

Prevention Of Laundering Act (PMLA 2002)

CA. UDAY KULKARNI

FCA-CIA-CISA-IP-CDPSE

Mobile-9822107177

Email-kulday@rediffmail.com

Purpose of Act

- *To Prevent Money Laundering*
- *Confiscation of property derived from or involved in money laundering.*

Prevention of Money Laundering Act 2002

- Came into force W.e.f. 1st July 2005.
- Financial Intelligence Unit- FIU-IND set up in November 2004 as 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.
- Director, FIU-IND and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant sections of the Act to implement the provisions of the Act.

PMLA 2002

- Section 3 – Offence of Money Laundering-
 - Whosoever
 - directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved
 - in any process or activity connected with the **proceeds of crime**
 - including its **concealment, possession, acquisition** or **use** and **projecting or claiming it as untainted property** shall be guilty of offences of money laundering.

Proceeds of Crime

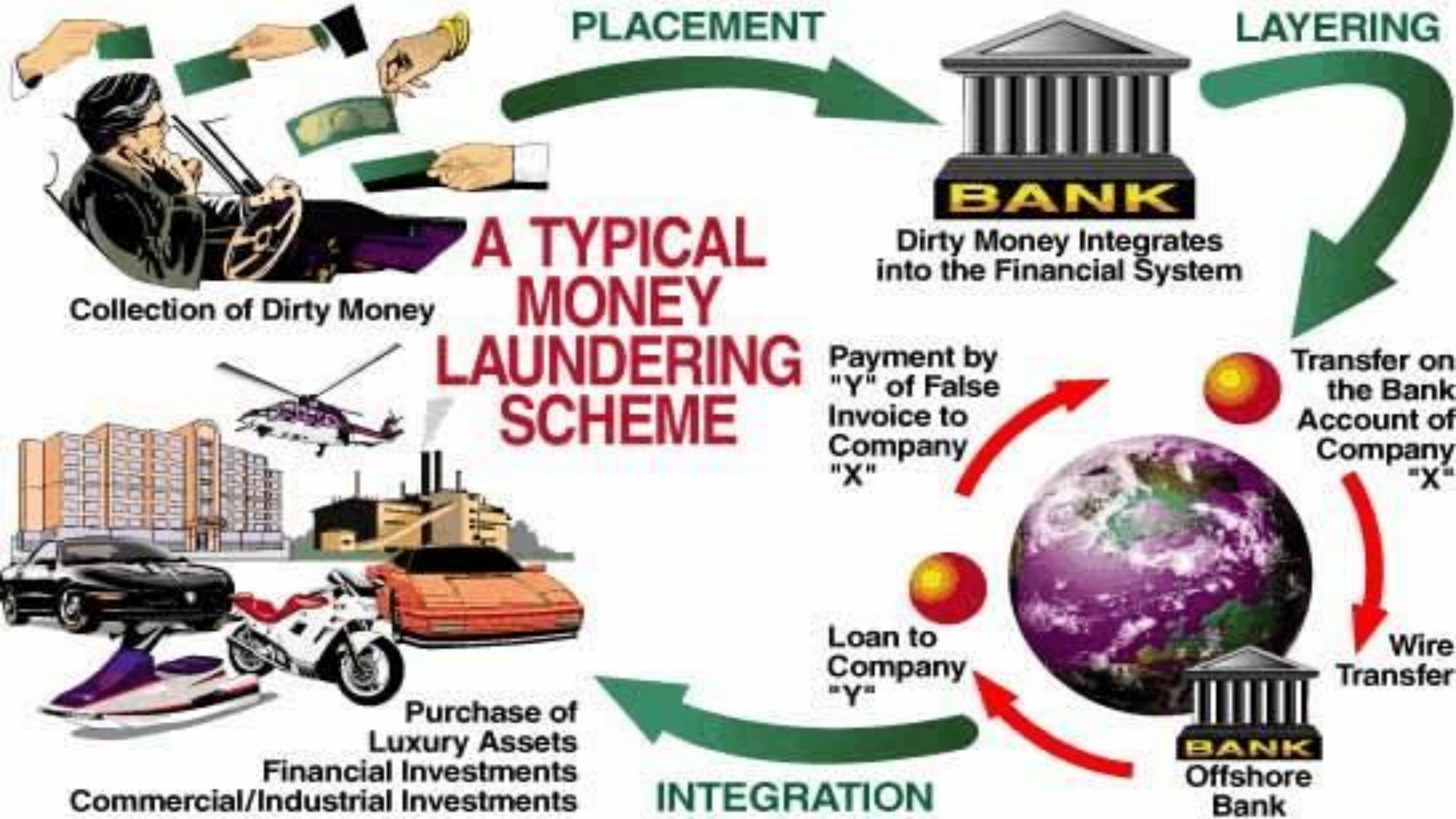
- ***Proceeds of Crime*** – Any Property
 - derived or obtained, directly or indirectly,
 - by any person
 - as a result of criminal activity relating to a scheduled offences
 - or the value of such property,
 - or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.
- 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.

