

Meridien Business Consultants Pvt. Ltd

**A practical guide to reporting and maintenance of information as specified
by the Prevention of Money Laundering Act, 2002**



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1.0 INTRODUCTION

The word “laundering” is used for cleaning dirty clothes. Money Laundering refers to the conversion or “Laundering” of money which is illegally obtained, in order to make it appear to originate from a legitimate source. Thus it is a process by which proceeds from illegal activities are disguised in order to conceal their illicit origin. Money Laundering is being employed by launderers worldwide to conceal criminal activity associated with it such as drug / arms trafficking, terrorism and extortion.

While there are several definitions for Money laundering, one that is commonly used is the definition by FATF. **The 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.”

Earlier the term Money laundering was applied only to financial transactions involving organized crime. However, this is now being expanded to encompass any financial transaction which

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generates an asset or a value as the result of an illegal act, which may involve actions such as tax evasion or false accounting.

Section 3 of the Prevention of Money Laundering Act, 2002 defines offence of money laundering as under:

“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 and projecting it as untainted property shall be guilty of offence of money laundering.”

The United Nations Global Programme against money laundering has identified ten fundamental laws of money laundering. They are:

1. The more successful a money laundering apparatus is in imitating the patterns and behaviour of legitimate transactions, the less the likelihood of it being exposed.
2. The more deeply embedded illegal activities are within the legal economy and the less their institutional and functional separation, the more difficult it is to detect money laundering.
3. The lower the ratio of illegal to legal financial flows through any given business institution, the more difficult it is to detect money laundering.
4. The higher the ratio of illegal “services” to physical goods production in any economy, the more easily money laundering can be conducted in that economy.
5. The more the business structure of production and distribution of non-financial goods and services is dominated by small and independent firms or self-employed individuals, the more difficult the job of separating legal from illegal transactions.
6. The greater the facility of using cheques, credit cards and other non-cash instruments for effecting illegal financial transactions, the more difficult it is to detect money laundering.
7. The greater the degree of financial deregulation for legitimate transactions, the more difficult it is to trace and neutralize criminal money.
8. The lower the ratio of illegally to legally earned income entering any given economy from outside, the harder the job of separating criminal from legal money.

9. The greater the progress towards the financial services supermarket and the greater the degree to which all manner of financial services can be met within one integrated multi-divisional institution, the more difficult it is to detect money laundering.
10. The greater the contradiction between global operation and national regulation of financial markets, the more difficult the detection of money laundering

2.0 MONEY LAUNDERING PROCESS AND METHODS

It is very important for the financial entities and the gate keepers to know how money is laundered. This helps them to equip themselves better to handle money launderers and their tricks.

Essentially, Money Laundering is a complex chain of activities whereby vast amount of cash generated from illegitimate activities viz. selling of narcotic drugs, extortion, gambling, illicit liquor trade etc is put through a series of process so that it comes out at the other end as clean and legal money.

Money laundering is often described as occurring in three stages:

- a) Placement,
- b) Layering, and
- c) Integration.

a) **Placement** refers to the initial point of entry for funds derived from criminal activities.

The aims of the launderer are to remove the cash from the location of acquisition so as to avoid detection from the authorities and to then transform it into other asset forms

The money launderers use various vehicles to do this e.g. Deposits, Money transfers, purchases of monetary instruments such as travellers' cheques, bank cheques or money orders, foreign currency conversions etc. They may also use insurance companies, brokerage accounts, credit cards and other financial services.

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b) **Layering** refers to the creation of complex networks of transactions which attempt to obscure the link between the initial entry point and the end of the laundering cycle.

The layering is like a shell game- many transactions and conversions take place to blur the trail back to the original crime. This may include investments, purchases of goods and services, encashing cheques, using several smaller cheques to purchase a bank wire etc.

c) **Integration** refers to the return of funds to the legitimate economy for later extraction. Examples include investing in a company, purchasing real estate, luxury goods, etc. 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.

The following methods show the means or medium using which, launderers carry out their activities:

- a) **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.
- b) **Bank Complicity:** Bank complicity occurs when a bank employee is involved in facilitating part of the money laundering process.
- c) **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. Money can also be wired to accounts in other countries. Other services offered by these businesses include the sale of money orders, cashiers cheques, and traveller's cheques.
- d) **Asset Purchases with Bulk Cash:** Money launderers may purchase high value items such as cars, boats or luxury items such as jewellery and electronics. Money launderers will use these items but will distance themselves by having them registered or purchased in an associate's name.

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- e) **Electronic Funds Transfer:** Also referred to as a telegraphic transfer or wire transfer, this money laundering method consists of sending funds electronically from one city or country to another to avoid the need to physically transport the currency.
- f) **Postal Money Orders:** The purchase of money orders for cash Allows money launderers to send these financial instruments out of the country for deposit into a foreign or offshore account.
- g) **Credit Cards:** Overpaying credit cards and keeping a high credit balance gives money launderers access to these funds to purchase high value items or to convert the credit balance into cheques.
- h) **Casinos:** Cash may be taken to a casino to purchase chips which can then be redeemed for a casino cheque.
- i) **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.
- j) **Legitimate Business / Co-mingling of Funds:** Criminal groups or individuals may take over or invest in businesses that customarily handle a high cash transaction volume in order to mix the illicit proceeds with those of the legitimate business. Criminals may also purchase businesses that commonly receive cash payments, including restaurants, bars, night clubs, hotels, currency exchange shops, and vending machine companies. They will then insert criminal funds as false revenue mixed with income that would not otherwise be sufficient to sustain a legitimate business.
- k) **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.

