

FAQs

(Frequently Asked Questions)

on

The Prevention of Money Laundering Act

Enforcement Directorate
Government of India

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FREQUENTLY ASKED QUESTIONS
ON
THE PREVENTION OF MONEY
LAUNDERING ACT

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PREFACE

The Prevention of Money Laundering Act, 2002 [PMLA] mandates that the investigation of the offence of money laundering be linked to the Scheduled Offences investigated by the concerned Central or State Law Enforcement Agencies. The scheme of PMLA thus necessitates inter-agency coordination to take effective action against persons who are found by the Law Enforcement Agencies to be involved in criminal activity. Such action under PMLA entails attaching and confiscating tainted assets, and prosecuting persons/entities for the offence of money laundering.

As a part of its ongoing outreach programme, the Enforcement Directorate has updated the Booklet containing Frequently Asked Questions [FAQs] on the Prevention of Money Laundering Act, 2002. The updated FAQs include the salient features of the amendments in PMLA resulting from the Prevention of Money Laundering [Amendment] Act, 2012, which has come into force with effect from 15th February, 2013.

I trust that the FAQs would facilitate better understanding of the modalities of implementation of PMLA, and be found useful by the various Law Enforcement Agencies and other stake holders dealing with offenders involved in money laundering.

We would welcome any suggestions for further improvements in the content of this Booklet.

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Director of Enforcement

1st May, 2013
New Delhi

FREQUENTLY ASKED QUESTIONS

Q1. What is PMLA?

PMLA refers to the Prevention of Money Laundering Act, 2002.

Q2. When did the Prevention of Money Laundering Act, 2002 come into force?

The Prevention of Money Laundering Act, 2002 came into force with effect from 1st July, 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.

Q3. Does the Act extend to the whole of India?

Yes, it extends to the whole of India including the state of Jammu & Kashmir.

Q4. What is the object of Prevention of Money Laundering Act, 2002?

As stated in the Preamble to the Act, it is an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and to punish those who commit the offence of money laundering.

Q.5 Which agency administers the Prevention of Money Laundering Act, 2002?

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.

Q.6. What is Money Laundering?

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

Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amounts of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to "legitimize" the ill-gotten gains through money laundering. 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.

In the PMLA, 2002, money laundering has been defined as "any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property".

Q.7. How does Money Laundering actually take place?

The process of Money Laundering generally involve the following three stages :

- (a) **Placement:-** The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.
- (b) **Layering:-** The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.
- (c) **Integration:-** Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc.

so that he can enjoy the laundered money, without any fear of law enforcement agencies.

The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

Q.8. What has been the international response to tackle Money Laundering?

In response to mounting concern over money laundering, the Financial Action Task Force (FATF) on Money Laundering was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations, which set out the measures national governments should take to implement effective anti-money laundering programmes. India is an active member of the FATF.

Q.9. What steps have been taken by the Government of India to tackle the menace of Money Laundering?

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).

In pursuance to 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.

Q10. What is the 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 offence of money laundering (**Section 3**).

Q11. What are proceeds of crime?

"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)**].

Q12. What is a '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 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.

Q13. What is a Predicate Offence?

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering.

Q14. What are the major Acts covered in the Schedule?

- (a) Indian Penal Code, 1860;
- (b) NDPS Act, 1985;
- (c) Unlawful Activities (Prevention) Act, 1967;
- (d) Prevention of Corruption Act, 1988;
- (e) Customs Act, 1962;
- (f) SEBI Act, 1992;
- (g) Copyright Act, 1957;
- (h) Trade Marks Act, 1999;
- (i) Information Technology Act, 2000;
- (j) Explosive Substances Act, 1908;
- (k) Wild Life (Protection) Act, 1972;
- (l) Passport Act, 1967;
- (m) Environment Protection Act, 1986;
- (n) Arms Act, 1959.

Various Acts covered in the Schedule to PMLA are given in Annexure-A.