Money Laundering Offence

- It is techno legally defined offence
- There must be Predicate Offence
- Predicate Offence needs to be deal with Proceeds of Crime
- *The predicate offences are all listed in the Schedule. Unless there is a predicate offence, there cannot be an offence of money-laundering*

PMLA 2002

- ***Property*** – Any property or assets of every description,(property of any kind), 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.
- ***Scheduled Offences*** –
 - (i) Offences specified under Part A of the schedule
 - (ii) Offences specified under Part B of the schedule if the total value involved in such offences is One Crore rupees or more.
 - (iii) Offences Specified under Part C of the Schedule



PMLA 2002

- OFFENCES UNDER THE INDIAN PENAL CODE
- OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985
- OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908
- OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967
- OFFENCES UNDER THE ARMS ACT, 1959
- OFFENCES UNDER THE WILDLIFE (PROTECTION) ACT, 1972
- OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956
- OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988
- OFFENCES UNDER THE EXPLOSIVES ACT, 1884
- OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972
- OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
- OFFENCES UNDER THE CUSTOMS ACT, 1962
- OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976
- OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986
- OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994
- OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

PMLA 2002

- OFFENCES UNDER THE EMIGRATION ACT, 1983
- OFFENCES UNDER THE PASSPORTS ACT, 1967
- OFFENCES UNDER THE FOREIGNERS ACT, 1946
- OFFENCES UNDER THE COPYRIGHT ACT, 1957
- OFFENCES UNDER THE TRADE MARKS ACT, 1999
- OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000
- OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002
- OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001
- OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986
- OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974
- OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981
- OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002
- **Corporate Frauds** - Section 447 of Companies Act is being included as scheduled offence under PMLA so that Registrar of Companies in suitable cases would be able to report such cases for action by Enforcement Directorate under the PMLA provisions.
- The offence of willful attempt to evade any tax, penalty or interest referred to in section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

PMLA 2002

- **Transaction-** means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof and includes:
 - a. opening of an account;
 - b. 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;
 - c. the use of a safety deposit box or any other form of safe deposit;
 - d. entering into any fiduciary relationship;
 - e. any payment made or received, in whole or in part, for any contractual or other legal obligation; or
 - f. establishing or creating a legal person or legal arrangement.

PMLA 2002

- **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.
- **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.

Person Section 2 (s)

(s) “person” includes—

(i) 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

PMLA 2002

- **“Reporting Entity”** means a banking company, financial institution, intermediary or a person carrying on a designated business or profession [Section 2(1)(wa)].
 - (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, 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 [Section 2(1)(sa)].*

Customer Identification

- **11A. Verification of Identity by Reporting Entity.—**

(1) Every Reporting Entity shall verify the identity of its clients and the beneficial owner,

by—

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) if the reporting entity is a banking company

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016)

(c) use of passport issued under section 4 of the Passports Act, 1967

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf

Obligations of RE

12. Reporting entity to maintain records.—

(1) Every reporting entity shall—

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

Obligations of RE

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained **for a period of five years from the date of transaction between a client and the reporting entity.**

