

Professional services a Chartered Accountant can provide in preventing Money laundering in India



By



CA. (Dr.) Adukia Rajkumar Satyanarayan

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Chairman western region ICAI 1997; Council Member ICAI 1998-2016
Mob: 98200 61049; Email: [rajkumar@cadrrajkumaradukia.com](mailto:raj कुमार@cadrrajkumaradukia.com)

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1. INTRODUCTION

The term “money laundering” is generally attributed to the collective of procedures involved in legitimising assets amassed by means which may not be have been legitimate. Described otherwise, it involves the transmutation of ill-gotten proceeds into ostensibly legitimate assets, and sometimes into businesses developed as means to generate more revenues to finance the very ill-means from where the proceeds were generated in the first place.

In India, before the enactment of the Prevention of Money Laundering Act 2002, a number of laws addressed scantily the issue in question. These were:

- 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 1860
- The 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.

Anti-Money Laundering (AML) seeks to deter criminals by making it harder for them to hide ill-gotten money. Criminals use money laundering to conceal

their crimes and the money derived from them. AML regulations require financial institutions to monitor customers' transactions and report on suspicious financial activity.

2. The Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 or the PMLA is an Act of the Parliament of India enacted to prevent money-laundering and to provide for confiscation of property derived from money-laundering.

The PMLA and the Rules notified there under came into force with effect from July 1, 2005. The Act and Rules notified there under impose obligation on banking companies, financial institutions, and intermediaries to verify identity of clients, maintain records and furnish information in prescribed form to the competent authorities formed and appointed in that regard [e.g., Financial Intelligence Unit – India (FIU-IND)]. The Act was subsequently amended in the years 2005, 2009 and 2012.

The PMLA seeks to combat acts pertaining to money laundering in India and in view of this, it mainly has three main objectives:

- To prevent and control money laundering
- To confiscate and seize the property obtained from the laundered money; and
- To deal with any other issue connected with money laundering in India.

2.1. Money-laundering

The concept of money laundering is described under section 3 of the PMLA, in a manner to include those activities whereby there are 'attempts to indulge or assist other person' or become 'involved in any activity connected with the

proceeds of crime and projecting it as untainted property' are said to be activities which may be acts of money laundering.

ii) **Proceeds of crime:** This is one of the most important terms to be understood insofar as the aim is to understand the scope of the term money laundering within the PMLA. This term is defined within the PMLA to describe properties and assets acquired out of a criminal activity.

2.2. Burden of Proof:

The offence of money laundering as noted under section 3 of the PMLA is considered an aggravating one, and an accusation under the same shifts the onus of proof on the person accused of having committed the offence, as such. Following the provisions as noted above, 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.

2.3. Penalties under the PMLA:

The PMLA is a piece of criminal legislation, where presumption of guilt has precedence and the burden of proof lies on the person accused of a violation. Following this there are certain penalties which are prescribed within the provisions of the PMLA.

The PMLA prescribes that any person found guilty of money-laundering shall be punishable with rigorous imprisonment from three years to seven years and where the proceeds of crime involved relate to any offence under paragraph 2 of Part A of the Schedule (Offences under the Narcotic Drugs and Psychotropic Substance Act, 1985), the maximum punishment may extend to 10 years instead of 7 years. Powers of attachment of tainted property
Appropriate authorities, appointed by the Govt of India, can provisionally attach property believed to be “proceeds of crime” for 180 days. Such an order is required to be confirmed by an independent Adjudicating Authority.

2.4. The Authorities – PMLA

Section 48 of the PMLA lays down the provision on the authorities holding competence under the Act. The authorities are as follows.

- Director or Additional Director or Joint Director,
- Deputy Director,
- Assistant Director, and
- such additional directors/officers whose appointment may be deemed necessary under the provisions of the PMLA.

3. SPECIAL COURTS

Section 43 of Prevention of Money Laundering Act, 2002 (PMLA) says that the Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under Section 4 of the PMLA, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification. Special courts formed under the

provisions of the PMLA are empowered to take cognisance of complaints made by an authority authorised in this behalf under the PMLA.

Section 26 of the PMLA lays down the procedures pertaining to the filing of appeals to appellate tribunals. The provisions therein specifically permit a 'person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal'.

Offences – Cognisable and Non-Bailable

The offences under the PMLA are to be treated as cognisable and non-bailable. The specific provisions in relation thereto occur under section 45 of the PMLA.