Q15. Who investigates Predicate/Scheduled Offences?

Predicate Offences are investigated by agencies such as Police, Customs, SEBI, NCB and CBI, etc. under their respective Acts.

Q16. Who can investigate a case of Money Laundering ?

As per Sections 48 & 49 of the PMLA, the officers of the Directorate of Enforcement have been given powers to investigate cases of Money Laundering. The officers have also been authorised to initiate proceedings for attachment of property and to launch prosecution in the designated Special Court for the offence of money laundering.

Q17. What are the possible actions which can be taken against persons / properties involved in Money Laundering?

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.

Q18. What are the powers available to 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]**.

Q19. What are the 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]**.

Q20. What are the 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]**.

Q21. What is the time limit for retention of records or property seized during search & seizure? What is the time limit for continuation of the order of freezing of property/records frozen during search and 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]**.

Q22. What are the rights of persons being searched during search?

- (i) Where an authority is about to search any person, he shall, if such person so requires, take

such person within twenty-four hours to the nearest *Gazetted Officer*, superior in rank to him, or a *Magistrate*.

- (ii) If the requisition is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the *Gazetted Officer*, superior in rank to him, or the *Magistrate* referred to in that sub-section.
- (iii) The *Gazetted Officer* or the *Magistrate* before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.
- (iv) Search shall be made in the presence of two or more persons.
- (v) No female shall be searched by any one except a female **[Section 18]**.

Q23. What are the rights of persons during arrest?

- (i) The *Authorized Officer* making arrest shall, as soon as may be, inform the arrestee of the grounds for such arrest.
- (ii) Every person so arrested shall, within twenty-four hours, be taken to a *Judicial Magistrate* or a *Metropolitan Magistrate*, as the case may be, having jurisdiction **[Section 19]**.

Q24. What are the 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**].

Q25. What is the time limit for 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**].

Q26. What are the presumptions in interconnected transactions?

Where money-laundering involves two or more inter-

connected transactions and one or more such transactions is proved to be involved in money-laundering, then for the purposes of adjudication or confiscation or for the trial offence of money laundering, 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 inter-connected transactions **[Section 23]**.

Q27. Whether the statement recorded before the Investigating Officer under PMLA is admissible evidence under the Law?

Yes, the statement recorded before the Investigating Officer under PMLA is admissible evidence in the Court as such a proceeding under Section 50(2) and 50(3) of the Act is a judicial proceeding within the meaning of Section 193 and 228 of IPC.

Q28. What is burden of proof in any proceedings relating to proceeds of crime under PMLA, 2002?

(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 **[Section 24]**.

Q29. What is meant by the term "Property" in the Prevention of Money Laundering Act, 2002?

"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. Further, property includes, property of any kind used in the commission of an offence under this Act or any of the scheduled offences [Section 2(1)(v)].

Q30. What is "attachment"?

"Attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act [Section 2(1)(d)].

Q31. What are the circumstances under which properties can be provisionally attached under PMLA?

(i) Where the Director, or any other officer not below the rank of Deputy Director authorised by the Director has **reasons to believe** (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

- (a) any person is in possession of any proceeds of crime and
- (b) such proceeds of crime or 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

he may, by an order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.

- (ii) No such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorized 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 or a similar report or complaint has been made or filed under the corresponding law of any other country.
- (iii) Further any property of any person may be attached, if the Director or any other officer not below the rank of Deputy Director authorized by him has reason to believe (reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately the non-attachment of the property is likely to frustrate any proceedings under this Act **[Section 5]**.

Q32. How long this order of provisional attachment of property will remain in force?

Every order of provisional attachment shall cease to have effect after 180 days from the date of the order, if no order is passed by the Adjudicating Authority under PMLA that the said property is involved in money-laundering.