Prevention of Money-laundering (Maintenance of Records) Rules- 2005

- No reporting entity shall allow the opening of or *keep any anonymous account or account in fictitious names or account on behalf of other persons whose identity has not been disclosed or cannot be verified.*
- Rule 9 - Every reporting entity *shall 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 client, his business and risk profile and where necessary, the source of funds.*
- Rule 13 (i) - Every reporting entity shall carry *out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, and products, services, transactions or delivery channels* that is consistent with any national risk assessment conducted by a body or authority duly notified by the Central Government.
- The risk assessment mentioned in clause (i) shall—
 - (a) be documented;
 - (b) consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;
 - (c) be kept up to date; and
 - (d) be available to competent authorities and self-regulating bodies.

Customer Profile for Risk Category

- RE should prepare a profile for each new customer based on risk categorization.
 - Customer identity
 - Social/financial status
 - Nature of business activities
 - Information about client & its business.

Obligations of RE

- ***Cash Transactions Report-***

- every reporting entity to furnish to FIU-IND information relating to -
 - All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
 - All series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency.

Obligations of RE

- ***Suspicious Transaction Reports-***

- Every reporting entity shall furnish to FIU-IND information of all suspicious transactions whether or not made in cash.
- **Suspicious transaction** means a transaction referred to in clause (h) of the rules, including an attempted transaction, whether or not made in cash which, to a person acting in good faith -
 - (a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or
 - (b) appears to be made in circumstances of unusual or unjustified complexity; or
 - (c) appears to have no economic rationale or bonafide purpose; or
 - (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;

Obligations of RE

- ***Broad categories of reason for suspicion and examples of suspicious transactions for a banking company are indicated as under:***
 - False identification documents
 - Identification documents which could not be verified within reasonable time
 - Accounts opened with names very close to other established business entities
 - Suspicious background or links with known criminals
 - Large number of accounts having a common account holder, introducer or authorized signatory with no rationale
 - Unexplained transfers between multiple accounts with no rationale
 - Unusual activity compared with past transactions
 - Sudden activity in dormant accounts
 - Activity inconsistent with what would be expected from declared business
 - 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 just under the reporting threshold amount in an apparent attempt to avoid reporting
 - Value inconsistent with the client's apparent financial standing

Obligations of RE

- ***Counterfeit Currency Reports***

- require every banking company, financial institution and intermediary, to furnish to FIU-IND information relating to 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.
- Establishment of Forged Notes Vigilance Cell at Head Office of Bank.

Obligations of RE

- ***Cross Border Wire Transfer Reports***

- 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***

- 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.

- ***NTR-***

- All transactions involving receipts by non profit organizations of value more than Rs. Ten lakhs or, its equivalent in foreign currency

Section 21- Retention of records.

- (1) Where any records have been seized-
 - under section 17
 - or
 - section 18
 - or
 - frozen under sub-section (1A) of section 17
 - And
 - the Investigating Officer or any other officer authorized by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen,
 - for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

Record under PMLA Section 2(1)(w)

- “Records” include-
 - the records maintained in the form of books
 - or
 - stored in a computer
 - or
 - such other form as may be prescribed;

Record under PMLA- THE PREVENTION OF MONEY-LAUNDERING (FORMS, SEARCH AND SEIZURE OR FREEZING 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 Rule 2 (1) (m)

- “Records” include-
 - the records maintained in the form of books
 - or
 - stored in a computer
 - or
 - Tapes
 - or
 - discs
 - Or
 - in any other electronic form
 - or
 - transcribed information of any type whether expressed in ordinary or machine language
 - and
 - such other documents as may be useful for the purposes of these rules;

Section 22- Presumption as to records or property in certain cases.

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

Section 23- Presumption in inter-connected transactions.

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

Section 24- Burden of proof

- In any proceeding relating to proceeds of crime under this Act,—
 - (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
 - (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

Email-kulday@rediffmail.com



Thanks!!!

Mobile
9822107177