

Prevention Of Money Laundering Act

Supporting Investigation Process
Departments Perspective

Directorate of Enforcement
Mumbai

BLACK MONEY AND CRIMINAL MONEY

- Money that is not fully legitimate in the hands of the owner is generally referred to as Black money.
- The source of money may be illegitimate activities not permissible under the law, like crime, drug trade, terrorism, and corruption, or any activity punishable under the legal framework of the state.
- Money may have been generated and accumulated by failing to pay the tax+
- . In this case, the activities undertaken by the perpetrator could be legitimate and otherwise permissible under the law of the land but s/he has failed to report the income so generated, comply with the tax requirements, or pay the dues to the public exchequer, leading to the
- generation of this wealth.

CATATYSTS FOR BLACK MONEY

- The term black money includes income derived from legal sources that is concealed from public authorities:
- Ignorance of law, Reluctance to deal with public authorities, perceived complexity of laws and administrative procedures;
- To evade payment of taxes (income tax, excise duty, sales tax, stamp duty, etc);
- To evade compliance with the provisions of laws relating to Industrial Disputes, Payment of Bonus , Factories Act 1948, and Contract Labour (Regulation and Abolition) Act 1970; and / or to evade compliance with other laws and.



Proceed 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

Global Anti-Money Laundering Initiatives

5

- UN Convention against Illicit Traffic in Narcotic Drugs & Psychotropic Substances calls for prevention of laundering of proceeds of Drug Crimes and Confiscation of proceeds
- Basle Statement of Principles, 1989, outlines Guidelines for Banks to follow to assist Law Enforcement Agencies in tackling Money laundering
- The Financial Action Task Force (FATF), created in 1989, is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing



History of Money Laundering Legislation

- Political Declaration and Global Programme of Action under Resolution S-17/2 of the General Assembly of the United Nations dated 23 February 1990 urged Member States to prevent Financial Institutions from being used for money laundering and enact legislation to prevent such laundering
- Political Declaration adopted by UN Special Session held on 8-10 June 1998 calling upon Member States to adopt National Money Laundering Legislations
- Bill was introduced in 1998 and Act was passed in 2002
- Act Notified from 1-07-2005
- Act amended w.e.f. 1-6-2009



Preamble to the PMLA 2002

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

Section 3

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."

Essential elements of the offence of money laundering

- the conversion or transfer of property;
- the concealment or disguise of the true nature, source, location, disposition, movement, right with respect to, or ownership of property;
- the acquisition, possession, or use of property;
- the participation in, association to or conspiracy to commit, attempts to commit, and aid, abet and facilitate.
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Proceed of Crime

Proceeds of Crime : Section 2 (u)

“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.

Punishment

Section 4

- *Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*
- **[which may extend to five lakh rupees (deleted)]**

(Removed existing limit of five lakh rupees of fine under the Act)



Restructured Schedules to the Act

- Offences in Part B moved to Part A
- Part B now contains no offence
- The required money threshold of 30 lakh rupees removed
- All offences brought at par



Offences Under Part A Schedule to PMLA

- Indian Penal code
- NDPS Act
- Explosive Substances Act
- Unlawful Activities (prevention) Act, 1967
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Acts Under Part A of the Schedule

- Arms Act, 1959
- Wild Life (Protection) Act, 1972
- Immoral Traffic (Prevention) Act, 1956
- Prevention of Corruption Act, 1988
- Explosives Act, 1884
- Antiquities and Arts Treasures Act, 1972
- Securities and Exchange Board of India Act, 1992
- Customs Act, 1962
- Contd.



Acts Under Part A of the Schedule

- Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition and Regulation) Act, 1986
- Transplantation of Human Organs Act, 1994
- Juvenile Children (Care and Protection of Children) Act 2000
- Emigration Act, 1983
- Passports Act, 1967
- Foreigners Act, 1946
- Copyright Act, 1957

Contd.



Acts Under Part A of the Schedule

- Trade Marks Act 1999
- Information Act, 2000
- Biological Diversity Act, 2002
- Protection of Plant Varieties and Farmers' Rights Act, 2001
- Environment Protection Act, 1986
- Water(Prevention and Control of Pollution) Act 1974
- Air(Prevention and Control of Pollution) Act 1974
- Suppression of Unlawful Acts against Safety of maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002

Offences Under Schedules to PMLA

PART - B

Offences Under Schedules to PMLA PART - C



PART C

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

Part A ;

or

The offences against property under Chapter XVII of the Indian Penal Code.



