

Prevention of Money Laundering Act

WIRC of ICAI

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Money Laundering

- The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source.

SONG CHEN / CHINA DAILY



SONG CHEN

Origin & Object

- PMLA, 2002 came into force w.e.f 1st July 2005, PMLA was amended in 2009, PMLA amended in 2013 and 2015
- It extends to whole of India including Jammu and Kashmir
- Preamble is to prevent money-laundering and provide for confiscation of property derived from, or involved in money-laundering and to punish those who commit the offence

Money laundering

- The PMLA, 2012 (w.e.f 15.02.2013) enlarges the definition of offence of money laundering
- To include therein the activities like concealment, acquisition, possession and use the proceeds of crime as criminal activities
- Remove the existing limit of Rs 5 lacs fine under the Act

Scheduled Offence

- The offences listed in the schedule to PMLA, 2002 are scheduled offence. There are 2 parts – Part A & Part C
- Part A comprise of offences under: IPC, NDPC, Explosive Substances Act, Unlawful Activities (Prevention) Act, Arms Act, Wild Life (protection) Act, Immoral Traffic (Prevention) Act, Prevention of Corruption Act, Antiquities and Arts treasures Act etc
- Part C deals with trans border crimes

Budget 2018

The Budget of 2018 has included corporate frauds included as Scheduled offence, Section 447 of Companies Act is being included as scheduled offence under PMLA so that Registrar of Companies in suitable cases would be able to report such cases for action by Enforcement Directorate under the PMLA provisions.

PREVENTION OF MONEY LAUNDERING (AMENDMENT) Act 2012. (w.e.f 15.02.2013)

- Introduced the concept of “ corresponding law” to link the provisions of Indian law with the laws of foreign countries and provide for the transfer of the proceeds of the foreign predicate offence in any manner in India
- Introduced the concept of “reporting entity” to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession

PREVENTION OF MONEY LAUNDERING (AMENDMENT) Act 2012. (w.e.f 15.02.2013)

- Introduced the provision for attachment and confiscation of the proceeds of crime even if there is no conviction so long as it is proved that offence of money-laundering has taken place and property in question is involved in money-laundering;
- Confer power upon the Director to call for records of transactions or any additional information that may be required for the purposes of the Prevention of money-laundering and also to make inquiries for non-compliance of reporting obligations cast upon them;
- Make the reporting entity, its designated directors on the Board and employees responsible for omissions or commissions in relation to the reporting obligations under Chapter IV of the Act;

PREVENTION OF MONEY LAUNDERING (AMENDMENT) Act 2012. (w.e.f 15.02.2013)

- Provide that in any proceedings relating to proceeds of crime under the aforesaid Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering;
- Provide for appeal against the orders of the Appellate Tribunal directly to the Supreme Court;
- Provide for the process of transfer of the cases of Scheduled offence pending in a court which had taken cognizance of the offence to the Special Court for trial of offence of money-laundering and also provide that the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed;

Interim Budget 2019

- Proposed to increase the time period of confiscation for attachment of the assets to 365 days from the 90 days at present
- The proposed rule will be applicable to the fugitive economic offenders as well
- Currently the ED are making seizures of assets directly and indirectly connected to offenders

Anti Money Laundering

- *An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.*
- **Offence of 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 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.

Chartered Accountants

- Chartered Accountants in their capacity as Financial Advisors, Tax Advisors and Auditors may provide certain services to their client's which unknowingly could be an offence under The Prevention of Money Laundering Act, 2002
- CA Naresh Rajpurohit arrested on Jan 30, 2019 for aiding and abetting the directors of Kamla Landmark for money laundering of more than Rs 600 crores
- Accounting Bodies in western countries like ICAEW, ACCA etc have published guidance note for their members to comply with the Anti-Money Laundering guidelines of their respective countries.

CSR

- Public Trusts are now increasingly used for laundering of funds of companies meant for CSR and most often the funds minus a commission come back to key persons of the companies to be used as cash money and bribes. This is the newest method adopted by Indi's top corporates these days. The regulators in Corporate Affairs do not have the capacity to verify AOC-4 form which is not statutorily subject to any external audit.

CSR

- Moreover, neither ED nor any other authority like FIU is alive to this trend in money laundering regime. The civil society needs to use right to information provisions to get at AOC-4 from company regulators and public data of concerned public trusts engaged in this nefarious activities. However, there is no centralized data on public trusts which make the business of catching the top corporates difficult.

Deepak Talwar

- Talwar is a corporate lobbyist, was detained in UAE and then arrested by ED in Jan 2019, he is involved in a case of misusing over Rs 90 crore taken through foreign funding route as part of corporate social responsibility (CSR)
- He has been charged with criminal conspiracy, forgery and under various other sections of the FCRA for allegedly diverting Rs 90.72 crore worth of foreign funds meant for ambulances and other articles received by his NGO from Europe's leading missile manufacturing company.

Fugitives Economic Offenders bill 2018

- The ED has now been given the responsibility of enforcing the Fugitives Economic Offenders bill 2018, as and when it becomes a law
- The bill aims to bring to task suspected economic offenders who flee India and do not return to face trial. It gives the government powers to confiscate property both within and outside India of fugitive economic offenders — whether or not the properties have been purchased from proceeds of crime

Fugitives Economic Offenders bill 2018

- It also covers a wide array of white collar offences that can lead to an individual being classified as an economic offender. Serious violations of tax laws, including the goods and services tax, customs and excise, anti-black money law and benami property transactions could see provisions of this bill kick in. To be sure, the amount involved has to be more than Rs100 crore for the law to kick apply.

History

- Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;
- Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme

Money Laundering

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

Agusta Westland

- Adv Gautam Khaitan is arrested
- Khaitan is accused of receiving kickbacks for the Rs 3,600 crore defense deal with Italian chopper manufacturer AgustaWestland for 12 AW-101 choppers during the UPA era in 2010.
- The investigation has revealed the nexus between Khaitan and the Banda family of Zambia. Allegedly there exists links between the accused with various arms dealers/deals

MANESAR LAND DEAL

15-11

09-09-16

ED files money-laundering case against Hooda

DEEPTIMAN TIWARY

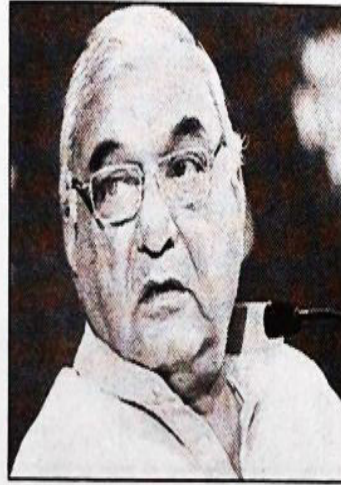
NEW DELHI, SEPTEMBER 8

THE ENFORCEMENT Directorate (ED) has registered a case of money laundering against former Haryana CM Bhupinder Singh Hooda in connection with the Manesar land deal case. This is the second case in which Hooda has been charged by the agency after he was accused of money laundering in the case of land transfer to Associate Journals Ltd, which owns the newspaper *National Herald*.