However, within said 180 days, if the Adjudicating Authority, by an order, records a finding that properties are not involved in money laundering, the order of provisional attachment shall cease to have

effect from the date of such order of the Adjudicating Authority [Section 5(3)].

Q33. Whether the persons claiming or entitled to claim any interest in the enjoyment of immovable property can enjoy the property during the period of provisional attachment?

Yes. [Section 5(4)]

Q34. What is the remedy available to a aggrieved person, where the property is provisionally attached?

It has been provided in the Act that before recording the finding that all or any of the properties are involved in money laundering, the Adjudicating Authority has to issue a show cause notice of not less than thirty days to the aggrieved person. The aggrieved person at this stage can submit his reply and attend the hearing before the Adjudicating Authority to present his defence [Section 8(1)].

Q35. What will happen if the Adjudicating Authority records the finding that the all or any of the properties are involved in money laundering?

Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property. Such attachment shall—

- (a) continue during the pendency of the proceedings relating to any offences under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) becomes final after an order of confiscation is passed **[Section 8(3)]**.

Q36. What will happen if the Adjudicating Authority records the finding that all or any of the attached/ seized/ frozen properties are not involved in money laundering?

In such cases, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized or the person entitled to receive it **[Section 20(5)]**.

However, the Director or any other officer authorised by him in this behalf, may withhold the release of any such property for a period of ninety days if he (Director of Enforcement) is of the opinion that such property is relevant for the appeal proceedings under this Act **[Section 20(6)]**.

Q37. What will happen to the seized/frozen records after confiscation of property involved in money laundering or used for the commission of the offence of the money laundering under Section 8 of PMLA?

After an order of confiscation of properties under Section 8 has been passed, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

However, the Director or any other officer authorised by him in this behalf, may withhold the release of any such record for a period of ninety days if he (Director of Enforcement) is of the opinion that such property is relevant for the appeal proceedings under this Act **[Section 21(5 & 6)]**.

Q38. What will happen to the attached properties after conclusion of Trial for the offence of money laundering?

- (i) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.
- (ii) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the properties not involved in money-laundering, it may order release of such property to the person entitled to receive it.
- (iii) Where the trial under this Act cannot be conducted, by reason of the death of the accused or the accused having been declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been issued by the Adjudicating Authority confirming the provisional attachment of the property, pass appropriate orders regarding confiscation or release of the property, as the case may be, after having regard to the material before it **[Sub-sections (5) (6) & (7) of Section 8]**.
- (iv) After an order of confiscation, all the rights and title in such property shall vest absolutely in the

Central Government free from all encumbrances
[Section 9].

Q39. Which is the Appellate Authority against the order passed by Adjudicating Authority and what is the time limit to file appeal?

The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period
[Section 26].

Q40. Which is the Appellate Authority against the order passed by Appellate Tribunal and what is the time limit to file appeal?

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. Thus appeal can be filed before High Court on any question of law or fact.

High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days [Section 42].

Q41. How do you describe the expression, "person" appearing in the Prevention of Money Laundering Act, 2002?

"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.

Thus, besides the natural person, even legal entities are also covered under the expression "person" as per the Act **[Section 2(1)(s)]**.

Q42. What is "offence of cross border implication"?

- (1) 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 or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to India; or
- (2) Any offence specified in Part A 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 **[Section 2(1)(ra)]**.

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Q43. Who are reporting entities?

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

Q44. Who are covered within the expression "Persons carrying on designated business or profession"?

Persons 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, 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)**].

Q45. What are the obligations of reporting entity in terms of the provisions of PMLA,2002?

- (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].

Q46. What are the monetary penalties that can be imposed on reporting entity for non maintenance of records or non submission of aforesaid information?

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)]**.

Q47. Who is the appellate authority against the order passed by Director (FIU)?

Any reporting entity aggrieved by any order of the Director (FIU) made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal **[Section 26]**.

SPECIAL COURTS

Q48. Which Courts are designated as Special Courts under PMLA, 2002?