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- 1) **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.

3.0 ROLE OF FINANCIAL INTELLIGENCE UNIT [FIU-IND]

The Government of India vide O.M. dated 18th November 2004 set up the Financial Intelligence Unit – India (FIU-IND) as the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

The main function of FIU-IND is to receive cash/suspicious transaction reports, analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory agencies. The functions of FIU-IND are:

- a) **Collection of Information:** Act as the central reception point for receiving Cash Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) from the banking companies, financial institutions and intermediaries.
- b) **Analysis:** Analyse received information to uncover patterns of transactions suggesting suspicion of money laundering.
- c) **Information Sharing:** Share information with intelligence/enforcement agencies, regulatory agencies and foreign FIUs.

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- d) **Coordination:** Coordinate and strengthen collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and related crimes.
- e) **Research and Analysis:** Monitor and identify strategic key areas on money laundering trends, typologies and developments.

4.0 OVERVIEW OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002

The Prevention of Money Laundering Act, 2002 (PMLA 2002) and the Rules notified there under came into force with effect from July 1, 2005. Director, FIU-IND and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant sections of the Act to implement the provisions of the Act.

The Prevention of Money Laundering Act, 2002 consists of ten chapters containing 75 sections and one Schedule. Certain amendments were made to this Act vide The Prevention of Money laundering (Amendment) Act, 2005(20 of 2005) and The Prevention of Money Laundering (Amendment) Act, 2009

The following table provides an insight into the scheme of the Act:

Chapter No	Sections	Title
I	1-2	Preliminary
II	3-4	Offence of Money Laundering
III	5-11	Attachment, Adjudication and confiscation
IV	12-15	Obligation of the Banks, Financial Institutions and Intermediaries.

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V	16-24	Summons, Searches And Seizures, Etc.
VI	25-42	Appellate Tribunal
VII	43-47	Special Courts
VIII	48-54	Authorities
IX	55-61	Reciprocal, arrangements for assistance in certain matters and procedure for confiscation of property.
X	62-75	Miscellaneous
Schedule	Part A	Offences which are covered regardless of the value
Schedule	Part B	Offences which are covered if the value exceeds 30 lakhs or more
	Part C	Cross border implications

PREVENTION OF MONEY LAUNDERING (AMENDMENT) ACT 2009

The Amended Act has sought to incorporate existing key provisions of the PMLA rules in recording and maintaining information and making reporting mandatory for all intermediaries, particularly for all foreign transactions. Casinos, money changers and transfer service providers, international credit card gateways are to be subjected to regulatory and reporting requirements. As of now, the latter are governed by the RBI regulations that mainly deal with their customer-related operations.

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All offences pertaining to insider trading and market manipulation will also be brought into PMLA as well as smuggling of antiques, terrorism funding, human trafficking other than prostitution, and a wider range of environmental crimes.

These amendments will make India's laundering law Financial Action Task Force (FATF) compliant. Incidentally, India is a Member of the APG and has the status of an Observer in the FATF. The Asia/Pacific Group [APG] on Money Laundering (APG) – a regional body under the Financial Action Task Force – was established in 1997 with a view to facilitate the adoption, effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism, in particular the FATF forty recommendations and nine special recommendations on combating the financing of terrorist financing. The group assists the member countries in the region to enact laws criminalizing the laundering of the proceeds of crime and the financing of terrorism, as well as laws dealing with the confiscation and forfeiture of the proceeds of crime, mutual legal assistance and extradition. Its role includes participating in and cooperating with the global anti-laundering network primarily the FATF and other regional anti-money laundering groups

The Key changes made vide PREVENTION OF MONEY LAUNDERING (AMENDMENT) ACT 2009 include:

1. Definitions – 4 definitions inserted as under.

- da) authorised person means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999, and includes a person who has been authorised or given general or special permission by the Reserve Bank of India and overseas principals with whom the person so authorised or having general or special permission conducts a service involving international money transfer;
- (ja) designated business or profession means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time;.

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- (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.

Explanation. .Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2008

- (rb) "payment system operator" means any person, who operates, maintains, facilitates or sustains a payment system involving the use of credit card or any other similar card or system, which enables payment to be effected between a payer and a beneficiary;’.

Changes made in 3 definitions

- (l) "financial institution" means a financial institution as defined in clause (c) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a co-operative bank, a housing finance institution and an authorised person, a payment system operator and a non-banking financial company
- (q) "non-banking financial company" shall have the same meaning as assigned to it in clause (l) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934); **and includes a person carrying on designated business or profession [inserted]**
- (y) "**Scheduled offence**" means-
- (i) The offences specified under Part A of the Schedule; or

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(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or

(iii) the offences specified under Part C of the Schedule.".