Last Saturday, the CBI had

carried out raids at 24 premises linked to Hooda, his close aides and former and current bureaucrats of the state government in connection with the alleged Manesar land grab case. The ED took cognizance of a corruption case filed by CBI in the matter and registered a case under various sections of Prevention of Money Laundering Act (PMLA).

ED sources said the agency is ascertaining details of the proceeds of the crime arising out of the CBI case and investigating the flow of funds to various people involved in the alleged scam. According to the CBI, farmers in



BHUPINDER SINGH HOODA

Manesar were cheated of over Rs 1,500 crore in the alleged scam.

"Once the money trail is established, we will proceed with attachment of properties, which

may include those belonging to the former CM," a senior ED official said.

The CBI raids were conducted in Rohtak, Gurgaon, Panchkula, Chandigarh and Delhi, and included Hooda's residence and office. During the searches at Hooda's residence, CBI sources claimed to have found details of "fund transactions worth crores of rupees". These transactions are being scrutinised by the agency.

The case pertains to the alleged purchase of 400 acres of land from farmers in Gurgaon for Rs 100 crore when the actual

worth (according to market rate) was Rs 1,600 crore. The purchase, according to the CBI, was made between August 2004 to August 2007, under the "threat and false apprehension of acquisition of the land by the state government".

The CBI said the Haryana government had issued notifications under various sections of the Land Acquisition Act for acquisition of land, measuring about 912 acres, for setting up an Industrial Model Township. As a result, a large number of land owners allegedly sold their land at throwaway prices.

Money Laundering

- Illegal arms sales, smuggling, and the activities of organised crime, including for example drug trafficking and prostitution rings, can generate huge amounts of proceeds. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimise” the ill-gotten gains through money laundering.

In a first, ED seizes 1,280 acres of Indian company's land in US

Attachment In Bank Fraud Case Biggest Abroad

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Ahmedabad: In its biggest-ever attachment abroad, the Enforcement Directorate on Thursday seized land worth around Rs 1,000 crore in the United States in connection with a case of money laundering against a real estate developer. This is the first time an Indian agency has attached property in the US.

The ED's Ahmedabad zonal unit attached the 1,280 acres of land in California belonging to Zoom Developers and its promoter Vijay Choudhary. It

INDORE TO US VIA LIECHTENSTEIN

THE CASE Vijay Choudhary & his company, Indore-based Zoom Developers, set up more than 100 dummy companies in India, Switzerland & London

- Took ₹2,200 crore in loans from more than 20 banks for projects in European countries
- No project took off; money siphoned through dummy firms
- Large amounts were moved to a trust in Liechtenstein,

has initiated action against the company under sections 5 and 60 of the Prevention of Money Laundering Act in a Rs 2,200 crore fraud.

Although ED has earlier attached properties abroad, the sheer scale of the action

considered a tax haven. Money then used to buy properties in India and abroad in the name of Zoom Developers

- Land in California was one such acquisition

NET CLOSES IN 1 director arrested last month; arrest warrant out for Choudhary

- CBI has booked company for fraud. Zoom is among top 5 defaulters of PSU banks

in the US is being seen as a message to those who have spirited away illicit funds abroad in the hope of escaping the law.

The case is considered one of the biggest bank loan frauds in the country.

Sources said the company and its promoter had set up more than 100 dummy companies in London, Switzerland and India. Huge amounts were diverted to a trust in Liechtenstein through fake firms. From there the money was moved to dummy companies and properties were bought in the name of Zoom Developers in and outside India. The land in California was purchased in the company's name.

The CBI has already booked a case of fraud against the company. Sharad Kabra, one of the directors of Zoom Developers, was arrested last month. He is in judicial custody. An arrest warrant has been issued against Choudhary, who is absconding.

▶ ₹2,200 crore fraud, P 17

ICICI Bank

- ED has registered a criminal case of money laundering against former ICICI Bank CEO Chanda Kochhar, her husband Deepak Kochhar, Videocon Group promoter Venugopal Dhoot and others to probe alleged irregularities and corrupt practices in sanctioning of Rs 1,875-crore loans by the bank to the corporate group

ICICI Bank

- ED carried out searches on March 4, 2019 against Chanda Kochhar, Videocon Group promoter Venugopal Dhoot and a few others in connection with a bank loan fraud case.
- The ED registered the case under PMLA on the basis of an investigation by the Central Bureau of Investigation (CBI) in the matter.
- The CBI named Chanda Kochhar, Deepak Kochhar, and Dhoot among others in the alleged irregularities in the loan case.

Scale

- The United Nations Office on Drugs and Crime (UNODC) conducted a study to determine the magnitude of illicit funds generated by drug trafficking and organised crimes and to investigate to what extent these funds are laundered. The report estimates that in 2009, criminal proceeds amounted to 3.6% of global GDP, with 2.7% (or USD 1.6 trillion) being laundered.



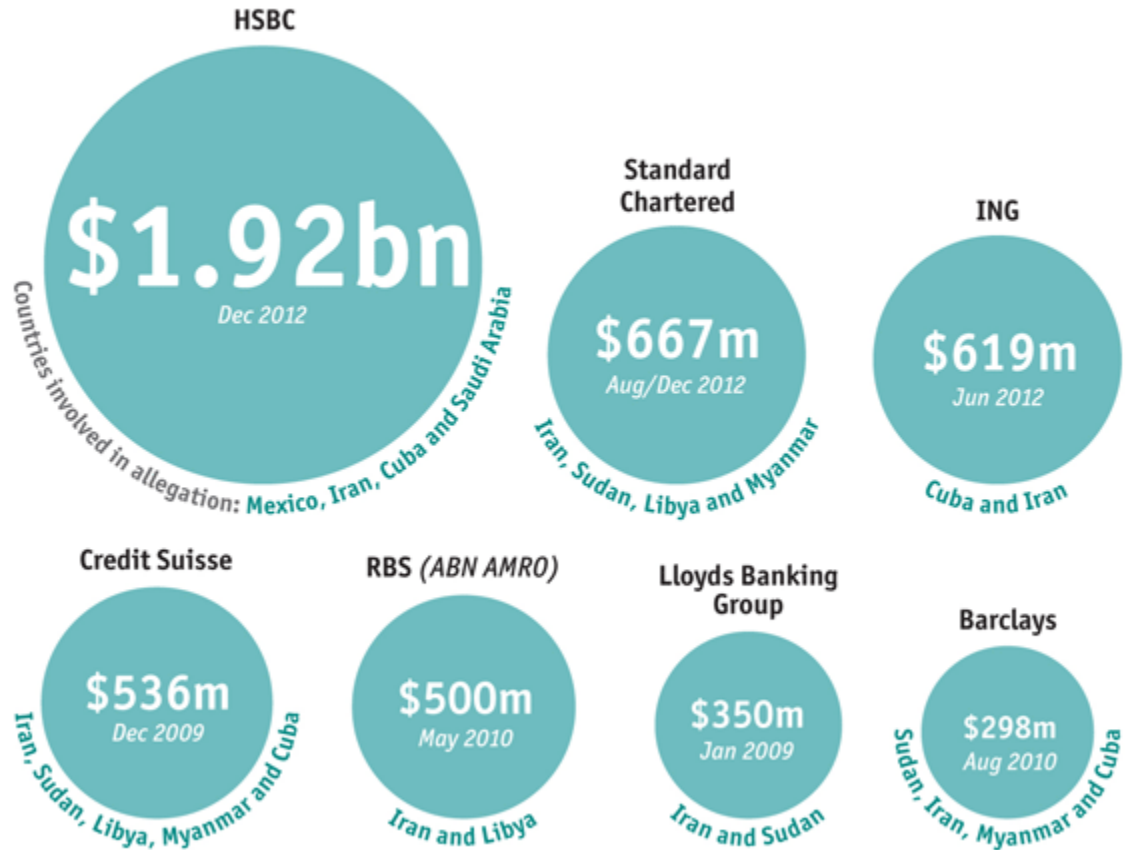
Scale

- International Monetary Fund, who stated in 1998 that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's gross domestic product. Using 1998 statistics, these percentages would indicate that money laundering ranged between USD 590 billion and USD 1.5 trillion. At the time, the lower figure was roughly equivalent to the value of the total output of an economy the size of Spain.