PMLA 2002 : Salient Features

- PMLA Act enacted to fulfill National/International obligations to fight financing of Terror and Organized Crime
- Offences related to Terror Financing added to Part A of the Schedule – IPC, Unlawful Activities (Prevention) Act, 1967, Explosive Substances Act
- Offences related to Cross Border Implications added in Part C to the Schedule
- Reporting of Suspicious Transactions by Banking companies and financial institutions to FIU – S/12-15 of PMLA
- Attachment and Confiscation of Properties – S/5-11 of PMLA
- The Scheduled Offences and the offence of money laundering shall be triable only by the Special Court – S/44 - PMLA



PMLA 2002 : Salient Features

- International Cooperation - Reciprocal Arrangement for assistance and procedure for attachment and confiscation of property - Chapter IX (S.55-61)
- **P**resumption clause, as to records or property in certain cases; Presumption Clause as to Interconnected Connections S/22-23
- The Burden of Proof on the accused – S/24
- Institutions like FFMCS and Money Transfer Service Providers (like Western Union) in the reporting regime to target wire transfers and nonbanking remittances

Pre-requisite for attachment under PMLA

- ✓ An order of attachment can be made after a scheduled offence has been committed and police report under section 173 of CrPC or complaint under section 36(1) of NDPS Act or complaint under other relevant Act has been filed in the court of law.

Pre-requisites for taking action under PMLA

- ✓ Consequent to the amendment, Search of premises and seizure of records/ property involved in money laundering in terms of Sec.17 of the Act can be done just after filing of the FIR and forwarding of report under Section 157 of CrPc to the Magistrate.
- ✓ Such search /seizure operations under section 17 of PMLA can be made after filing of complaint before a court by other law enforcing agencies (other than police officers) in respect of the Scheduled Offences.



AUTHORITIES : FIU-IND

- Financial Intelligence Unit (FIU) , India, FIU-IND has been entrusted with the responsibilities of securing compliance with the requirements of reporting of financial transactions by the Banking companies, financial institutions and intermediaries and to levy penalties for non compliance.



AUTHORITIES : ENFORCEMENT DIRECTORATE

- Directorate of Enforcement is entrusted with the duties and responsibilities with regard to investigation, attachment of property/ proceeds of crimes relating to scheduled offences and filing of complains before the Special Courts etc., under the PMLA



Authorities under PMLA (Contd)

- Adjudicating Authority : New Delhi Bench of the Adjudicating Authority has jurisdiction, powers and authority under the PMLA all over India.
- Appellate Tribunal : The Central Government has established an Appellate Tribunal at New Delhi to hear appeals against the orders of the Adjudicating Authority and the Authorities under the PMLA.