For trial of offence punishable under section 4 of PMLA, 2002, the Central Government, in consultation with the Chief Justice of the respective High Courts, by notification, has designated 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 specified in the notifications.

While trying an offence of money laundering under PMLA, 2002, a Special Court has also to try the offences, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial [**Section 43**].

Q49. What are offences triable by special Courts under PMLA, 2002?

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence of money laundering punishable under Section 4 of PMLA, 2002 and any scheduled offence connected to the offence of money laundering, shall be triable by the Special Court constituted for the area in which the offence has been committed.

Q50. What will happen if the Court, which has taken cognizance of the scheduled offence is other than the Special Courts under PMLA (which has taken cognizance of the complaint of the offence of money laundering) ?

In such cases, on an Application by the authority authorized to file a complaint under PMLA, the trial court (which has taken cognizance of the scheduled offence) shall commit the case relating to the scheduled offence to the Special Courts under PMLA. The Special Court, PMLA, on receipt of such case committed to it, shall proceed to deal with it from the stage at which it is committed **[Section 44(1)(c)]**.

Q51. Which is the Appellate Authority against the order passed by Special Court?

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court **[Section 47]**.

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

Q52. What is meant by the term "Contracting State"?

"Contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise [**Section 55**].

Q53. What is the mechanism to obtain evidence required in connection with investigation into an offence or proceedings under the Act if such evidence may be available in any place in a contracting State?

An application is to be made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer and the Special Court, on being satisfied, may issue a Letter of Request to a court or an authority in the contracting State competent to deal with such request to—

- (i) examine facts and circumstances of the case,
- (ii) take such steps as the Special Court may specify in such letter of request, and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

Every statement recorded or document or thing received from a Contracting State shall be deemed to be the evidence collected during the course of investigation [Section 57].

Q54. What is the mechanism to provide assistance to a Contracting State?

Where a Letter of Request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under PMLA, 2002 and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such Letter of Request to the Special Court or to any authority under the Act for execution of such request [Section 58].

Q55. Whether the properties involved in money laundering located in India can be confiscated, where the offence of money laundering has been committed outside India?

The properties involved in money laundering located in India, where the offence of money laundering has been committed outside India, can be ordered to be confiscated by the Special Court/Adjudicating Authority on an application moved to the Special Court/Adjudicating Authority [Section 58B & 62A].

Q56. What are the reciprocal arrangements for processes and assistance for transfer of accused persons?

- (1) A Special Court, in relation to an offence punishable under section 4 for the service or execution of a summons, a warrant or a search warrant in a Contracting State shall send such summons or warrant, in duplicate, in prescribed

form to the Court, Judge or Magistrate through specified Authorities.

- (2) Similarly, a summons, a warrant or a search warrant in relation to an offence punishable under section 4, received for service or execution from a Contracting State, shall be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution.

After execution of summon or search warrant received from a Contracting State, the documents or other things produced or things found during search shall be forwarded to the Court issuing the summons or search-warrant through the specified Authority **[Section 59]**.

Q57. Whether the property involved in money laundering and located in the Contracting State can also be attached or seized?

Yes. In such cases, after issue of an order for attachment of any property made under Section 5 or freezing under Section 17(1A) or confirmation of attachment by Adjudicating Authority under Section 8 or confiscation by Special Court under Section 8, the Special Court, on an application by the Director or the Administrator may issue a Letter of Request to a court or an authority in the Contracting State for execution of such order as per the provisions of corresponding law of that country **[Section 60(1)]**.

MISCELLANEOUS

Q58. What is the punishment for vexatious search?

Imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both [**Section 62**].

Q59. What is the punishment for giving false information or failure to give information, etc.?

Any person willfully and maliciously giving false information and so causing 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 [**Section 63(1)**].

Q60. What is the punishment if a person being legally bound to state the truth of any matter refuses to answer any question put to him, refuses to sign any statement made by him, or omits to attend or produce books of account or documents at the place or time in compliance of summon issued under section 50?

