



My Dear Friend

***I am presenting Thursday Article on Money Laundering Activities
in India + outside India (both)***

- 1. Any kind of Money Laundering activity by resident of India is not permitted in India + outside India (both)***
- 2. It's humbly suggested to resident of India to stop any kind of Money Laundering activity in India + outside India (both)***
- 3. I trust that you will be enriched by reading this article***

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● With best wishes from CA Satish Agarwal, New Delhi ●



Money Laundering Activities in India + outside India (both)

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Money Laundering Activities in India + outside India (both) Under Prevention of Money Laundering Act (PMLA) 2002 in India

1. Definition of PMLA, 2002 in India

- *Definition of PMLA under section 3 of PMLA, 2002 is including the alleged activity of Money Laundering for converting the Non legitimize money into legitimize money as earned through schedule offence.*

2. Mandatory 3 conditions for applicability of PMLA, 2002 in India

(i) Where Schedule offence is already committed

+

(ii) Where Non legitimize money is already earned through alleged schedule offence

+

(iii) Where Non- legitimize money is already earned through alleged schedule offence + already converted into legitimize money through Money laundering.

- *Hence 3 mandatory conditions be satisfied for applicability of PMLA.*

3. Burden of proof against application of PMLA, 2002 in India

- *Burden of proof is on Enforcement Directorate (ED) that money laundering activity already committed. Hence burden of proof is on ED as natural justice under constitution of India*

4. History of PMLA, 2002 in India

(i) PMLA is passed in 2002



- (ii) *PMLA is applicable on whole of India including Jammu and Kashmir from July, 01st 2005*
- (iii) *PMLA is 1st time amended from June, 01st 2009*
- (iv) *PMLA is 2nd time amended from Feb, 15th 2013.*
- (v) *PMLA is 3rd time amended through Finance Act, 2015 from May 14th, 2015.*
- (vi) *PMLA is 4th time amended through Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 from July, 01st 2015.*
- (vii) *PMLA is 5th time amended through Finance Act, 2016 from June, 01st 2016.*
- (viii) *PMLA is 6th time amended through Finance Act, 2018 from April, 19th 2018.*
- (ix) *PMLA is 7th time amended through Prevention of Corruption (Amendment) Act, 2018 from July, 26th 2018.*
- (x) *PMLA is 8th time amended through Finance Act (No. 1), 2019 from March, 20th 2019*
- (xi) *PMLA is 9th time amended through Aadhar and other laws (Amendment) Act, 2019 from July, 25th 2019*
- (xii) *PMLA is 10th time amended through Finance Act (No.2), 2019 from August, 01st 2019*

5. Corporate Frauds (Section 447 of Companies Act, 2013) in India

- *List of 29 schedule offences under PMLA, 2002 is including the Corporate Frauds as defined under section 447 of Companies Act, 2013.*

6. Arrest under PMLA without issue of warrant + filling of FIR (both) in India

- (i) *100% PMLA scheduled offences to be treated as cognizable + non-bailable (both).*
- (ii) *Hence authorized officer of ED is permitted to arrest without issue of warrant + filling of FIR (both).*



7. Time limit for retention of records + properties (Section 20 and 21) in India

- *Time limit for retention of records + properties) (both) not exceeding the 180 day from date of retention*

8. Power of Central Govt. in India

- *Central Govt. is permitted to set up Inter-Ministerial Coordination Committee for inter-departmental + inter-agency coordination for operational + policy level cooperation for consultation on anti-money laundering + terror funding activities (both).*

9. List of activities under PMLA, 2002 in India

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

10. Role of ED + Financial Intelligence Unit - India (FIU-IND) both

- (i) Role of ED*
 - *ED in Department of Revenue, Ministry of Finance is authorized for investigation the cases against already committed alleged money laundering through scheduled offences.*
- (ii) Role of FIU-IND*
 - *FIU-IND under Department of Revenue, Ministry of Finance is central nodal agency + authorized (both) for receiving + processing + analyzing +*



disseminating (all) information's relating to alleged money laundering + to inform ED.

11. PMLA Outside India

- (i) Financial Action Task Force (FATF) on Money Laundering is established through G-7 Summit as held at Paris in 1989 for developing a coordinating an international agency.*
- (ii) (a) 1st tasks of FATF to develop the recommendations for setting the measures for countries + territories (both) for effective anti-money laundering measures.*
 - (b) India is member of FATF.*
- (iii) Member of FATF is required to have separate PMLA similar to PMLA in India.*

12. List of 29 scheduled offences under PMLA, 2002 in India

- (i) Under Companies Act, 2013 for Corporate frauds (Section 447)*
- (ii) Under Suppression of Unlawful Acts for Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002*
- (iii) Under Biological Diversity Act, 2002*
- (iv) Under Protection of Plant Varieties and Farmers' Rights Act, 2001*
- (v) Under Information Technology Act, 2000*
- (vi) Under Juvenile Justice (Care and Protection of Children) Act, 2000*
- (vii) Under Trade Marks Act, 1999*
- (viii) Under Transplantation of Human Organs Act, 1994*
- (ix) Under SEBI Act, 1992*
- (x) Under Prevention of Corruption Act, 1988*
- (xi) Under Child Labor (Prohibition and Regulation) Act, 1986*
- (xii) Under Environment Protection Act, 1986*



