

# **Prevention of Money Laundering Act (PMLA), 2002 and The Benami Transactions (Prohibition) Amendment Act, 2016 in India**

## **A. Prevention of Money Laundering Act (PMLA), 2002**

### **1. Introduction on the PMLA**

- (i) Definition of PMLA is given under section 3 of the PMLA, 2002 where any activity of Money Laundering is involved for the purpose of converting 'Non legitimize' money into 'legitimize' money which is earned through committing a 'schedule offence' by a person.
- (ii) **3 mandatory conditions for applying PMLA, 2002 are to be satisfied.**
  - (a) Schedule offence should be committed
  - (b) And money should be earned through committing schedule offence
  - (c) And also money earned through committing schedule offence should be converted into legitimize money through Money Laundering
  - **Hence these 3 mandatory conditions should be 'together' satisfied for applicability of the PMLA, 2002**
- (iii) **Burden of the proof**
  - Burden of the proof that a schedule offence has 'actually happened' is on the Enforcement Directorate (ED) who is investigating the case under the PMLA, 2002.
- (iv) **History of the PMLA, 2002**
  - (a) PMLA, 2002 was passed in year 2002
  - (b) PMLA, 2002 is applicable from 01<sup>st</sup> July, 2005.
  - (c) PMLA, 2002 was first amended w.e.f 01<sup>st</sup> June, 2009

- (d) PMLA, 2002 was second amended w.e.f 15<sup>th</sup> Feb, 2013.
- (e) PMLA, 2002 was further amended through Finance Act, 2015 w.e.f 14<sup>th</sup> May, 2015.
- (f) PMLA, 2002 was further amended through Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 w.e.f 01<sup>st</sup> July, 2015.
- (g) PMLA, 2002 was further amended through Finance Act, 2016 w.e.f 01<sup>st</sup> June, 2016.
- (h) PMLA, 2002 was further amended through Finance Act, 2018 w.e.f 19<sup>th</sup> April, 2018.
- (i) PMLA, 2002 was further amended through The Prevention of Corruption (Amendment) Act, 2018 w.e.f 26<sup>th</sup> July, 2018.
- (j) PMLA, 2002 was further amended through Finance Act (No. 1), 2019 w.e.f 20<sup>th</sup> March, 2019
- (k) PMLA, 2002 was further amended through The Aadhar and other laws (Amendment) Act, 2019 w.e.f 25<sup>th</sup> July, 2019
- (l) PMLA, 2002 was further amended through Finance Act (No.2), 2019 w.e.f 01<sup>st</sup> August, 2019

**(v) Corporate Frauds**

Now list of schedule offences is also to include 'Corporate frauds' as defined under section 447 of the Companies Act, 2013.

**(vi) Arrest without warrant and FIR**

Now all PMLA offences are to be treated as cognizable and non-bailable. Hence ED is permitted to arrest 'without' any warrant.

**(vii) Time limit for retention of records or property seized during search and seizure**

- The property or record can be seized and retained for the period not exceeding 180 days (under sections 20 and 21)

**(viii) Power of the Central Govt.**

Now Central Govt. is permitted to set up an Inter-Ministerial Coordination Committee for inter-departmental and inter-agency coordination for operational and policy level cooperation, for consultation on anti-money laundering and counter-terror funding initiatives

- PMLA, 2002 is applicable on whole of India 'including' Jammu and Kashmir from 01<sup>st</sup> July, 2005

**2. List of the activities for Money Laundering includes 'anyone' of the followings:-**

- (i) Concealment or
- (ii) Possession or
- (iii) Acquisition or
- (iv) Use or
- (v) Projecting as untainted property or
- (vi) Claiming as untainted in 'any other' manner

**3. Role of Enforcement Directorate (ED) and Financial Intelligence Unit - India (FIU-IND)**

**(i) Role of the ED**

The Enforcement Directorate in the Department of Revenue, Ministry of Finance is authorized for investigating the cases of a committing offence of money laundering under the PMLA, 2002.

**(ii) Role of the FIU-IND**

Financial Intelligence Unit - India (FIU-IND) under the Department of Revenue, Ministry of Finance is the central national agency and authorized for receiving, processing, analyzing and disseminating information relating to suspect financial transactions to enforcement agencies in India and to the 'foreign' FIUs.

#### **4. PMLA 'outside' India**

- (i) The Financial Action Task Force (FATF) on Money Laundering was established by the G-7 Summit in Paris in 1989 to develop a coordinated international response.
- (ii) One of the first tasks of the FATF was to develop recommendations to set out the measures for the national governments to be implemented for effective anti-money laundering programmes. India is an active member of the FATF.
- (iii) Every country outside India and a member of FATF is having separate Prevention of Money Laundering Act (PMLA) like 'similar' to Indian PMLA, 2002.