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, can be imposed. Further, a person who intentionally disobeys any direction issued under Section 50 shall also be liable

to be proceeded against under Section 174 of the Indian Penal Code, 1860 [(Section 63 (3 & 4)].

Q61. Whether a suit can be brought in civil court to set aside or modify any proceedings taken or made under PMLA, 2002?

No suit can be brought in any civil court to set aside or modify any proceeding taken or order made under PMLA, 2002 and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under the PMLA, 2002 [Section 67].

Q62. What is the mechanism to recover the fine or penalty imposed on any person under Section 13 or Section 63?

Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director, FIU-Ind or Director of Enforcement or any other officer authorised by them in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 (43 of 1961) for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose [Section 69].

Q63. What are provisions when the offence of money laundering is committed by companies?

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule,

direction or order made there under is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this subsection shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

- (2) Notwithstanding anything contained in subsection (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
- (3) Further, a company may be prosecuted notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual **[Section 70]**.

Q64. What will happen if there is conflict between the provisions of PMLA, 2002 and other Acts / laws?

The provisions of PMLA, 2002 have over-riding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force **[Section 71]**.

Q65. What will happen to the proceedings initiated under PMLA, 2002 in the event of death or insolvency of the person?

In cases where any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred, then, the legal representatives or the official assignee or the official receiver may prefer an appeal to the Appellate Tribunal / High Court or to continue the appeal before the Appellate Tribunal / High Court, in place of such person **[Section 72]**.

ANNEXURE-A

THE SCHEDULE

PART A

PARAGRAPH 1 OFFENCES UNDER THE INDIAN PENAL CODE, 1860 (45 OF 1860)

Section	Description of offence
120B	Criminal conspiracy.
121	Waging or attempting to wage war or abetting waging of war, against the Government of India.
121-A	Conspiracy to commit offences punishable by section 121 against the State.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.

- 302 Murder.
- 304 Punishment for culpable homicide not amounting to murder.
- 307 Attempt to murder.
- 308 Attempt to commit culpable homicide.
- 327 Voluntarily causing hurt to extort property, or to constrain to an illegal act.
- 329 Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
- 364A Kidnapping for ransom, etc.
- 384 to 389 Offences relating to extortion.
- 392 to 402 Offences relating to robbery and dacoity.
- 411 Dishonestly receiving stolen property.
- 412 Dishonestly receiving property stolen in the commission of a dacoity.
- 413 Habitually dealing in stolen property.
- 414 Assisting in concealment of stolen property.
- 417 Punishment for cheating.
- 418 Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
- 419 Punishment for cheating by personation.

- 420 Cheating and dishonestly inducing delivery of properties.
- 421 Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
- 422 Dishonestly or fraudulently preventing debt being available for creditors.
- 423 Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
- 424 Dishonest or fraudulent removal or concealment of property.
- 467 Forgery of valuable security, will etc
- 471 Using as genuine a forged document or electronic record.
- 472 and 473 Making or possessing counterfeit seal, etc., with intent to commit forgery.
- 475 and 476 Counterfeiting device or mark.
- 481 Using a false property mark.
- 482 Punishment for using a false property mark.
- 483 Counterfeiting a property mark used by another.
- 484 Counterfeiting a mark used by a public servant.

- 485 Making or possession of any instrument for counterfeiting a property mark.
- 486 Selling goods marked with a counterfeit property mark.
- 487 Making a false mark upon any receptacle containing goods.
- 488 Punishment for making use of any such false mark.
- 489 A Counterfeiting currency notes or bank notes.
- 489 B Using as genuine, forged or counterfeit currency notes or bank notes.

**PARAGRAPH 2
OFFENCES UNDER THE NARCOTIC DRUGS AND
PSYCHOTROPIC SUBSTANCES ACT, 1985
(61 OF 1985)**

Section	Description of offence
15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.