Scale

- As per the statistics released by the United Nations Office for Drugs and Crime (UNODC) value of various crimes which are covered by AML provisions can be estimated as under :
- Drug trafficking -USD \$ 320 billion a year,
- Counterfeiting -USD \$ 320 billion a year
- Human trafficking -USD \$ 32 billion a year
- Trafficking in timber -USD \$3.5 billion a year (South-East Asia alone).

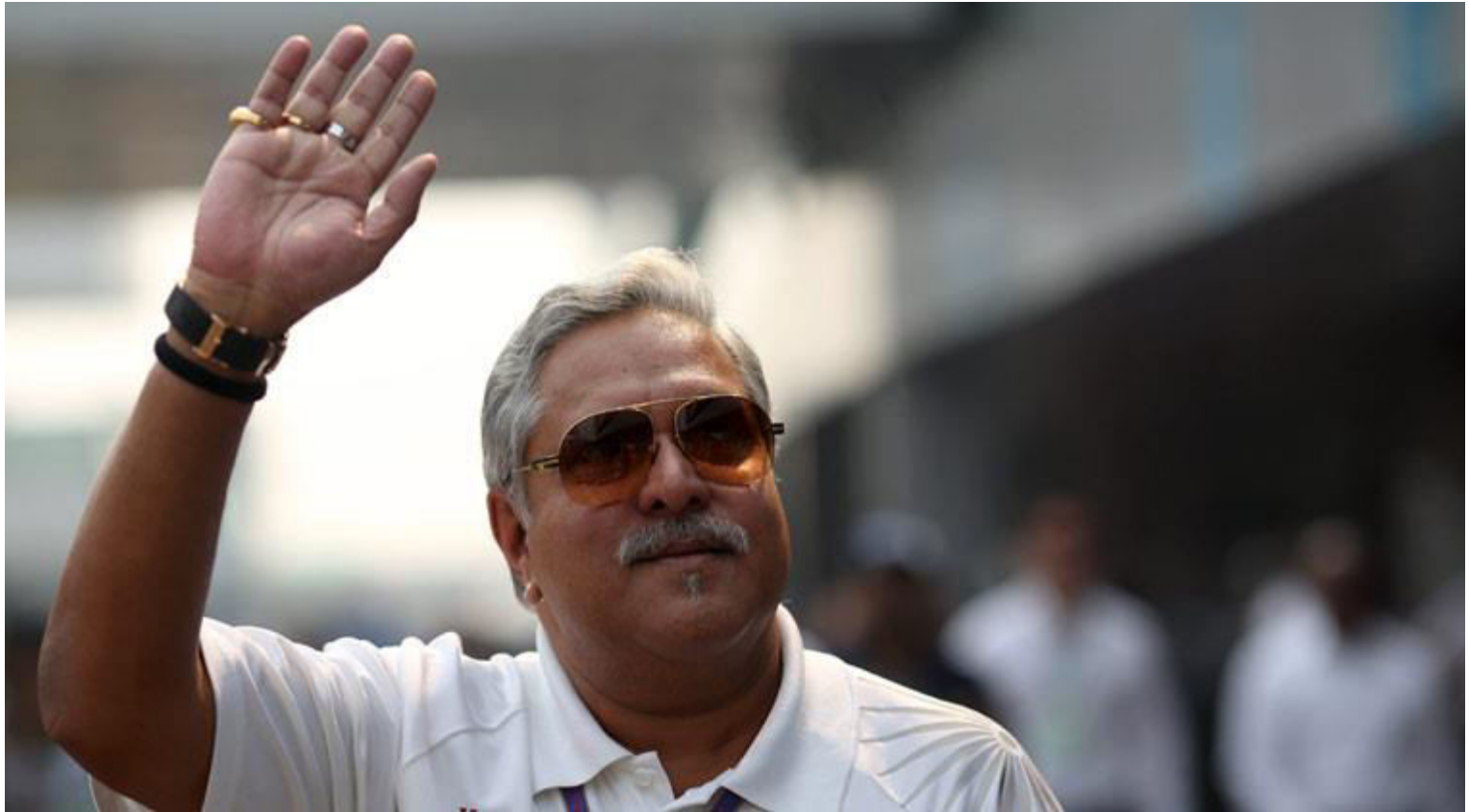
Biggest money-laundering settlements with US authorities



Sources: Company reports; national sources

Money Laundering

- When a criminal activity generates substantial profits, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the persons involved. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.



Vijay Mallya

- A special anti-money laundering court confirmed an order for attachment of assets worth Rs 1,411 crore issued by the ED against UBHL and others in connection with its money laundering probe against liquor baron Vijay Mallya and others.
- The total attachment made by the agency in this case has now shot up to Rs 8,041 crore and this is one of the largest attachment of assets made by ED in a PMLA case till now

Money Laundering

- In response to mounting concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a coordinated international response. One of the first tasks of the FATF was to develop Recommendations, 40 in all, which set out the measures national governments should take to implement effective anti-money laundering programmes.



Chhagan Bhujbal

- Former deputy chief minister was arrested in March by Enforcement Directorate (ED) in an alleged money laundering case in which the agency claimed that he had caused a loss of Rs 870 crore to the exchequer.
- He challenged sections 19 and 45 of PMLA. Section 19 empowers ED to arrest an accused based on evidence gathered by the agency against an individual, while section 45 deals with bail of the accused.

PMLA

- There were 174 prosecution cases filed until May 2015 involving money laundering or confiscations in the judicial courts. During the same period, legal action was taken against properties worth Rs528 crore (\$769 million).
- According to the latest information given by Minister of State for Finance in a written reply to a question in the Lok Sabha, 283 prosecution complaints have been filed and properties worth Rs18,866 crore have been attached.

Challenging the Summons

- The ED had, on January 17, 2019, issued a summons to him based on the charge sheet filed in June 2018 by the Income Tax Department against Mr. Shivakumar and four others on the allegations of wilfully attempting to evade tax, filing false income tax statements under the provisions of the Income Tax Act, and indulging in criminal conspiracy under Section 120B of the Indian Penal Code along with the four other accused for evading tax.