#### **5. List of the 'schedule offences' under the following 29 acts:-**

- (i) **Indian Penal Code (IPC) 1860**
- (ii) NDPS Act, 1985
- (iii) The Explosive Substance Act, 1908
- (iv) Unlawful Activities (Prevention) Act, 1967
- (v) The Arms Act, 1959
- (vi) The Wildlife (Protection) Act, 1972
- (vii) The Immoral Traffic (Prevention) Act, 1956
- (viii) Prevention of Corruption Act, 1988
- (ix) The Explosive Act, 1884
- (x) The Antiquities and Arts Treasures Act, 1972
- (xi) SEBI Act, 1992
- (xii) The Custom Act, 1962
- (xiii) The Bonded Labor System (Abolition) Act, 1976
- (xiv) The Child Labor (Prohibition and Regulation) Act, 1986
- (xv) The Transplantation of Human Organs Act, 1994
- (xvi) The Juvenile Justice (Care and Protection of Children) Act, 2000
- (xvii) The Emigration Act, 1983

- (xviii) The Passports Act, 1967
- (xix) The Foreigners Act, 1946
- (xx) The Copyright Act, 1957
- (xxi) The Trade Marks Act, 1999
- (xxii) The Information Technology Act, 2000
- (xxiii) The Biological Diversity Act, 2002
- (xxiv) The Protection of Plant Varieties and Farmers' Rights Act, 2001
- (xxv) The Environment Protection Act, 1986
- (xxvi) The Water (Prevention and Control of Pollution) Act, 1974
- (xxvii) The Air (Prevention and Control of Pollution) Act, 1981
- (xxviii) The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002
- (xxix) **Companies Act, 2013 for corporate frauds 'only'**

**6. List of 'other agencies' other than ED for investigating the 'Scheduled Offences'**

- (i) Police
- (ii) Customs
- (iii) SEBI
- (iv) NCB
- (v) CBI
- (vi) 'Etc'.

**7. Powers of officers of ED for investigating the case of Money Laundering under the PMLA, 2002**

- (i) To provisionally attach any property derived or obtained as directly or indirectly by any person as a result of criminal activity relating to a scheduled offence (under section 5)
- (ii) To conduct survey of a place (under section 16)
- (iii) To conduct search of building, place, vessel, vehicle or aircraft and seize/freeze records and property (under section 17)

- (iv) To conduct personal search (under section 18)
- (v) To arrest a person as accused of committing the offence of Money Laundering (under section 19)
- (vi) To summon and record the statements of the persons (under section 50)

**8. Term of the 'Property' under the PMLA, 2002.**  
(Under section 2(1)(v))

- Term 'Property' to include the following descriptions:-

- (i) Corporeal or incorporeal
- (ii) Movable or immovable
- (iii) Tangible or intangible
- (iv) Deeds and instruments as documentary proof for the titles
- (v) Interest in any property or asset as located in India and 'Outside' India

**9. Term of the 'Person' includes the followings:-**  
(Under section 2(1)(s))

- (i) An individual
- (ii) A Hindu undivided family (HUF)
- (iii) A company
- (iv) A firm
- (v) An association of persons (AOP) or body of individuals (BOI) incorporated and non incorporated both.
- (vi) Any other Artificial juridical person 'not' already covered under Para 'a to e' as above
- (vii) Any agency office or branch owned or controlled by any of the above persons under Para 'a to f' as above
- (viii) Any 'other' legal entity

## **10. Power to arrest under the PMLA, 2002 by the Authorize officer** (Under section 19)

- Followings features are needed for initiating the arrest by the ED:-
  - (i) Specific material for the schedule offence should be in possession
  - (ii) Reason to believe should be existed
  - (iii) Grounds for arrest is to be communicated to the person to be arrested
  - (iv) Adjudicating authority is to be intimated

## **11. Prosecution and Penalties under the PMLA, 2002**

- (i) **Role of the Income Tax (IT) Department under the Income Tax Act, 1961**
  - (a) **Now** the IT Department has filed several cases for prosecution against the alleged offender caught for money laundering through evading of Income tax under the Income Tax Act, 1961.
  - (b) Imprisonment a maximum period of 7 years is permitted for Money Laundering through evading of Income tax 'additionally' to the different penalties and penal interest under the Income Tax Act, 1961.
  - (c) **Now** the IT department is 'reporting' many cases to the ED on alleged ground of Money Laundering for investigation for applicability of PMLA, 2002 **beside the Income Tax cases are time barred for issuing notice under section 148 of the Income Tax Act, 1961 after expiry of 10 Assessment years** (where the escaped income is likely to be exceed 50 lacs per assessment year)
  - (d) **Now** the IT department is using the latest digital techniques like Artificial Intelligence (AI) data mining and data analyzing etc. for finding the cases of Money Laundering. Hence IT department, others revenue departments and Investigation department of the Ministry of Finance are extra vigilant for finding Money Laundering cases and reporting to ED for investigation under the PMLA, 2002.
- (ii) **Punishment under the PMLA, 2002**
  - Imprisonment for a minimum period of 3 years and maximum 7 years and along with liable to fine also

