of the nature and value ... rules].
4. Risk Advisory services (RAS), identifying the risk & its mitigating controls in the systems for proper internal control environment.
5. Management Advisory service (MAS), creating proper administrative and organisation structure to ensure the loop free information
6. Evaluating the adequacy of AML software
7. Internal audit, adherence to Rule 3 [PML maintenance of records of the nature and value ... rules] for vetting the transactions at specified limits.
8. Appearance before the Enforcement Directorate as a matter of authorised representation
9. Consultants to the Enforcement Directorate and Adjudicating Authority
10. Authorized representation - A person preferring an appeal to the Appellate Tribunal may use the assistance of an authorized representative (as defined in S 288(2) of the Income

Tax Act,1961) to present his case before the Appellate Tribunal. (Section 39(1) of the Prevention of Money-laundering Act, 2002)

11. Member to Appellate Tribunal Act -A practicing Chartered Accountant can become a member of ‘Appellate Tribunal’, which hears appeals against the orders of the Adjudicating Authority and authorities. (Section 28(2) of the Prevention of Money-laundering Act, 2002)
12. Assisting the enforcement of PMLA, 2002 – Sec 54 of the PMLA, 2002 requires the assistance of Chartered Accountants for inquiry and other related services namely
 1. Attachment
 2. Survey
 3. Search
 4. Seizure

23. USEFUL WEBSITES

Financial Intelligence Unit- India - <http://www.fuindia.gov.in/>

FIIInet Gateway - <https://finnet.gov.in/>

Directorate of Enforcement - <http://www.directorateofenforcement.gov.in/>

Ministry of Finance - <http://www.finmin.nic.in/>

Insurance Regulatory and Development Authority - <http://www.irdaindia.org/>

Reserve Bank of India - <http://www.rbi.org.in/>

Securities and Exchange Board of India - <http://www.sebi.gov.in/>

Financial Action Task Force on Money Laundering (FATF) - <http://www.fatf-gafi.org>

Asia/Pacific Group on Money Laundering (APG) - <http://www.apgml.org/>

24. ABOUT THE AUTHOR

Mr. Rajkumar Adukia is an eminent consultant, writer, and speaker. He is a rank holder from Bombay University and did his graduation from Sydenham College of Commerce & Economics. A Chartered Accountant, Company secretary and Cost and Management Accountant, he was among the top rank holders in the courses. Mr. Adukia also holds a degree in law. He has been involved in the activities of the Institute of Chartered Accountants of India (ICAI). In addition to being a Council Member of the ICAI, he is actively involved in various committees of ICAI. He is currently the Chairman of Committee for Co-operatives and NPO Sectors and Ind AS (IFRS) Implementation Committee. He is also the convenor of the Study Group on Indian Economy, ICAI.

He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions and has actively participated with accountability and standards-setting organizations in India and at the international level.

Based on his rich experience, he has written numerous articles on varied topics and has travelled across 70 countries for his presentations on accounting (IFRS), Finance (Taxation), Financial Planning, Real Estate, Commercial, Economic and Labour Laws, International Trade, Forensic Audit, Internal Audit, Corporate Governance, Corporate Social Responsibility, Climate Change and Carbon Credits Mechanism etc. His authoritative articles appear in financial papers like Business India, Financial Express, Economic Times and professional and business magazines. He has written over a 100 books on vast range of topics. His books are known for their practicality and for their proactive approaches to meeting practice needs.

Mr. Adukia is a frequent speaker at seminars and conferences organized by the Institute of Chartered Accountants of India, various chambers of Commerce, income tax offices and other professional and industry associations. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals across the country and abroad.