20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the narcotic Drugs and Psychotropic Substances Act, 1985.
25-A	Contravention of orders made under section 9-A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27-A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

PARAGRAPH 3
OFFENCES UNDER THE EXPLOSIVE SUBSTANCES
ACT, 1908 (6 OF 1908)

Section	Description of offence
3	Causing explosion likely to endanger life or property.

- 4 Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
- 5 Making or possessing explosives under suspicious circumstances.

**PARAGRAPH 4
OFFENCES UNDER THE UNLAWFUL ACTIVITIES
(PREVENTION) ACT, 1967 (37 OF 1967)**

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc
11 read with sections 3 and 7	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
18A	Punishment for organizing of terrorist camps.

18B	Punishment for recruiting of any person or persons for terrorist act.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organization.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organization.
39	Offence relating to support given to a terrorist organization.
40	Offence of raising fund for a terrorist organization.

**PARAGRAPH 5
OFFENCES UNDER THE ARMS ACT, 1959
(54 OF 1959)**

Section	Description of offence
25	To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959.
	To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.

Contravention of section 24-A of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.

Other offences specified in section 25.

26 To do any act in contravention of any provisions of section 3,4, 10 or 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.

Other offences specified in section 26.

27 Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.

28 Use and possession of fire arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.

30 Contravention of any condition or a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PARAGRAPH 6
OFFENCES UNDER THE WILD LIFE (PROTECTION)
ACT, 1972 (53 OF 1972)

Section	Description of offence
51 read with section 9	Hunting of wild animals.

51 read with section 17-A	Contravention of provisions of section 17-A relating to prohibition of picking uprooting, etc., of specified plants.
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.
51 read with section 44	Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 49-B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals.
51 read with section 49-B	Contravention of provisions of section 49-B relating to prohibition of dealings in trophies, animal articles, etc., derived from scheduled animals.

PARAGRAPH 7
OFFENCES UNDER THE IMMORAL TRAFFIC
(PREVENTION) ACT, 1956 (104 OF 1956)

Section	Description of offence
5	Procuring, inducing or taking persons for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.

8 Seducing or soliciting for purpose of prostitution.

9 Seduction of person in custody.

**PARAGRAPH 8
OFFENCES UNDER THE PREVENTION OF
CORRUPTION ACT, 1988 (49 OF 1988)**

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official Act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence, with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.

**PARAGRAPH 9
OFFENCES UNDER THE EXPLOSIVES ACT, 1884
(4 OF 1884)**

Section	Description of offence
9-B	Punishment for certain offences.
9-C	Offences by Companies.

PARAGRAPH 10
OFFENCES UNDER THE ANTIQUITIES AND ARTS
TREASURES ACT, 1972 (52 OF 1972)

Section	Description of offence
25 read with section 3	Contravention of export trade in antiquities and art treasures.
28	Offences by Companies.

PARAGRAPH 11
OFFENCES UNDER THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992 (15 OF 1992)

Section	Description of offence
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

PARAGRAPH 12
OFFENCES UNDER THE CUSTOMS ACT, 1962
(52 OF 1962)

Section	Description of offence
135	Evasion of duty or prohibitions

PARAGRAPH 13
OFFENCES UNDER THE BONDED LABOUR SYSTEM
(ABOLITION) ACT, 1976 (19 OF 1976)

Section	Description of offence
16	Punishment for enforcement of bonded labour.

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|----|---|
| 18 | Punishment for extracting bonded labour under the bonded labour system. |
| 20 | Abetment to be an offence. |

**PARAGRAPH 14
OFFENCES UNDER THE CHILD LABOUR
(PROHIBITION AND REGULATION) ACT, 1986
(61 OF 1986)**

Section	Description of offence
14	Punishment for employment of any child to work in contravention of the provisions of section 3.