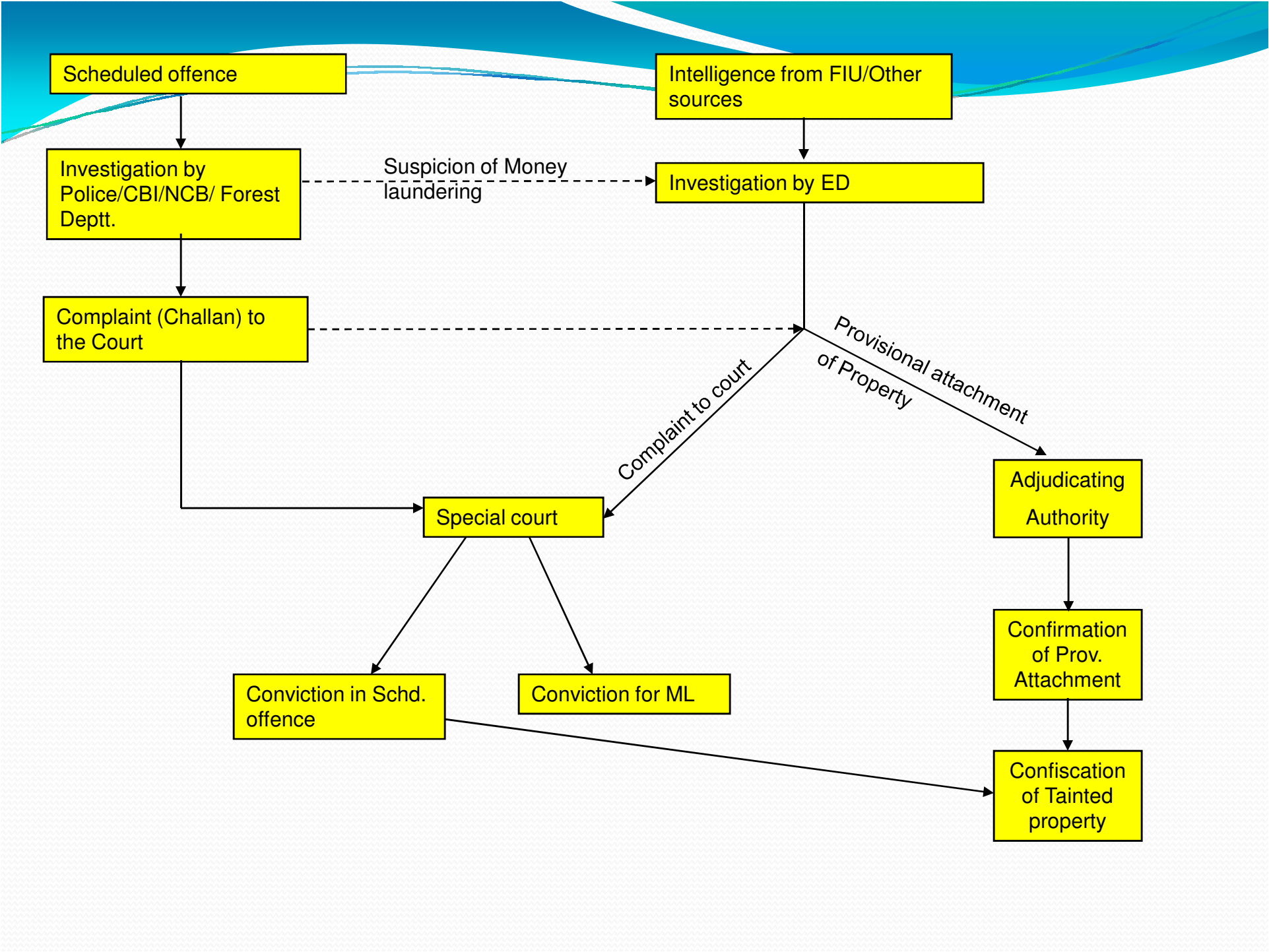
Authorities under PMLA (Contd)

- Special Court: The Central Government has designated the Court (s) of Sessions as Special Court(s) for the specified areas, for trial of offences punishable under section 4 of the PMLA.
- In Greater Mumbai, the Court of the Principal Judge of the Sessions Court has been designated as the Special Court
- In other Judicial Districts, the Court of Principal District and Sessions Judge has been designated as the Special Court



28 Authorities under PMLA (Contd)

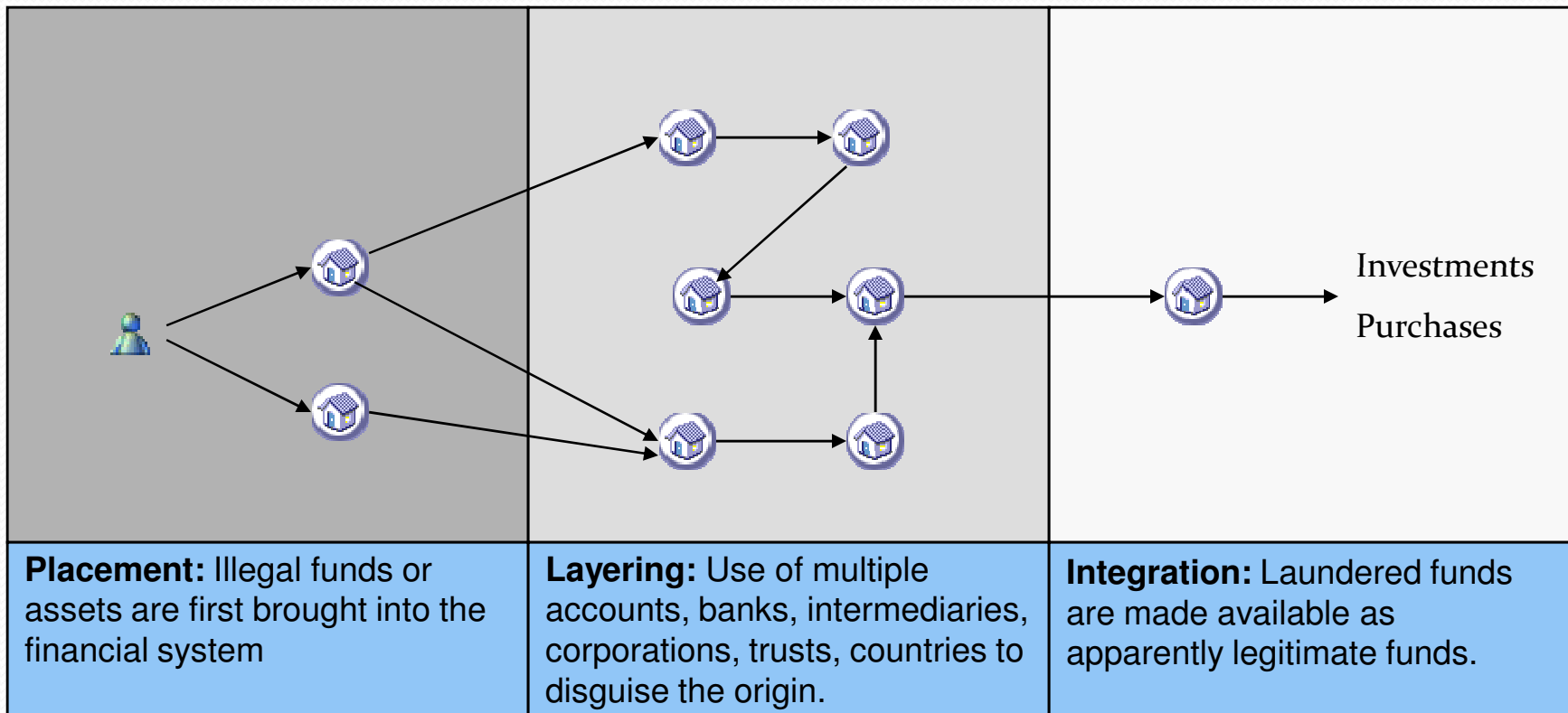
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What is Money Laundering ?