Challenging the Summons

- The I-T Department had also alleged in the charge sheet that Mr. Shivakumar, along with two businessmen, and a present and a former employee of the Karnataka government, had “engaged in transporting huge amounts of unaccounted cash on a regular basis through hawala channels”.
- The I-T Department had initiated prosecution based on the outcome of the raids conducted on premises belonging to Mr. Shivakumar and others at various locations in Bengaluru and New Delhi.
- On Feb 3, 2019, Mr Shivkumar has challenged the summons

PMLA

- Proceeds of Crime – Sec 2 (1)(u)
 - Any property-movable or immovable
 - Linkage to scheduled offence (sec 2(1)(y))
 - Value or value thereof
 - In India or abroad
 - In case of companies

Budget 2018

Budget of 2018 has the following changes as amendment in definition of “proceeds of crime” :The definition of “proceeds of crime” in PMLA was amended in 2015 to include “property equivalent held within the country” in case proceeds of crime is taken out or held “outside the country”. The present amendment shall allow proceeding against property equivalent to proceeds to crime held outside the country also.

Attachment

- Sec 5 – provisional attachment
- Sec 8 – Filing a case before adjudicating authority
- Sec 16 – Survey under PMLA
- Search under PMLA

Trial under PMLA

- Sec 41 & Sec 67 expressly bars the civil court to have jurisdiction over PMLA cases
- PMLA has special designated courts
- Once may then appeal the above orders to High Court & then Supreme Court
- Once the Provisional Attachment order is passed at the Adjudicating authority, confirming the attachment, the ED then files a prosecution complaint in the PMLA Special Court

Trial under PMLA

- The PMLA Special court calls for all accused and the witness for detailed hearing
- Examination of Money laundering, and where are the proceeds of crime, and the attachment
- How is the property connected to money laundering, all documents are produced
- The prayer by ED is for attachment of the property & arrest of the person involved

Trial under PMLA

- Charges are then framed
- The Police may also be investigating the case simultaneously, a prayer is made to transfer the file to PMLA special court. So that the trial is conducted in the same court.
- Code of Criminal Procedure shall not apply to the extent it is not inconsistent with PMLA.
- Indian Evidence Act shall apply.

Power to arrest under PMLA

- Sec 19
- Possession of material
- Reason to believe
- Guilty of scheduled offence
- PMLA special court shall give the orders
- 3 to 7 years of Jail
- Grounds of arrest to be communicated
- Adjudicating authority to be intimated

Bail

- Sec 45
- Very Stringent
- No one can get bail behind the back of ED
- PMLA special court to be satisfied that the person is not guilty of the offence of money laundering
- Assurance that if given bail, then same offence of money laundering shall not be committed

Nikesh Tarachand Shah

- The draconian provision – Section 45 (1) of the Prevention of Money Laundering Act, 2002 (**PMLA**), insofar as it imposed two conditions for release of an accused on bail was held to be unconstitutional as it violated Article 14 and 21 of the Constitution in a landmark judgment of Supreme Court in *Nikesh Tarachand Shah v. Union of India*.

Twin conditions

- The conditions required that the public prosecutor must be given an opportunity to oppose any application for release on bail and 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*”.

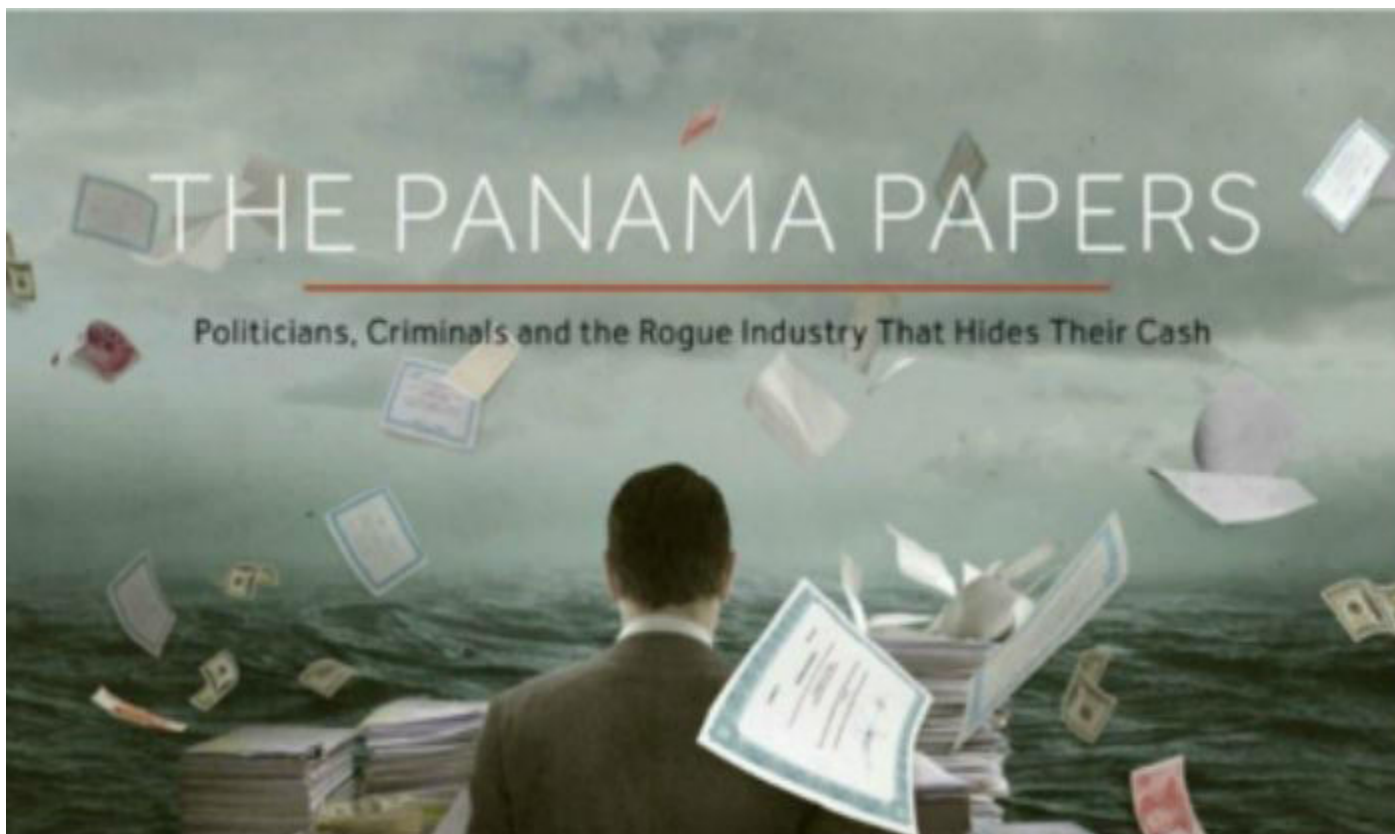
Budget 2018

The Budget of 2018 has the following changes as amendment in bail provisions:

Amendment in Section 45(1) would make the applicability of bail conditions uniform to all the offences under PMLA, instead of only those offences under the schedule which are liable to imprisonment of more than 3 years.

This will be a significant step forward in delinking the proceedings against scheduled offences and Money laundering offences under PMLA.

Further limit of Rs.one crore shall allow court to apply bail provisions more leniently to less serious PMLA cases.