**PARAGRAPH 15
OFFENCES UNDER THE TRANSPLANTATION OF
HUMAN ORGANS ACT, 1994 (42 OF 1994)**

Section	Description of offence
18	Punishment for removal of human organ without authority.
19	Punishment for commercial dealings in human organs.
20	Punishment for contravention of any other provision of this Act.

**PARAGRAPH 16
OFFENCES UNDER THE JUVENILE JUSTICE
(CARE AND PROTECTION OF CHILDREN) ACT, 2000
(56 OF 2000)**

Section	Description of offence
23	Punishment for cruelty to juvenile or child.
24	Employment of juvenile or child for begging.
25	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.
26	Exploitation of juvenile or child employee.

**PARAGRAPH 17
OFFENCES UNDER THE EMIGRATION ACT, 1983
(31 OF 1983)**

Section	Description of offence
24	Offences and penalties.

**PARAGRAPH 18
OFFENCES UNDER THE PASSPORT ACT, 1967
(15 OF 1967)**

Section	Description of offence
12	Offences under penalties.

PARAGRAPH 19
OFFENCES UNDER THE FOREIGNERS ACT, 1946
(31 OF 1946)

Section	Description of offence
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.

PARAGRAPH 20
OFFENCES UNDER THE COPYRIGHT ACT, 1957
(14 OF 1957)

Section	Description of offence
63	Offences or infringement of copyright or other rights conferred by this Act.
63A	Enhanced penalty on second and subsequent convictions.
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.

PARAGRAPH 21
OFFENCES UNDER THE TRADE MARKS ACT, 1999
(47 OF 1999)

Section	Description of offence
103	Penalty for applying false trademarks, trade description, etc.

104	Penalty for selling goods or providing services to which false trade-mark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.

**PARAGRAPH 22
OFFENCES UNDER THE INFORMATION TECHNOLOGY
ACT, 2000 (21 OF 2000)**

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

**PARAGRAPH 23
OFFENCES UNDER THE BIOLOGICAL DIVERSITY
ACT, 2002 (18 OF 2003)**

Section	Description of offence
55 read with section 6	Penalties for contravention of section 6, etc.

PARAGRAPH 24
OFFENCES UNDER THE PROTECTION OF PLANT
VARIETIES AND FARMERS RIGHTS ACT, 2001
(53 OF 2001)

Section	Description of offence
70 read with section 68	Penalty for applying false denomination, etc.
71 read with section 68	Penalty for selling varieties to which false denomination is applied.
72 read with section 68	Penalty for falsely representing a variety as registered.
70 read with section 68	Penalty for subsequent offence.

PARAGRAPH 25
OFFENCES UNDER THE ENVIRONMENT PROTECTION
ACT, 1986 (29 OF 1986)

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants.
15 read with section 8	Penalty for handling hazardous substance.

**PARAGRAPH 26
OFFENCES UNDER THE WATER (PREVENTION AND
CONTROL OF POLLUTION) ACT, 1974
(6 OF 1974)**

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

**PARAGRAPH 27
OFFENCES UNDER THE AIR (PREVENTION AND
CONTROL OF POLLUTION) ACT, 1981 (14 OF 1981)**

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

**PARAGRAPH 28
OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL
ACTS AGAINST SAFETY OF MARITIME NAVIGATION
AND FIXED PLATFORMS ON CONTINENTAL SHELF
ACT, 2002 (69 OF 2002)**

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.

PART B

Part B (containing para 1 to para 25) has been omitted by the Prevention of Money Laundering (Amendment) Act, 2012 (2 of 2013) and all the offences of Part B have now been placed in Part A of the Schedule.

PART C

An offence which is the offence of cross border implications and is specified in,-

- (1) Part A; or
 - (2) omitted by the Prevention of Money Laundering (Amendment) Act, 2012 (2 of 2013) with effect from 15.02.2013.
 - (3) the offences against property under Chapter XVII of the Indian Penal Code.
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