

Preventive Measures of Money Laundering In India



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ABSTRACT

Money laundering plays a Vital role in facilitating the ambitions of the drug trafficker, the terrorist, the organised criminal, the insider dealer, the tax evader as well as the many others who need to avoid the kind of attention from the authorities that sudden wealth brings from illegal activities. The global processes, driven by advancement in communication and information technology, have made the international system more interactive, integrated, interrelated and interconnected. This dynamic has unleashed the floodgates of opportunities for criminals to expand, widen and deepen their reach, become more sophisticated in their operation, and intensify their level and pace of transaction.

Key-words: Anti Money Laundering, know Your Customer, Enforcement Directorate, Embezzlement, Monetary Instrument.

Introduction:

Money laundering is the process of concealing the source of legally, illegally, and grey area obtained money¹. As opportunities and needs created by the global dimension of business, crimes such as frauds, counterfeiting, corruption and embezzlement have opportunities to shift from individual or family ambit to more organised and competitive global structures. Indeed, underground criminal organizations operate like multinational companies, establishing affiliates, maintaining strategic alliances, investing legitimately in foreign countries, and extending their capacities and ranges across regions².

The methods by which money may be laundered are varied and can range in sophistication. Many regulatory and governmental authorities quote estimates each year for the amount of money laundered, either worldwide or within their national economy³.

Meaning:

Large amounts of illegally obtained money from drug trafficking, terrorist activity, prostitution rings, or other serious crimes are given the appearance of having originated from a legitimate source. Embezzlement, insider trading, bribery and computer fraud also produce large profit and create an inactive to legitimise the ill-gotten gains through money laundering.

Definitions:

Article 1 of the draft of 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, dispo-

sition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.

According to the Section 3 of the Prevention of Money Laundering Act, 2002 whoever, acquires, owns, possesses, or transfers any proceeds of crime or knowingly enters into any transaction which is related to proceeds of crime directly or indirectly or conceals or aids in the concealment of the proceeds of crime, shall be guilty of offence of money laundering.

Process:

The practice of Money laundering can be classified in three steps:

First step: placement:

Launderer introduces his illegal profits into the financial system 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 instrument that are collected and deposited into accounts of another location.

Second step: Layering:

Launderer engages in a series of conversation and movement of the funds to distance them from their source or Involves carrying out complex financial transactions in order to camouflage the illegal source.

Final step: Integration:

In this step the funds re-enter the legitimate economy. The Launderer might choose to invest the funds into real estate, luxury assets, or business ventures or entails acquiring wealth generated from the transactions of the illicit funds.

Protective Measures:

1. The Prevention of Money-Laundering Act, 2002 which came into effect on 1 July 2005.

Section 12 (1) of the aforesaid Act prescribes the obligations on banks, financial institutions and intermedi-

aries: Section 4 of PMLA provides punishment of rigorous imprisonment for the term which shall not be less than three years but extended to seven years and also liable to fine which may extend to five lakh rupees to such offences.

2. 'Know Your Customer' (KYC) Guidelines - Anti Money Laundering Standards:

The RBI introduced KYC guidelines for all banks in 2002. The purpose was to prevent money laundering, terrorist financing and theft.

Know Your Customer' Standards as Per RBI Guidelines:

The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. Banks should frame their KYC policies incorporating the following four key elements:

- i. Customer Acceptance Policy;
- ii. Customer Identification Procedures;
- iii. Monitoring of Transactions; and
- iv. Risk management.

3. Enforcement Directorate:

ED was established on the 1st day of June, 2000 by the Central Govt. of India.

Functions:

- a. Investigate offence of money laundering under the provisions of PMLA to take actions of attachment and confiscation of property.
- b. Render cooperation to foreign countries in matters

relating to money laundering and restitution of assets under the provisions of PMLA and to seek cooperation in such matters.

Findings:

As per the Section 112 of PMLA Bank accountant must record all the transactions whose amount will be more than Rs. 10 Lakhs. Bank accountant must maintain these records for 10 years. Banks will also make cash transaction report (CTR) and Suspicious transactions report whose amount is more than Rs. Ten Lakhs within 7 days of doubt. This report will be submitted to Enforcement Directorate and Income Tax Department⁴.

Conclusion:

ML is money arising out of criminal source which conversion in legitimate gains. Recent in India money laundering activity is through political parties, corporate companies and share market which is investigated by the Indian Income Tax Department. The provisions of PMLA are frequently reviewed and various amendments have been passed from time to time. ED has been investigated approx 156 offences under PMLA throughout the Country.

Suggestion:

To criminalize money laundering it requires a jurisdiction for an effective Anti Money Laundering (AML) program.

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