THE PANAMA PAPERS

Politicians, Criminals and the Rogue Industry That Hides Their Cash

Panama Papers

- The Panama Papers in 2016 revealed details of more than 2.14 lakh offshore companies involved with Panamanian law firm Mossack Fonseca.
- The data was leaked to the International Consortium of Investigative Journalists by an anonymous informant.
- The Panama Papers featured the names of over 500 Indians.



Considering money laundering and terrorist financing as part of your institution's business risk – a risk based approach.

Trib, 23

IPL betting Raids in Mumbai, Ahmedabad, Jaipur and Delhi

ED cracks down on bookies

TRIBUNE NEWS SERVICE

MUMBAI/NEW DELHI, MAY 22

With betting on Indian Premier League (IPL) matches peaking with the tournament heading for a close, the Enforcement Directorate (ED) today conducted raids across the country on known bookies and their associates.

According to sources here, ED teams launched co-ordinated raids at several premises in Mumbai, Thane, Ahmedabad, Jaipur and New Delhi.

In Mumbai the raids were conducted in suburban Andheri, near the international airport and Kalbadevi in South Mumbai. Among those raided include several diamond exporters, angadias or couriers and many money-changers suspected to be part of hawala rackets, sources said.

Many operating out of vessels on sea

- Mumbai police sources say prominent bookies had long gone into hiding and were operating from off-shore locations
- While many bookies are said to be working from Dubai, sources say some could be operating out of vessels on sea
- The ED had recovered incriminating information from computers, mobile phones and pen drives after prominent bookies were picked up in different parts of the country recently

Today's raids come after some prominent bookies were picked up in different parts of the country earlier this month. ED officials here said the raids conducted by sleuths from its Ahmedabad office followed incriminating information recovered from computers, mobile phones and pen drives recovered from bookies arrested in the earlier raid.

Mumbai police sources say, prominent bookies from the city had long gone into hiding and were operating from

off-shore locations. While several bookies are said to be working from Dubai, sources say some could also be operating out of vessels on the high seas.

A team of over 30 officials are part of search teams, the sources said. The searches, earlier this month, were largely in the national capital and its adjoining areas and two Delhi-based alleged bookies were arrested. Over ₹26 lakh was seized then apart from a cache of comput-

er peripherals, mobiles and hard drives, the sources said.

In March this year, the Ahmedabad office of the agency had claimed to have busted the alleged betting racket and arrested some bookies from a farmhouse on the outskirts of Vadodara city in Gujarat. Later, the probe agency arrested 13 others in connection with this illegal activity from Gujarat.

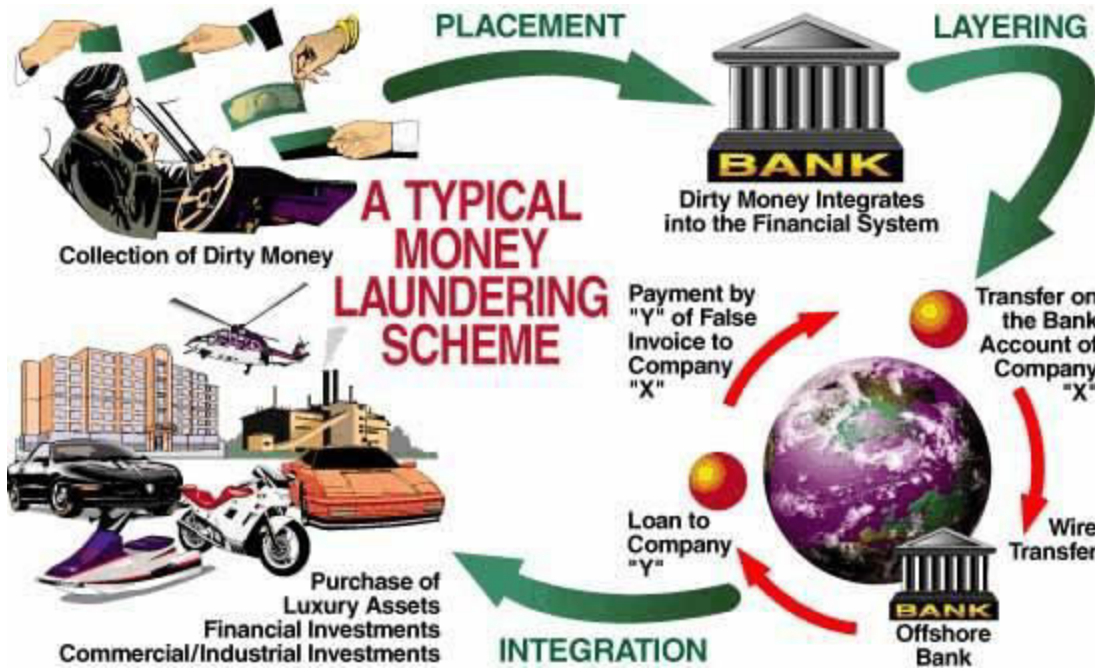
The same office registered a money laundering case against two prime suspects and a few others in connection with the alleged racket suspected to be between ₹1,000 and ₹4,000 crore. The accused had been earlier charged under Sections 418 (cheating), 419 (punishment for cheating), 420 (cheating) and other sections of the IPC by the agency.

Hawala

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

Process of Money Laundering

- Placement
 - Dirty money being inserted in financial system
 - Layering
 - Separates the proceeds from their criminal origin by moving them through a series of financial transactions
 - Integration
 - Creating a legitimate explanation for their sources of funds, allowing them to be retained, invested or used, to acquire goods or assets
- The Process given above may not be in the same order



Placement

- The first stage is the physical disposal of cash.
- The launderer introduces his illegal profits into the financial system.
- This placement is accomplished by depositing the cash in domestic banks or in other types of formal or informal financial institutions.
- This is done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.).

Placement

- The cash is usually siphoned off across borders for deposit in foreign financial institutions, or used to buy high-value goods, such as artwork, aeroplanes, and precious metals and stones, that can then be resold for payment by cheque or bank transfer.

Layering

- The Second stage in money laundering is layering.
- The launderer engages in a series of conversions or movements of the funds to distance them from their source.
- The funds might be channelled through the purchase and sale of investment instruments such as bonds, stocks, and traveller's cheques or the launderer might simply wire the funds through a series of accounts at various banks across the globe, particularly to those jurisdictions that do not cooperate in anti-money laundering investigations.
- In some instances, the launderer might disguise the transfer as payments for goods or services, thus giving them a legitimate appearance.

Layering

- A number of rotations to slush funds are given through banks and this complex layer of financial transactions are carried out to divorce the illicit proceeds from their source and mislead the investigating agencies.
- The high-value goods and monetary instruments are resold and the proceeds are invested in real estate and legitimate businesses, particularly in the leisure and tourism industries.
- Shell companies i.e. paper companies/bogus companies) serve as front and are registered in offshore havens.
- They are a common tool in the layering phase.

Integration

- This is the stage where the funds are returned to the legitimate economy for later extraction. Examples include investing in a company, purchasing real estate, luxury goods, etc.