4. ANTI-MONEY LAUNDERING REGULATORS IN INDIA

FIU-IND Financial Intelligence Unit [FIU-IND] was set by the Government of India, on 18 November 2004, as the central national agency responsible for receiving, processing, analysing, and disseminating information relating to suspect financial transactions. The 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.

RBI is one of such authority which lays down anti-money laundering guidelines for banks and other financial institutions to adhere to. Similarly, SEBI has also prescribed certain requirements relating to Know Your Customer (KYC) norms for the financial intermediaries in securities market to follow to combat money laundering.

Further, there are law enforcement bodies like the Directorate of Enforcement and the Central Bureau of Investigation – Economic Offences Wing, dealing with money laundering issue. Further, the Income Tax Department, Government of India under the Income Tax Act, is also authorised to take steps to prevent the offence of money laundering by imposing tax on undisclosed foreign income and assets on Indian residents. This has been further augmented by enactment of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

The information required to be furnished by the Reporting Entities is provided in the table below. This information is required to furnish information to the Director of FIU-IND.

Sr. no.	Description	Due date
1	All cash transactions of the value of more than INR 1,000,000 or its equivalent in foreign currency	15 th day of the succeeding month
	All series of cash transaction integrally connected to each other which have been value below INR 1,000,000 or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate an amount of INR 1,000,000 or its equivalent in foreign currency	15 th day of the succeeding month
2	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	15 th day of the succeeding month

	transactions	
3	All transactions involving receipts by non-profit organizations of value more than INR 1,000,000 or its equivalent in foreign currency	15 th day of the succeeding month
4	All cross border wire transfers of the value of more than INR 500,000 or its equivalent in foreign currency where either the origin or destination of fund is in India	15 th day of the succeeding month
5	All purchase and sale by any person of immovable property valued at INR 5,000,000 or more that is registered by the reporting entity, as the case may be	15 th day of the succeeding month
6	All suspicious transactions whether or not made in cash	Not later than 7 (seven) working days on being satisfied that the transaction is suspicious

5. Case laws:

In case of *Narendra Mohan Singh and Another vs Directorate of Enforcement*, the Hon'ble Jharkhand High Court took a strict view in respect of the applicability of the PMLA and its various provisions regarding 'presumption'. Under Section 3 of the PML Act against the petitioners would not be maintainable as for prosecuting a person under PML Act, precondition is that one should involve himself in the process or activities connected with the proceeds of crime and the proceeds of crime be derived or obtained because of criminal activity relating to scheduled offence. But, here in the case

as has been stated above, the charge upon which cognizance has been taken under the PML Act, that never form part of the charges upon which CBI has submitted charge sheet.' Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time.

Rama Raju, S/ o B. Ramalinga Raju Vs. Union of India (UOI), In this case, it was held that section 24 shifts the burden of proving that proceeds of crime are untainted property onto person(s) accused of having committed the offence under Section 3. In response to a notice issued under Section 8(1) and qua the legislative prescription in Section 24 of the Act the person accused of having committed the offence under Section 3 must show with supporting evidence and material that he has the requisite means by way of income, earnings or assets, out of which or by means of which he has acquired the property alleged to be proceeds of crime. Only on such showing would the accused be able to rebut the statutorily enjoined presumption that the alleged proceeds of crime are untainted property.

6. HISTORY OF SCAMS:

Kingfisher Airlines case: Enforcement Directorate filed a case of money laundering against the liquor tycoon Vijay Mallya as he allegedly sent abroad

approximately ₹900 crore (US\$130 million) which loaned to his airline. Various Indian banks had given him a loan of about Rs 9,000 crore, which he has allegedly routed to gain a majority stake. He escaped from India and has been living in a self-imposed exile in Britain since March 2016. He was also named in the Panama Paradise Papers and Panama Papers as he leaked sensitive documents relating to investments done offshore and was also declared as a "proclaimed offender by PMLA court. Hence person with dual citizenship must be keenly monitored.

Commonwealth Games scam: A pilferage of Rs 70,000 crore, one of the major scams witnessed by Delhi in 2010 was of Commonwealth games. The accused were booked under sections of Prevention of Corruption Act as the scandal involved cheating and criminal conspiracy. Due to this money laundering and corruption act, India lost its reputation in front of the world and was banned from Olympics, impacting the future tournaments of Indian players. Possible ways to avoid such cases is regular auditing of income and expenses for an international game tournaments and Background check of the officials to handle the responsibility.