Money Laundering is the process by which illegal funds and assets are converted into legitimate funds and assets.



Important: *All money laundering transactions need not go through this three-stage process.*



Key Concepts

- Beneficial Ownership
- Designated business or profession
- Reporting Entity
- Suspicious Transaction
- Offence of cross border Implications



Beneficial Ownership

‘(fa) “beneficial owner” means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;



Identifying the Beneficial Owner

- To identify the de facto control over a corporate vehicle—and not a purely legal definition.
- To be effective and meaningful, beneficial ownership must not be reduced to a legally defined position, such as a director of a company or foundation or a trust or shareholder who owns more than a certain percentage of shares or legal entitlement/benefit of a trust.
- Focus on the control exercised and the benefit derived

Designated business or profession

- ‘(sa) “person 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;



Reporting Entity

Concept of 'reporting entity' to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession



Suspicious Transaction

Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith –

- gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or
- appears to be made in circumstances of unusual or unjustified complexity; or
- appears to have no economic rationale or bona fide purpose; or
- gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

Offence of cross border implications

2(ra) “offence of cross border implications”, means –

- (i) 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, Part B or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or
- (ii) any offence specified in Part A, Part B 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.



Methods of Money laundering

- Receipt of large number of Gift Cheques into the accounts of associates of the Crime Syndicate. This Money was used to purchase property.
- Receipt of Cheques from a large number of people who lent their names/bank accounts to convert cash. This money was directly deposited into the account of the Construction Companies.

Out of Book Transactions

- Most widely adopted methods of tax evasion and generation of black money;
- Concealment of receipts or income are from the books of account by the taxpayer;
- Maintaining two sets or records;
- Avoiding complete disclosure of receipts and income.
- Prevalent among the small shops, unskilled or semi-skilled service providers, etc.

Parallel Books of Accounts

- Intended to evade reporting activities or the income, resort to maintaining two sets of books of account – one for their own use and the other one for the regulatory and tax authorities
- The second set of books of account for the purpose of satisfying the legal and regulatory obligations of reporting to authorities,
- Accounts manipulated by omitting receipts or falsely inflating expenses, for the purpose of evading taxes or other regulatory requirements.
- Used by those who are obliged under the law or due to business needs to maintain books of account.



Manipulative Accounting

- **Manipulation of Books of Account/Sales/Receipts**
- Use of a dummy / associated entity
- **Manipulation of Expenses**
- **Manipulation by Way of International Transactions through Associate Enterprises**
- **Manipulation of Capital**
- **Manipulation of Capital Expenses**



TRADE BASED MONEY LAUNDERING



Definition of TBML

The term *trade-based money laundering and terrorist financing (TBML/FT)* refers to the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illegal origins or finance their activities.