Yogeshwar Diamonds, Shree Charbhuja Diamonds, Kanika Gems

- Manager of Renukamata Co Bank arrested by the ED on Jan 13, 2019 for helping three companies launder Rs 120 crore to Hong Kong,
- The money (Approx Rs 2000 cr) was allegedly laundered using fake import documents for three companies

Yogeshwar Diamonds, Shree Charbhuja Diamonds, Kanika Gems

- The Manager deposited large amount of money in the society's account using fictitious names before redepositing them in the society's bank accounts.
- The money would be later transferred abroad through RTGS.
- As and when there was a demand, he would take out these blank RTGS slips and fill the amount and beneficiary details.

Nirav Modi

- Modi has been charged with allegations that companies linked to him and his relatives got credit worth Rs 13,500 between 2011 and 2017 using false Letters of Understandings (LoU) allegedly issued by the bank's officials at its Brady Road branch in Mumbai.
- Following the FIR filed by PNB with CBI in the last week of January 2018, the Enforcement Directorate began investigation against Modi from mid February onward under the Prevention of Money Laundering Act, 2002.

Nirav Modi

- Modus operandi used was through SWIFT network, the bank official issued LoUs on behalf of companies linked to Nirav Modi Group including Solar Exports, Stellar Diamonds and Diamond R US to avail buyers credit from overseas branches of Indian banks.
- The transactions weren't routed through the core banking system to avoid fraud detection.

Nirav Modi

- So far in this case, the ED has attached property worth Rs 1,725.36 crore in India and abroad.
- Additionally, gold, diamond, bullion, jewellery and other valuables worth Rs 489.75 crore have also been seized.
- Recent attachment includes a Rolls Royce, real estate, jewellery and highly-valued art worth more than Rs 147 crore

Mehul Chokshi

- An investigation ordered by a US bankruptcy court has alleged that fugitive diamond trader Mehul Choksi's firm in the US, Samuels Jewelers Inc., may have sold lab-grown diamonds to customers by wrongly certifying them as natural stones.
- This was done through a laboratory "secretly" controlled by Choksi through a British Virgin Islands (BVI) firm, said the report.

Mehul Chokshi

- The forensic report has also alleged that Samuels Jewelers, owned by Gitanjali Gems Ltd, received about \$20 million (Rs 139 crore) from the fraudulent Letters of Undertaking (LoUs) issued to Gitanjali by Punjab National Bank (PNB) in India.
- This money was received through a “sham royalty agreement” between Samuels Jewelers and firms controlled by Choksi, including a few companies in the Middle East which existed only on “paper”.

Where can it occur

- As money laundering is a consequence of almost all profit generating crime, it can occur practically anywhere in the world. Generally, money launderers tend to seek out countries or sectors in which there is a low risk of detection due to weak or ineffective anti-money laundering programmes. Because the objective of money laundering is to get the illegal funds back to the individual who generated them, launderers usually prefer to move funds through stable financial systems.



Where can it occur

- Money laundering activity may also be concentrated geographically according to the stage the laundered funds have reached. At the placement stage, for example, the funds are usually processed relatively close to the underlying activity; often, but not in every case, in the country where the funds originate.

JUST WHAT IS MONEY LAUNDERING?



DID YOU KNOW?

Money laundering happens on
A DAILY BASIS all around
the world.

Where can it occur

- With the layering phase, the launderer might choose an offshore financial centre, a large regional business centre, or a world banking centre – any location that provides an adequate financial or business infrastructure. At this stage, the laundered funds may also only transit bank accounts at various locations where this can be done without leaving traces of their source or ultimate destination.

Where can it occur

- Finally, at the integration phase, launderers might choose to invest laundered funds in still other locations if they were generated in unstable economies or locations offering limited investment opportunities.



Bitcoins & Budget 2018

- In the Budget 2018 , Finance Minister Arun Jaitley reiterated a well-known official position – cryptocurrency is not recognized as legal tender in India. He said the government in Delhi will take all measures to eliminate its use in financing illegitimate activities
- In February, 2018 India's Income Tax Department issued notices to at least 100,000 cryptocurrency investors

Bitcoins – Present Scenario

- Trouble is, the virtual currency seems to have been adopted by lots of questionable characters, some of them outright criminals, including murderers, traffickers in human beings and drugs, extortionists and terrorists.
- Bitcoin and other virtual currency systems that use block-chain technology to transmit value could revolutionize financial services by offering an inexpensive and secure method for completing transactions globally.

BITCOIN

- Bitcoin startups Zebpay, Unocoin, Coinsecure and SearchTrade have come together to form Digital Asset and Blockchain Foundation of India (DABFI) for the “orderly and transparent growth of the virtual currency market.
- DAFBI will develop norms for trading of bitcoins and other blockchain-based digital assets. DABFI will also standardise Know Your Customer norms and anti-money laundering and suspicious transaction reports for member companies

Cryptocurrency & Money Laundering

- Cryptocurrency transactions are also far more transparent.
- This allows transactions to be tracked, meaning it is easier to "follow the money" – and illicit transactions cannot be hidden by banks
- Cryptocurrency-related money laundering during of USD approx. 90 million of two years constituted less than a two-hundredth of a percent of the laundering

Indian Scenario

- A high-level panel (set up in Nov 2017) tasked with drafting rules for India's virtual currency ecosystem, the committee, led by the top bureaucrat Subhash Chandra Garg is believed to be in a tangle over the impact that digital coins will have on the Indian rupee if they are allowed for making payments.
- The fears have been possibly bolstered by a report released by the Bank for International Settlements (BIS).

Indian Scenario

- In the BIS report, it had said that virtual currencies can one day be issued by policymakers for settling payments among financial institutions, among other things.
- However, it had also warned that digital coins might destabilise traditional banks if they are offered widely to the general public.

International Banks

- JP Morgan, Standard Chartered, and Citigroup have all played a part in laundering funds related to malicious activities – and have subsequently been forced to pay fines for violating sanctions.
- HSBC recently failed to monitor approximately \$670 billion in transfers from Mexico. They were also unable to notice purchases of around \$9.4 billion US dollars

International Banks

- This allowed both Mexican and Columbian drug cartels to leverage HSBC's accounts in order to launder illicit funds. When it became clear that HSBC had failed to live up to AML (anti-money laundering) regulations, the bank was fined a relatively meager \$1.9 billion.
- Furthermore, JP Morgan Chase was fined \$2.05 billion for consistently ignoring warning signs related to the Wall Street financier Barnard Madoff – which allowed Madoff to run the biggest-ever Ponzi scheme uncovered in the US.

Integration

- This is the final stage in the process.
- The launderer makes it appear to have been legally earned and accomplishes integration of the “cleaned” money into the economy.
- By this stage, it is exceedingly difficult to distinguish legal and illegal wealth.
- It involves making the wealth derived from crime appear legitimate.

Methods of Money Laundering

- **Structuring ("Smurfing"):** Smurfing is possibly the most commonly used money laundering method. It involves many individuals who deposit cash into bank accounts or buy bank drafts in amounts in small amounts to avoid the reporting threshold.
- **Bank Complicity:** Bank complicity occurs when a bank employee is involved in facilitating part of the money laundering process



Shree Ganesh Jewellery House

- The Enforcement Directorate (ED) on Jan 31, 2019 raided various locations and office premises of Shree Ganesh Jewellery House here in connection with a Rs 2,672 crore money laundering case
- Based on a complaint of defrauding a consortium of banks led by the State Bank of India (SBI) for non-payment of loan to the tune of Rs 2,672 crore, CBI launched the case

Shree Ganesh Jewellery House

- During investigations, the agency found the accused to "be actively involved in the fraud of diversion of primary gold of over 1,700 kg among other violations like non-realization of remittance on account of export of gems and Jewelleries to the tune of Rs 7,500 crore" to the several dummy and shell companies at Singapore, Hong Kong and Dubai.