7. Money laundering Impact in Global Perspective:

The magnitude of money laundering activities and the amount of money laundered each year is gauged by way of the estimations issued by various government and non-government financial research entities. Although, various estimates of the scale of global money laundering are sometimes repeated often enough to make some people regard them as factual — no researcher has overcome the inherent difficulty of measuring an actively concealed practice. Regardless of the difficulty in measurement, the amount of

money laundered each year is in the billions of US dollars and poses a significant policy concern for governments.

Some of such risks and concerns are of the following nature:

- Reputational risk;
- Loss of revenue required to sustain governance and fund public welfare projects;
- War on Drugs
- Terror Funding

As a result, governments and international bodies have undertaken efforts to deter, prevent, and apprehend money launderers. Financial institutions have likewise undertaken efforts to prevent and detect transactions involving dirty money, both as a result of government requirements and to avoid the reputational risk involved. Issues relating to money laundering have existed as long as there has been large scale criminal enterprises.

7.1. The Financial Action Task Force (on Money Laundering)

Formed in 1989 by the G7 countries, the FATF is an intergovernmental body with an aim to develop and promote international response to combat money laundering.

FATF's three primary functions with regard to money laundering are

- Monitoring members' progress in implementing anti-money laundering measures,
- Reviewing and reporting on laundering trends, techniques, and Monitoring members' progress in implementing anti-money laundering measures, Reviewing and reporting on laundering trends, techniques, and countermeasures, and

- Promoting the adoption and implementation of FATF anti-money laundering standards globally. The FATF currently comprises 34 member jurisdictions and 2 regional organisations, representing most major financial centres in all parts of the globe.

The FATF Secretariat is housed at the headquarters of the OECD in Paris. In October 2001, FATF expanded its mission to include combating the financing of terrorism. FATF is a policy-making body that brings together legal, financial, and law enforcement experts to achieve national legislation and regulatory AML and CFT reforms. As of 2016, its membership consists of 35 countries and two regional organizations. FATF works in collaboration with a number of international bodies and organizations. These entities have observer status with FATF, which does not entitle them to vote, but permits them full participation in plenary sessions and working groups.

8. Scheduled Offence

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 various pieces of legislations relating to criminal activities which includes – 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, and so on. 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.

8.1. MAJOR ACTS COVERED IN THE SCHEDULE

- Indian Penal Code, 1860;
- NDPS Act, 1985;
- Unlawful Activities (Prevention) Act, 1967;
- Prevention of Corruption Act, 1988;
- Customs Act, 1962;
- SEBI Act, 1992;
- Copyright Act, 1957;
- Trade Marks Act, 1999;
- Information Technology Act, 2000;
- Explosive Substances Act, 1908;
- Wild Life (Protection) Act, 1972;
- Passport Act, 1967;
- Environment Protection Act, 1986;
- Arms Act, 1959.

9. Provisions of bail under the Prevention of Money Laundering Act

The purpose of bail in our judiciary system is to confirm that the accused person will be present in the court whenever he is called for appearing for the hearing and anyone who is charged with a criminal offense can get bail by paying a specific amount. But the court before granting bail looks into various

grounds and it may or may not be granted depending upon the severity of the crime.

In the case of those who are charged with the offense of money laundering, Section 45 of the Prevention of Money Laundering Act, 2002 deals with the provision of bail. And, the offense of money laundering is treated as a cognizable and non-bailable offense, so bail in this situation can only be granted if anyone is charged with imprisonment of fewer than 3 years. Otherwise, those who are charged with punishment of more than 3 years, have to file for a bail bond, and then court grants bail to them after having security from them in monetary terms that they will appear in the further court trials.

However, the bail can only be granted if they are not opposed by respective personnel. The following are the conditions under which granted is granted by the special court:

1. When an accused person files for bail, the public prosecutor is given an opportunity to provide arguments against the grant of the bail by the court.
2. On the discretion of the special court juveniles who are underage as per law, woman and a person whose health condition is not good, can get bail. And also those who do not fall under these criteria for bail can also get bail if the court believes that the convicted person is innocent and will do any such action in the future.

The money laundering offense will not be treated as a cognizable offense until there is a written complaint received from the director or from the central or state government. Also, there will be no investigation taking place on the part of the police until the government gives them special order to do so.