- (xiii) *Under NDPS Act, 1985*
- (xiv) *Under Emigration Act, 1983*
- (xv) *Under Air (Prevention and Control of Pollution) Act, 1981*
- (xvi) *Under Bonded Labor System (Abolition) Act, 1976*
- (xvii) *Under Water (Prevention and Control of Pollution) Act, 1974*
- (xviii) *Under Wildlife (Protection) Act, 1972*
- (xix) *Under Antiquities and Arts Treasures Act, 1972*
- (xx) *Under Passports Act, 1967*
- (xxi) *Under Unlawful Activities (Prevention) Act, 1967*
- (xxii) *Under Custom Act, 1962*
- (xxiii) *Under Arms Act, 1959*
- (xxiv) *Under Copyright Act, 1957*
- (xxv) *Under Immoral Traffic (Prevention) Act, 1956*
- (xxvi) *Under Foreigners Act, 1946*
- (xxvii) *Under Explosive Substance Act, 1908*
- (xxviii) *Under Explosive Act, 1884*
- (xxix) *Under Indian Penal Code (IPC) 1860*

13. List of Investigation agencies for scheduled offence in India

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



14. Powers of officers of ED under investigation in India

- (i) To provisionally attach the properties as derived + obtained directly or indirectly through alleged money laundering (section 5)*
- (ii) To conduct a survey of place (section 16)*
- (iii) To conduct a search of buildings + places + vessels + vehicles + aircrafts and seize the records + properties (section 17)*
- (iv) To conduct the personal search (section 18)*
- (v) To arrest the person as accused for alleged money laundering (section 19)*
- (vi) To issue a summon + to record the statements of person (section 50)*

15. List of Properties (Section 2(1)(v)) in India

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

16. List of Persons (Section 2(1)(s)) in India

- (i) Individual*
- (ii) Hindu undivided family (HUF)*
- (iii) Domestic (Indian) Company*
- (iv) Domestic (Indian) Partnership Firm + LLP (both)*
- (v) Association of persons (AOP) + body of individuals (BOI) incorporated + non-incorporated (both).*
- (vi) Other artificial juridical person not already covered under Para i to v as abovementioned.*



(vii) Agency office + branch office (both) owned + controlled by persons under Para i to vi as abovementioned.

(viii) Other legal entity (if any).

17. Duties of Authorized officer of ED to arrest person (Section 19) in India

(i) Authorized officer is required to have in possession a specific material for already alleged committed money laundering

+

(ii) Authorized officer is required to have the reason to believe

+

(iii) Authorized officer is required to communicate the grounds for arrest to person to be arrested

+

(iv) Authorized officer is required to intimate to adjudicating authority under PMLA.

18. Imprisonment + Fine (both) under PMLA, 2002 in India

(i) Role of Income Tax (IT) Department under Income Tax Act, 1961

(a) Now IT Department is forwarding the thousands cases to ED for investigation against alleged money laundering where incomes are evaded by taxpayer.

(b) Imprisonment + fine to be levied by Income tax department for evasion of income over and above the imprisonment + fine (both) for money laundering separately on same financial transaction.

(c) Now IT department is forwarding the thousands cases to ED for investigation against alleged money laundering where Income tax cases are time barred for issuing of notice under section 148A of Income Tax Act, 1961 after expiry of 10 Assessment years against likely escaped incomes exceeding 50 lac per assessment year.



(d) (a) *Now IT department + other offices under revenue department of Ministry of Finance are forwarding the thousands cases to ED for investigation against alleged money laundering through using the latest digital techniques like Artificial Intelligence (AI) data mining + data analyzing + etc. for finding the Money Laundering under PMLA, 2002.*

(b) *Hence IT department + other offices under revenue department of Ministry of Finance are extra vigilant for finding Money Laundering cases + forwarding to ED for investigation under PMLA, 2002*

(ii) *Imprisonment + Fine (both) for Money laundering*

- *Imprisonment + Fine (both) to be levied by special courts as specifically constituted for money laundering for minimum 3 year and maximum 7 year + fine INR 5 Lac*

(iii) *Imprisonment + Fine (both) for vexatious (illegal) search by authorized officer of ED office (Section 62)*

(a) *Authorized officer of ED office is liable for punishment + fine (both) for exercising the powers as available under PMLA without recording the reasons for search like :-*

- *Search and seizure of building + place*
- *Detain + search + arrest (any)*

(b) *Authorized officer is liable for imprisonment for maximum 2 year or maximum fine INR 50 thousand or both.*

(iv) *Imprisonment for false informations + failure to give information + etc. to ED office (Section 63)*



- *Imprisonment is permitted for maximum 2 year + maximum fine INR 50 thousand or both for willfully + maliciously giving false informations.*
- (v) *Designated Special Courts for punishment under PMLA (Section 43)*
- *Central Government in consultation with Chief Justice of High Court is permitted to designate 1 or more special Court for area + case + class + group of cases as may be specified in notification as issued by central govt.*



Published By



CA. Satish Agarwal

B.com (Hons) FCA

Practicing Chartered Accountant Since 1985

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femainindia.com

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