Gold

- A Dubai-based Indian businessman has been arrested by Directorate of Revenue Intelligence (DRI) officials for allegedly involving in a major gold smuggling and money laundering racket, on Jan 23, 2019
- The accused, who runs garments business as his front in Dubai, was arrested

Gold

- The arrested individuals were part of a larger syndicate comprising about 70 carriers involved in outward smuggling of foreign currency from India to Dubai and smuggling of gold on return journey into India
- The syndicate smuggled approximately 70 kg of gold valued at Rs 21 crore into India from Dubai

Methods

- **Money Services and Currency Exchanges:**
Money services and currency exchanges provide a service that enables individuals to exchange foreign currency that can then be transported out of the country
- **Asset Purchases with Bulk Cash**
- **Electronic Funds Transfer**
- **Postal Money Orders**

Methods

- **Credit Cards**
- **Casinos**
- **Refining:** This money laundering method involves the exchange of small denomination bills for larger ones and can be carried out by an individual who converts the bills at a number of different banks in order not to raise suspicion. This serves to decrease the bulk of large quantities of cash

Methods

- **Legitimate Business / Co-mingling of Funds**
- **Value Tampering:** Money launderers may look for property owners who agree to sell their property, on paper, at a price below its actual value and then accept the difference of the purchase price "under the table". In this way, the launderer can, for example, purchase a 2 million rupee property for 1 million rupee, while secretly passing the balance to the seller. After holding the property for a period of time, the launderer then sells it for its true value of 2 million rupees

Methods

- **Loan Back:** Using this method, a criminal provides an associate with a sum of illegitimate money and the associate creates the paperwork for a loan or mortgage back to the criminal for the same amount, including all of the necessary documentation. This creates an illusion that the criminal's funds are legitimate. The scheme's legitimacy is further reinforced through regularly scheduled loan payments made by the criminal, and providing another means to transfer money.

ED records best-ever performance

PRAMOD KUMAR
NEW DELHI, APRIL 28

The enforcement directorate (ED) has recorded its best-ever performance in crucial investigations done by the agency so far, having seized assets worth ₹3,650 crore under money laundering laws in the year 2014-15. The anti-money laundering (under Prevention of Money Laundering Act) and foreign exchange violations (under Foreign Exchange Management Act) has also made the maximum number of prosecutions against offenders of these laws during the last financial year.

Sources in the agency said, "In 2014-15, the agency arrested 19 persons under the provisions of PMLA as against seven in the preceding year. The agency succeed in recording its best-ever performance in investigations so far. The ED registered a total of 178 cases under PMLA till March 31 this year." As far as investigation under Fema is concerned, the ED issued 654 showcause notices to different persons in the last financial year, they added.

"Fifty-seven attachments were effected in 2013-14, this has been doubled to 138 in 2014-15. Besides, the agency also issued 166 provisional attachment orders in 2014-15," sources said.



Sakha Organics Ltd

- A special PMLA court in Ahmedabad has sentenced four people, including two Malaysians, and a firm to seven years of rigorous imprisonment and fined them Rs. 5 lakh for money laundering linked to illegal possession of narcotic drugs on 30 Jan, 2019

Sakha Organics Ltd

- ED said its investigation found that Kirit Rasiklal Shah had availed a loan of Rs. 66.70 lakh from the Gujarat State Finance Corporation (GSFC) by way of mortgaging the factory premises of Sakha Organics Ltd located in Vadodara.
- Major repayments were done in 2008 by procuring DDs from various banks/persons in lieu of cash paid to them.

Sakha Organics Ltd

- During the same period, another accused, Xie Jing Feng (Canadian national), had paid Rs. 4 crore to Kirit Rasiklal Shah for the production and manufacture of methamphetamine,
- The special judge (for PMLA cases) has ordered for a separate trial to be conducted against Feng. The extradition proceedings against him are under process with the authorities in Hong Kong as he is reported to be lodged in a jail in that country

Demonetization - PMLA

- The ED in Mumbai in February, 2017 arrested the owner of Rajeshwar Exports, Kritika Dahal, for money laundering using her company in Hong Kong.
- ED team had come across illegal deposits of money (after November 8, 2016) worth Rs 700 crore with various bank accounts, which later, got diverted to Hong Kong.

Demonetization - PMLA

- During the course of investigation under PMLA, it was revealed that the bank accounts were used for illegal transactions of huge amounts.
- More than 100 accounts of different shell companies were sourced for depositing huge cash of more than Rs 92 crore in old demonetised currency. The agency noticed that layering of these funds has been done through more than 500 accounts.

Demonetization - PMLA

- Ultimately, the funds from all companies and firms were credited through RTGS to Rajeshwar Exports, which was utilised for outward remittance to Hong Kong in guise of payment of import of overvalued consignments of total 355 Bills of Entries.
- During investigation, it was revealed that an amount of Rs 1478 crore is yet to be received by Rajeshwar Exports against export made from the company.

Demonetization – PMLA

- ED in Feb, 2017 has attached assets worth Rs 64.70 crore of Divine Infracon, in a Delhi hotel property, managed by Radisson Blu, for money laundering.
- GOI is believed to have initiated action against at least 34 Chartered Accountants for allegedly converting scrapped notes into new through shell companies during the demonetisation period.
- The Serious Fraud Investigation Office (SFIO) has registered cases against 49 shell companies, as much as Rs 3900 crore has been laundered by 559 persons with the help of 54 professionals. Also, Rs 1,238 crore cash has been deposited in shell or dormant companies, post demonetisation.

Prosecution Cases

- A senior income tax (I-T) official said the department has filed as many as 570 prosecution cases against alleged offenders caught laundering money and evading taxes, compared to 196 cases filed in different courts across the country. As of Jan 2019, 1400 prosecution cases are filed.
- Under I-T laws, a court conviction for tax offences can lead to imprisonment of up to seven years in addition to fine and interest and penalty on the tax evaded.
- The department has been taking up cases of money laundering seriously and has asked officials to file prosecution complaints against entities who refuse to own up their money despite enough evidences based on banking data obtained on deposits made after demonetisation.

Scrutiny

- During AY 2017-18, only 20,088 cases of huge sums of money deposited in banks were identified by the tax department. These cases pertained to the demonetisation period -- between November 8, 2016 and December 31, 2016.
- During AY 2018-19, 1,34,574 such cases were selected for scrutiny. During AY 2017-18, notice under Section 142(1) of the Income Tax Act, 1961, were sent out to 2,99,937 depositors who had dumped large sums during demonetisation but did not file income-tax return.