3. The time period of granting bail in case of money laundering is according to the CrPC, 1973.

However, for granting bail to the accused who is involved in money laundering case, is found to be in violative nature because those who are charged with this offense, they are yet to be declared guilty and before being proved guilty they are being treated as criminal and because of which their fundamental right to be treated equally and right to life is infringed under Article 14 and Article 21 of the Constitution of India, as the court followed twin test.

The Conditions that the Court held to be unconstitutional are:

- Public Prosecutor must be given an opportunity to oppose any application for release on bail;
- The Court must be satisfied, where the Public Prosecutor opposes the application, that there are reasonable grounds for believing that the accused is not guilty of such offence, and that he is not likely to commit any offence while on bail.

In ***Nikesh Talwar Shah vs. Union of India*** the question of granting bail to those who were denied to get bail from the court as per Section 45 of the PMLA, 2002 was answered. In this case, the petitioner filed a writ petition because there was a violation of his fundamental right. As those who have applied for bail even before a trial has taken place that is anticipatory bail, the court grants them bail but when a person was arrested and after that, they apply for bail, then the court follows twin-condition for granting bail which is in itself discriminatory in nature. So, with this case, the Supreme Court

removed this discrimination and asked for reapplying for bail in the court from where their bail application was rejected.

9.1. Conditions for grant of bail:

P. Chidambaram vs Directorate of Enforcement: In this case, former Finance Minister of India P. Chidambaram was booked under Section 3 of the PMLA, 2002 for being a facilitator to INX Media foreign fund. However, he applied for anticipatory bail which was rejected on the grounds of tampering with the evidence of the case against him because of which he landed behind the bars. But later on, the High Court granted bail to him on following grounds:

1. He was asked to pay bail bond for rupees 2 lakhs along with two sureties.
2. The Court held his passport and was asked to not leave the country without their permission.
3. He should be always available for interrogation.
4. He cannot in any circumstances was asked to stay away from witnesses and he should also not try to tamper with evidence.
5. He cannot even give public appearances and hold any press conferences or make any comment regarding the case.

10. DEVELOPMENTS AND CHANGES IN PMLA:

The PMLA (Amendment) Act, 2012 has enlarged the definition of money laundering by including activities such as concealment, acquisition, possession and use of proceeds of crime as criminal activities. "Criminal intent is the main ingredient of any offence" under money laundering.

The chances of harassment would still have been negligible had the government not proposed to change yet another provision of the same Act.

Till last month, money-laundering crimes with the exception of serious ones like terrorism were taken up only when the money involved was Rs. 30 lakh or above. And that's why there have been only 165-odd cases of money laundering so far.

But the amended version of the Act has removed the threshold. That means all money-laundering offences, big or small, will now be taken up for investigation. If someone makes a small profit by violating Sebi Act or Environment Protection Act or even Air (Prevention and Control of Pollution) Act, the offender will be booked for money laundering. Till last month, laundering money by violating 24 such acts was considered a crime under PMLA only when the proceeds of crime used to be Rs 30 lakh and more.

The PMLA was enacted in 2002, but was amended thrice, first in 2005, then in 2009 and then 2012. The 2012 version of the amendment received president's assent on January 3, 2013, and the law became operational from February 15, when the finance ministry notified it.

The government's argument is that it had to amend the existing law once more as India became a member of the Financial Action Task Force (FATF) in October 2010. Headquartered in Paris, the FATF is an inter-governmental body that promotes policies to combat money laundering and terrorist financing. And it was the FATF that pointed out a few deficiencies in India's anti-money-laundering legislation.

11. CONCEPT OF MONEY LAUNDERING- THREE STAGE PROCESS

The money laundering cycle can be broken down into three distinct stages; however, it is important to member that money laundering is a single process. The stages of money laundering include the[v] :-

A). Placement Stage

B). Layering Stage

C). Integration Stage

The Placement Stage:-

This is the movement of cash from its source. On occasion the source can be easily disguised or misrepresented. This is followed by placing it into circulation through financial institutions, casinos, shops, bureau de change and other businesses, both local and abroad. The process of placement can be carried out through many processes including:

- *Currency Smuggling*– This is the physical illegal movement of currency and monetary instruments out of a country.
- *Bank Complicity*– This is when a financial institution, such as banks, is owned or controlled by unscrupulous individuals suspected of conniving with drug dealers and other organised crime groups. This makes the process easy for launderers. The complete liberalisation of the financial sector without adequate checks also provides leeway for laundering.
- *Currency Exchanges*– In a number of transitional economies the liberalization of foreign exchange markets provides room for currency movements and as such laundering schemes can benefit from such policies.
- *Securities Brokers*– Brokers can facilitate the process of money laundering through structuring large deposits of cash in a way that disguises the original source of the funds.
- *Blending of Funds*– The best place to hide cash is with a lot of other cash. Therefore, financial institutions may be vehicles for laundering. The

alternative is to use the money from illicit activities to set up front companies. This enables the funds from illicit activities to be obscured in legal transactions.