IMPORTANCE OF TBML STUDY

- TBML study is important to understand misuse of the trade system as one of the main methods by which criminal organisations and terrorist financiers move money for the purpose of disguising its origins and integrating it into the formal economy.
- To improve the ability of competent authorities to collect and effectively utilise trade data, both domestically and internationally, for the purpose of detecting in a risk-based manner and investigating money laundering and terrorist financing through the trade system.



BASIC TBML SCHEMES

- Fraudulent trade practices such as:
 - over- and under-invoicing of goods and services,
 - multiple invoicing of goods and services,
 - over- and under-shipments of goods and services,
 - falsely describing goods and services.
- More complicated schemes integrate these fraudulent practices into a complex web of transactions and movements of goods.



Red Flags relating to Financial & Banking Products



Use of Letter of Credit

- Use of **letters of credit** to move money between those countries, where such trade would not normally occur and / or is **not consistent with the customer's usual business activity**.
- A Letter of credit is generally resorted to so as to accord more legitimacy to the transaction in order to conceal the real facts



Method of Payment

The **method of payment** requested by the client appears **inconsistent with the risk characteristics of the transaction**. For example receipt of an advance payment, for a shipment, from a new seller in a high-risk jurisdiction



Third Party Payments

The transaction involves the receipt of cash (or by other payment methods) **from third party entities** that have no apparent connection with the transaction or which involve front or shell companies or wire instructions / payment from parties which were not identified in the original letter of credit or other documentation. The transactions that involve payments for goods through cheques, bank drafts, or money orders not drawn on the account of the entity that purchased the items also need further verification.



Amendments to LCs

The transaction involves the use of repeatedly **amended or frequently extended letters of credit** without reasonable justification or that includes changes in regard to the beneficiary or location of payment without any apparent reason.



Unusual Deposits

- **Unusual deposits** i.e. use of cash or negotiable instruments (such as traveller's cheques, cashier's cheques and money orders) in **round denominations** (to keep below reporting threshold limit) to fund bank accounts and to pay for goods and services.
- The negotiable instruments may be sequentially numbered or purchased at multiple locations and may frequently lack payee information.
- Further, cash payments for high-value orders are also indication of TBML activity.



Multiple Account Payments

Inward remittances in **multiple accounts** and payments made from multiple accounts for trade transaction of same business entity are indicators for TBML.

In this regard the study of foreign exchange remittances may help detect the offence.

Shipment of Goods Inconsistent With Normal Geographic Trade

Transaction involves **shipment of goods inconsistent with normal geographic trade patterns** of the jurisdiction i.e. trade in goods other than goods which are normally exported/ imported by a jurisdiction or which does not make any economic sense e.g. Semi-conductor manufacturing equipment being shipped to a jurisdiction that has no electronics industry.



Circuitous route of shipment

Circuitous route of shipment and/or circuitous route of financial transaction or Order for the goods is placed by firms or individuals from foreign countries other than the jurisdiction of the stated end-user.



RED FLAGS WITH REGARD TO JURISDICTIONS

- a) The commodity is shipped to or from a jurisdiction designated as '**high risk**' for ML activities or sensitive / non co-operative jurisdictions.
- b) The commodity is **transhipped** through one or more such high risk / sensitive jurisdictions for no apparent economic reason.
- c) Presence of **Free Trade Zones / Special Economic Zones** also affects the sensitiveness of a jurisdiction.

RED FLAGS WITH REGARD TO GOODS

- Significant discrepancies between the **description, quality and quantity** of the goods on the documents such as bills of lading, invoices etc and the actual goods shipped.
- The misrepresentation in relation to or type / grade of goods.
For example, a relatively inexpensive good invoiced as being more expensive, of different quality or even as an entirely different item so the documentation does not accurately record what is actually supplied. Cheap cloth items / waste thereof are declared as premium quality garments to launder the criminal money.
- Significant discrepancies between the **value** of the commodity reported on the invoice and the commodity's fair market value.
This is done either in conjunction with mis-declaration of the description / quality / grade of goods or without it. This is also often associated with mis-declaration of the jurisdiction of origin.

Inconsistent Consignment size or Quantity

Consignment size or type of commodity being shipped appears inconsistent with the scale or capacity of the exporter or importer having regard to their regular business activities or the shipment does not make economic sense i.e. there is no reasonable explanation for the client's financial investment into the shipment.



RED FLAGS WITH REGARD TO CORPORATE STRUCTURES

- Use of **shell companies**
- Use of **front companies**
- **Sole proprietorship businesses/private limited companies** set up by proxies.
- Related party transactions



THANKS