The Forms of Money Laundering

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graph LR; A[The Forms of Money Laundering] --- B[Acquiring using or possessing criminal property]; A --- C[Handling the proceeds of crime, such as theft, fraud and tax evasion]; A --- D[Investing the proceeds of crimes into other financial products]; A --- E[Being knowingly involved in any way with criminal or terrorist property]; A --- F[Transferring criminal property]; A --- G[Entering into arrangements to facilitate laundering criminal or terrorist property]; A --- H[Investing the proceeds of crimes into the acquisition of property / assets];
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Acquiring using or possessing criminal property

Handling the proceeds of crime, such as theft, fraud and tax evasion

Investing the proceeds of crimes into other financial products

Being knowingly involved in any way with criminal or terrorist property

Transferring criminal property

Entering into arrangements to facilitate laundering criminal or terrorist property

Investing the proceeds of crimes into the acquisition of property / assets

Risk – Political Persons

- The focus on Political Persons has increased with recent events in the Middle East and North Africa; financial institutions find themselves in a key role regarding international financial crime initiatives.
- Firstly, momentum has been gathering in relation to global bribery and corruption programs, and Libya, Egypt, Syria, other uprisings have increased Money Laundering.

Trade based Money Laundering

- The Indian government has recently tightened an often used route for trade-based money laundering.
- Issuance of remittances or opening of letter of credit in trade will now be done electronically involving the Reserve Bank of India, banks and customs authorities.
- RBI has decided to do away with the requirement for the banks to obtain a physical copy of the bill of entry from the importer as an evidence of import, because this data can be transferred in a secured manner from the system of the customs department

ABC Cotspin Private Limited

- ED filed Rs 804 crores prosecution complain against the above on Feb 1, 2019
- Based upon 2 FIR and charge sheet filed by CBI
- Foreign Currency remitted in advance abroad (to a fictitious company) without any goods entering into India
- False claim of foreign agency commission

Speak Asia Online Pvt. Ltd.

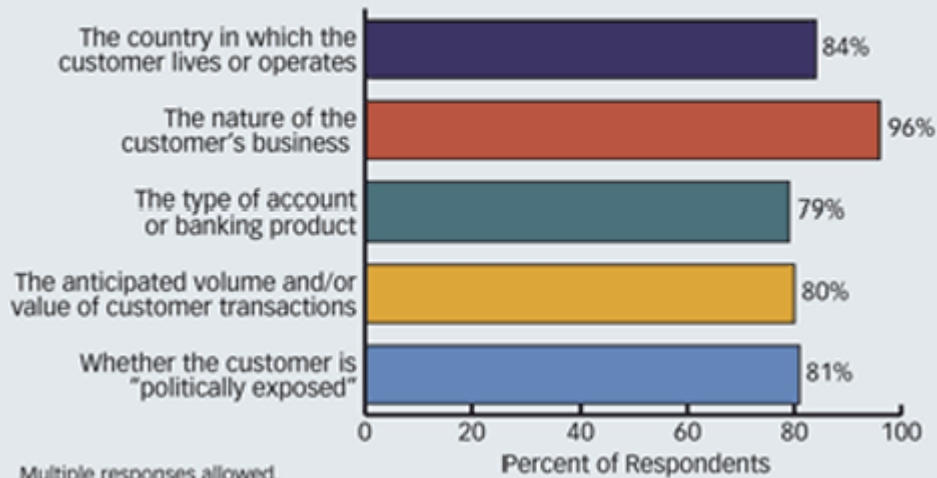
- The company developed a web-based online money circulation scheme through its website
- Money collected from gullible investors in the guise of subscription fee for online survey was sent out to Singapore in the bank account of M/s. HPVL, Singapore.
- ED identified the proceeds of crime and attached Rs 89.56 crores in Current account of M/s. Seamless Outsourcing LLP

De-Risking

- De-Risking has become a popular practice in financial institutions, particularly banks. The absence of an agreed definition leaves room for lengthy discussion and debate particularly in the banking industry. Some reports issued in this regard indicate that the term of de-risking refers to terminating the business relationship with customers, specifically correspondent banking relationship, instead of applying due diligence requirements to avoid the potential risk involved

Red Flags

Factors considered by financial institutions when using a risk-based approach at the account-opening stage:



Multiple responses allowed.

Source: KPMG's Global Anti-Money Laundering Survey, 2007

Income Tax-CBI-ED-Police

- New Strategy
- Local Police to register FIR
- Opening for ED to register a case under PMLA
- Once under PMLA, his properties and assets equivalent to the alleged unaccounted income can be attached and confiscated on proving the charges
- ED on 13 Nov arrests 7 persons in Bangalore on charges of PMLA after IT search
- CBI arrests a casino owner in Bangalore after IT search finds Rs 5.7 crores in his bathroom
- RBI official also arrested

Alchemist Infra Realty Ltd

ED has provisionally attaches assets worth Rs 239.29 crore situated at Chandigarh, Panchkula, Derabassi, SAS Nagar (Punjab), Shimla and also bank accounts in HDFC bank in an ongoing investigation under Prevention of Money Laundering Act (PMLA) against Alchemist Infra Realty Ltd on Feb 6, 2019.

Alchemist Infra Realty Ltd

- The central financial probe agency moves comes after the prosecution complaint filed by Securities and Exchange Board of India (SEBI) in PMLA Court at Patiala House, Delhi on March 18, 2018.
- The probe agency investigation revealed that the 'Proceeds of Crime' generated by Alchemist Infra Realty Ltd laundered through the web of companies.

IBC vs PMLA

- No attachment can be ordered under the Prevention of Money Laundering Act, 2002 with respect to the assets of the Corporate Debtor undergoing insolvency process
- STERLING SEZ INFRASTRUCTURE LTD
- As per Section 238, the IBC would have an overriding effect over PMLA Act considering the economic interest of the beneficiaries being the Corporate Creditors herein.
- IBC being the later legislation would prevail over PMLA Act being the earlier legislation.

IL&FS

- ED registered a complaint against the company and some of its former directors
- The ED's case is based on the Delhi Police FIR lodged by Ensure Infrastructure claiming a loss of Rs 70 crore due to a fraud done by IL&FS
- IL&FS has defaulted in payments of more than Rs 90,000 crore
- ED had searched their offices, the investigation is going on

PMLA Amendments Challenged

- Congress MP Jairam Ramesh on 27th Feb, 2019 challenged all the amendments made to the anti-money laundering law since 2015 in the Delhi High Court saying they were in violation of the Constitution as they were enacted as money bills.
- The Delhi High Court has rejected the claim
- A money bill is a piece of legislation which can be introduced only in the Lok Sabha and the Rajya Sabha cannot amend or reject it.

Sale of Drugs

- Three Indian-Americans are among six people convicted for their role in a two-year multi-million dollar money-laundering scheme in Feb, 2019
- They were part of a complex money laundering scheme whereby money derived from the sale of drugs in the US was laundered through businesses in Laredo in order to return the proceeds to Mexican drug dealers.

Sale of Drugs

- From 2011 to 2013, the conspirators helped to move millions of dollars derived from the sale of drugs throughout the US to Laredo in Texas.
- The US currency was moved by couriers via cars, commercial buses, commercial planes and also a private plane used in bulk cash amounts of up to hundreds of thousands of dollars at a time.

Sale of Drugs

- The money, in heat sealed packs, uneven rubber-banded money stacks or loose US currency, arrived in plastic bags, cloth bags, suitcases, backpacks and even cereal boxes
- The money was then distributed among downtown Laredo, Texas perfume stores, including stores

Thank you