- *Asset Purchase*– The purchase of assets with cash is a classic money laundering method. The major purpose is to change the form of the proceeds from conspicuous bulk cash to some equally valuable but less conspicuous form[vii].

The Layering Stage

The purpose of this stage is to make it more difficult to detect and uncover a laundering activity. It is meant to make the trailing of illegal proceeds difficult for the law enforcement agencies. The known methods are:

a). *Cash converted into Monetary Instruments* – Once the placement is successful within the financial system by way of a bank or financial institution, the proceeds can then be converted into monetary instruments. This involves the use of banker's drafts and money orders.

b). *Material assets bought with cash then sold* – Assets that are bought through illicit funds can be resold locally or abroad and in such a case the assets become more difficult to trace and thus seize.

After placement comes the layering stage. The layering stage is the most complex and often entails the international movement of the funds. The primary purpose of this stage is to separate the illicit money from its source. This is done by the sophisticated layering of financial transactions that obscure the audit trail and sever the link with the original crime

The Integration Stage

This is the movement of previously laundered money into the economy mainly through the banking system and thus such monies appear to be normal business earnings. This is dissimilar to layering, for in the integration process detection and identification of laundered funds is provided through informants. The known methods used are:

a). Property Dealing – The sale of property to integrate laundered money back into the economy is a common practice amongst criminals. For instance, many criminal groups use shell companies to buy property; hence proceeds from the sale would be considered legitimate.

b). Front Companies and False Loans – Front companies that are incorporated in countries with corporate secrecy laws, in which criminals lend themselves their own laundered proceeds in an apparently legitimate transaction.

12. CASE STUDIES

- ***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.

- ***OPERATION WIRE CUTTER***

The U.S. Customs Service, in conjunction with the Drug Enforcement Administration (DEA) and Colombian Department of Administrative 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.

- ***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.

12. Adjudicating Authority Under PMLA:

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.

In terms of sub-section (1) of section 6 of Preventions of Money Laundering Act, 2002, an Adjudicating Authority under PMLA has been constituted to exercise jurisdiction, powers and authority conferred by or under the said Act.

The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of PMLA. The Adjudicating Authority shall have powers to regulate its own procedure. 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, it shall be presumed that the remaining transactions form part of such inter-connected transactions.

13. Reporting Entities

The PMLA further has provisions pertaining to certain units known as 'reporting entities' within its ambit. Within clause (wa) of section 2(1), reporting entities include banking company, financial institution, intermediary or a person who may be carrying out a business or profession specifically designated within the PMLA.

13.1. Designated Business or Profession

Within the ambit of the PMLA, certain businesses and professions and the persons associated therewith are also included within the meaning of a 'reporting entity'. Such persons include the followings

- A person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- A Registrar or Sub-Registrar appointed under Section 6 of the Registration Act, 1908, as may be notified by the Central Government.
- Real estate agent, as may be notified by the Central Government.
- Dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government.
- 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
- Person carrying on such other activities as the Central Government may, by notification, so designate, from time to time.

The above description is mentioned under the Section 2(1)(s) of the PMLA.

13.2. Procedure under the PMLA

Obligations of the Reporting Entities

The reporting entities are tasked under the provisions of the PMLA to perform the major activities mandated by the law. In their specific capacities are obligated to perform certain functions, which concisely include the followings:

1. Maintenance of records;
2. Furnish information pertaining to such records;
3. Verification of identity of its clients by carrying out due diligence procedures;
4. Identification of beneficial owner, in respect of the transactions undertaken with its various clients.

The aforesaid obligations in detail are provided under section 12 of the PMLA.

In addition to the above-mentioned obligations, it is also the duty of the reporting entities to provide access to necessary information as and when called for by a director (appointed under the provisions of the PMLA).

The necessary provisions in this regard occur under section 12A of the PMLA.