(iii) **Punishment to the 'Govt. officer' for vexatious (illegal) search**  
(Under section 62)

(a) A officer is liable for punishment for exercising the powers as available under the PMLA, 2002 'without' recording the reasons. Hence the officer is liable for punishment for exercising the following powers 'without' recording the reasons.

(aa) Searches or causes to be searches any building or place or

(ab) Detain or search or arrest any person

(b) The officer is liable for imprisonment for a maximum period of 2 years or fine a maximum of Rs. 50 thousand or both.

(iv) **Punishment for false information or failure to give information etc.**  
(Under section 63)

Imprisonment a maximum period of 2 years and maximum fine Rs. 50 thousand or both for willfully and maliciously giving false information.

(v) **Designated Special Courts for punishment under the PMLA, 2002**  
(Under section 43)

The Central Government, in consultation with the Chief Justice of the High Court is permitted to designate one or more Courts as special court or special courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

## **12. Conclusion**

(i) Money Laundering is involved for the purpose of converting 'Non legitimize' money into 'legitimize' money which is earned through committing a 'schedule offence'.

(ii) **3 mandatory conditions are to be satisfied for applying PMLA, 2002**

(a) Schedule offence should be committed (b) And money should be earned through committing schedule offence (c) And also money earned through committing schedule offence should be converted into legitimize money through Money Laundering



- (iii) Burden of the proof that a schedule offence has 'actually happened' is on the Enforcement Directorate (ED) who is investigating the case under the PMLA, 2002.
- (iv) **Now** the IT department is 'reporting' many cases to the ED on alleged ground of Money Laundering for investigation under the PMLA, 2002 treating as a 'schedule offence' under head **The Indian Penal Code (IPC) 1860**.
- (v) **Penalties and Prosecutions on the offender under the PMLA, 2002**
  - (a) '100% confiscation' of the property as involved under the PMLA, 2002
  - (b) And 'Imprisonment' minimum period 3 years and maximum 7 years for the committing offence under the PMLA, 2002
  - (c) And 'Imprisonment' a maximum period of 2 years and maximum fine Rs. 50 thousand or both for willfully and maliciously giving false information(s).
- (vi) **Punishment to the 'Govt. officer' for vexatious (illegal) search under the PMLA, 2002**

The officer is liable for imprisonment for a maximum period of 2 years or fine a maximum of Rs. 50 thousand or both for vexatious (illegal) search

## **B. The Benami Transactions (Prohibition) Amendment Act, 2016**

### **1. Introduction on the Benamidar Act, 2016**

(i) (a) This Act empowers the authorities for 'provisional attachment' (Confiscation) of the Benami properties.

(b) Provisional attachment is to prohibit the transfer, conversion, or disposition of the Benami properties.

### **2. Term of the 'Benami Transactions' includes the followings:-**

(i) A transaction or arrangement as made by a 'real beneficiary' (actual owner) by way of using the name of 'another person' instead of using his own name.

(ii) A transaction or arrangement as made by a real beneficiary by way of using name of a 'fictitious person' instead of using his own name.

(iii) A transaction or arrangement as made by a real beneficiary by way of using name of 'another person' where another person is 'not aware about knowledge of his ownership'.

(iv) A transaction or arrangement as made by a real beneficiary by way of using name of 'another person' where the 'real beneficiary is not traceable'.

(v) A transaction or arrangement as made by a real beneficiary by way of using any right, interest, legal document or instrument as evidencing an interest in a property where the 'title' is in the name of 'another person' instead of using his own name.

(vi) **However Benamidar is not permitted to 're-transfer' the benami property to the real beneficiary. Any such transaction if undertaken will be treated as invalid under the Benami Act, 2016.**

### **3. History of the Benami Act, 2016**

(i) The Benami Transactions (Prohibition) Act, 1988 ('Old Act') was introduced to prohibit benami transactions and to recover the property held as benami.

(ii) The 'Old Act' contained 8 sections only. Moreover the rules, regulations and procedures for the implementation of the law could not be framed. Hence old Act became ineffective.