For all the obligations which are to be shouldered by a reporting entity, the PMLA specifically gives exclusions to reporting entities against any kind of civil or criminal proceedings. Such exclusion or exemption also extends to the directors and/or employees of the concerned reporting entity.

Monetary Penalties on Reporting Entity

Notwithstanding the protection of law according to reporting entities, it may also be noted that the reporting entities are also subject to vigilance and for obligatory violations, such reporting entities may also get penalised.

In accordance with the provisions of Section 13(2)(d), it may be noted that reporting entities may get penalised for non-maintenance of records or non-submission of information sought from such reporting entity. As such, 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 instance of failure.

How to combat money laundering?

There are five ways suggested to combat money laundering activities. They are:

1. Improve searches with technology

With the advancement of technology, such as Artificial Intelligence (AI), detect false positives and conduct searches 24/7 to lessen the burden of

the anti-money laundering (AML) regulators to weed out false positives and expand searches.

2. Regular-cross communication

Constant communication among different parties, including law enforcement agencies, governments and regulators etc. Communication can keep all parties up-to-date, verify any suspicions, identify possible networks, and enhance the public-private partnership, ultimately creating a united front against money launderers.

3. Leverage data analytics to detect patterns

As there is more data available nowadays, regulators can identify and detect patterns through past data information and develop a client model to trace any suspicions.

4. System standardization

With the different anti-fraud measures in different regulatory institutions, some issues may arise from different jurisdictions using a network of legacy computer systems. Without standardization, it makes it harder to communicate and process data in a collective way with other parties and hence can hinder fraud detection.

5. Training

Having the right personnel is very important when it comes to detecting fraud. Training is essential and companies may consider people to train employees, make stakeholders aware of any suspicious activity and take relevant action when there is any hint of fraud. It's also important to have someone in charge to stay on top of news and technological developments, and to oversee the fraud detection process.

PROFESSIONAL OPPORTUNITIES FOR CAs

1. Consultancy
2. Appearance before regulators SFIO, EOW, CBI, ACB , NCB etc. etc.

3. First response to legal authority is very important
4. Due diligence under PMLA
5. Filing monthly compliances under PMLA
6. Appearance before adjudicating authorities
7. Appearance before tribunal
8. Economic laws compliance audit
9. Advisor to regulators, ministries
10. By being advisors to these reporting entities
11. By appearing at the Appellate tribunal under these laws
12. By presenting the case of our clients to the Adjudicating authority
13. In conducting due diligence for clients to comply with the laws
14. For putting in place the policies and guidelines as required under the law

The implementation of PMLA is conferred on several authorities as mentioned such as Director or Additional Director or Joint Director, Deputy Director, Assistant Director, and such additional directors/officers whose appointment may be deemed necessary under the provisions of the PMLA. The professionals like chartered accountant are more conversant with business environment and holds special expertise in finances that gives them an additional advantage to fit into role of assisting, serving such authorities.

Few websites to refer:

1. Financial Intelligence Unit India <http://www.fiindia.gov.in/>
2. Ministry of Finance <http://www.finmin.nic.in/>
3. Insurance Regulatory and Development Authority
<http://www.irdaindia.org/>
4. Reserve Bank of India <http://www.rbi.org.in/>
5. Securities and Exchange Board of India <http://www.sebi.gov.in/>

6. Asia/Pacific Group on Money Laundering (APG)
<http://www.apgml.org/>
7. Bank for International Settlements <http://www.bis.org/>
8. Caribbean Financial Action Task Force on Money Laundering (CFATF)
<http://www.cfatf.org/eng/>
9. Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
<http://www.esaamlg.org/>
10. Egmont group <http://www.egmontgroup.org/>
11. Eurasian Group on Combating Money Laundering and Financing
Terrorism <http://www.eurasiangroup.org/>
12. European Union <http://europa.eu/pol/fraud/>
13. Financial Action Task Force on Money Laundering (FATF)
<http://www.fatf-gafi.org>
14. International Monetary Fund <http://www.imf.org/>
15. International Money Laundering Information Network (IMoLIN)
<http://www.imolin.org/imolin/index.html>
16. Interpol - International Criminal Police Organisation
<http://www.interpol.com/>
17. Middle East & North Africa Financial Action Task Force (MENAFATF)
<http://www.menafatf.org/>
18. Organisation for Economic Co-operation and Development (OECD)
<http://www.oecd.org/>
19. United Nations International Drug Control Programme
<http://www.unodc.org/>
20. World Bank <http://web.worldbank.org/>