(iii) The Benami Transactions (Prohibition) Amendment Act, 2016 ("the Act") was enacted in July 2016 with 72 sections along with the rules, regulations and procedures for the implementation of the law. This Act is applicable from November 01, 2016.

**4. The 'Exempted properties' under the Benami Act, 2016**

(i) A property as held by the karta or by a member of Hindu Undivided Family (HUF) on behalf of the HUF

(ii) A property as held by a person as trustee, partner, director or depository in a fiduciary capacity on behalf of the trustee/partner/ director/ depository.

(iii) A property as held by a person in the name of his spouse or children.

(iv) A property as 'jointly' held by a person with his lineal ascendant, lineal descendant, brother or sister where the ' actual share of consideration' is also paid by lineal ascendant/descendant/brother/sister from his 'own sources'.

**5. Power of the Govt. Authorities**

(i) Discovery and inspection

(ii) Authority to instruct to produce the books of accounts

(iii) Receiving evidence on the affidavit

(iv) Provisional attachment of the benami properties

**6. Term 'Property' to include the following descriptions:-**

(i) A movable or immovable property

(ii) A Tangible or intangible property

(iii) A Corporeal or incorporeal property

(iv) Any right, interest, legal document or instrument for the evidence an interest in a property.

## 7. **Punishment under the Benami Act, 2016**

- (i) '100% confiscation' of the property as involved under the Benami Act, 2016
- (ii) And 'Imprisonment' for a minimum period of 1 year and maximum 7 years for the committing offence under the Benami Act, 2016
- (iii) And 'Additional fine' maximum 25% of the 'fair market value' of the property for the committing offence under the Benami Act, 2016
- (iv) Henceforth maximum penalty is 125% as 100% confiscation of Benami property plus 'additional fine' maximum 25% of the 'fair market value' of the property for the committing offence under the Benami Act, 2016
- (v) (a) And 'Imprisonment' minimum period of 6 months and maximum 5 years for 'not' providing or providing the false information(s)  
(b) And Additional fine a maximum 10% of the fair market value of the property for 'not' providing or providing the false information(s)
- (vi) Imprisonment and penalties are applicable on the real beneficiary (actual owner) and Benamidar 'both'.

## 8 **Role of the Income Tax (IT) Department under the Income Tax Act, 1961**

- (i) **Now** the IT department is 'reporting' many cases for investigation for applicability of Benami Act, 2016 **beside the Income Tax cases are time barred for issuing notice under section 148 of the Income Tax Act, 1961 after expiry of 10 Assessment years** (where the escaped income is likely to be exceed 50 lacs per assessment year).
- (ii) Generally IT department is scrutinizing the involvement of escaped income under section 147 of the Income Tax Act, 1961 for the purpose of assessing Income tax liability along with the penalties, penal interest and prosecution where alleged applicability of the Benami Act, 2016 is existed.
- (iii) **Now** the IT department is using the latest digital techniques like Artificial Intelligence (AI) data mining and data analyzing etc. for finding the cases of Benami transactions. Hence IT department, others revenue departments and Investigation department of the Ministry of Finance are extra vigilant

for finding Benami transactions cases and reporting for investigation under the Benami Act, 2016.

## **9. Conclusion**

- (i) This Act empowers the authorities for 'provisional attachment' (Confiscation) of the Benami properties to prohibit the transfer, conversion, or disposition of the Benami properties.
- (ii) The Benami transaction to include a transaction or arrangement as made by a 'real beneficiary' (actual owner) by way of using the name of 'another person' instead of using his own name.
- (iii) 'Exempted properties' under the Benami Act, 2016 as held by the karta or by a member of Hindu Undivided Family (HUF) on behalf of the HUF or by a trustee, partner, director or depository in a fiduciary capacity on behalf of the trustee/partner/ director/ depository and in the name of spouse or children.
- (iv) Benamidar is not permitted to 're-transfer' the benami property to the real beneficiary. Any such transaction if undertaken will be treated as invalid under the Benami Act, 2016.

### **(v) Punishment under the Benami Act, 2016**

100% confiscation of the Benami properties, Imprisonment for a minimum period of 1 year and maximum 7 years and 25% 'additional fine' for committing offence under the Benami Act, 2016, imprisonment and additional fine for 'not' providing or providing the false information's. The detailed matter is available under preceding head as Para No. 7. Imprisonment and penalties are applicable on the real beneficiary (actual owner) and Benamidar 'both'.

- (vi) Generally IT department is scrutinizing the involvement of escaped income under section 147 of the Income Tax Act, 1961 where alleged applicability of the Benami Act, 2016 is existed.

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