[Substituted for (ii) the offences specified under Part B of the Schedule if the total value involved in such offence is thirty lakh rupees or more.]

2. Attachment of property involved in money-laundering- Sec 5(1)

The investigating agency can attach any property and search a person only after completing investigation. The period of provisional attachment of property has been enhanced from 90 days to 150 days

3. Search and seizure Proviso to Sec 17(1)

The Enforcement Directorate is empowered to search the premises immediately after the offence is committed and the police have filed a report under section 157 of Code of Criminal Procedure, 1973;

4. Adjudicating authorities

The age of retirement of Chairperson and Members of the Adjudicating Authority increased from 62 years to 65 years [proviso to Sec 6 (8)]

5. Resignation and removal

The Amended Act seeks to provide mandatory consultation with the Chief Justice of India before removal of the Chairperson or a Member of the Appellate Tribunal [proviso to sec 32 (2)]

6. Attachment, seizure and confiscation, etc., of property in a contracting State or India

The Amended Act seeks to enable the Central Government to return the confiscated property to the requesting country in order to implement the provisions of the United Nations Convention against Corruption – [Sec 60(7)]

7. Schedule

- (1) Certain offences added in Part A and Part B of the Schedule to the Act.

Offences added include those pertaining to insider trading and market manipulation as well as smuggling of antiques, terrorism funding, human trafficking other than prostitution, and a wider range of environmental crimes

- (2) A new category of offences which have cross-border implications introduced – Part C

Major Provisions of the Prevention of Money Laundering Act, 2002

Definitions

Section 2 defines various terms used in the Act. Some of the important terms are:

Attachment

Sub-section (d) defines attachment as to mean prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III.

Banking Company:

Sec 2(1) (e) of Prevention of Money laundering Act, 2002 defines” banking company”.

Banking company means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act.

The banking regulation act interalia requires that any company which is engaged in accepting repayable deposits (either on demand or otherwise) for the purpose of lending of investments is called a banking company.

A company which is engaged in manufacturing or trade which accepts deposits only for financing its own business is specifically excluded.

Hence, Banking Company includes:

- i) All nationalized banks, private Indian banks and private foreign banks,

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- ii) All co-operative banks viz. primary co-operative banks, state co-operative banks and central co-operative banks,
- iii) State Bank of India and its associates and subsidiaries,
- iv) Regional Rural Banks

Financial Institutions

Sec 2 (1) (l) of the Prevention of Money laundering Act, 2002 defines “Financial Institutions”

Financial Institution means a Financial Institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a co-operative bank, a housing finance institution and a non banking financial company

The Prevention of Money Laundering (Amendment) Act 2009 has modified the definition of “Financial Institution” as hereunder:

"financial institution" means a financial institution as defined in clause (c) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a co-operative bank, a housing finance institution and an authorised person, a payment system operator and a non-banking financial company **[substituted for a non-banking financial company;]**

And

"non-banking financial company" shall have the same meaning as assigned to it in clause (I) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934); **and includes a person carrying on designated business or profession**

Further,

As per Section 45-I (c) of the Reserve Bank of India Act, 1934,

“Financial Institution” means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:–

- (i) The financing, whether by way of making loans or advances or otherwise, of any activity other than its own:

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- (ii) The acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature:
- (iii) Letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972:
- (iv) The carrying on of any class of insurance business;
- (v) Managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;
- (vi) Collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, but does not include any institution, which carries on as its principal business,—
 - (a) Agricultural operations; or
 - (aa) industrial activity; or
 - (b) The purchase or sale of any goods (other than securities) or the providing of any services; or
 - (c) The purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;]

Explanation – For the purposes of this clause, “industrial activity” means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964;

Proceeds of crime

Sub-section (u) defines this term as to mean 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.

Property

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The term “property” used in sub-section (v) means any property or assets of every description, whether, corporeal or incorporeal, movable or immovable, tangible or intangible and includes, deeds and instruments evidencing title to, or interest in such property or assets wherever located.

Intermediaries

Sec 2(1) (n) of the Prevention of Money laundering Act, 2002 defines “Intermediary”

Intermediary means a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

Intermediary thus includes following persons registered under Section 12 of SEBI Act:-

- i. Stock brokers
- ii. Sub-brokers
- iii. Share transfer agents
- iv. Bankers to an issue
- v. Trustees to trust deed
- vi. Registrars to issue
- vii. Merchant bankers
- viii. Underwriters
- ix. Portfolio Managers
- x. Investment advisers
- xi. Depositories and Depository Participants
- xii. Custodian of securities
- xiii. Foreign institutional investors
- xiv. Credit rating agencies
- xv. Venture capital funds
- xvi. Collective investment schemes including mutual funds

Given below are other definitions [excluding changes made vide The Prevention of Money Laundering (Amendment) Act, 2009]

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Other Definitions

<i>Term</i>	<i>Definition</i>	<i>Source</i>
<i>Chit Fund Company</i>	Chit fund company means a company managing, conducting or supervising, as foremen, agent or in any other capacity, chits as defined in Section 2 of the Chit Funds Act, 1982.	2(h) of PMLA 2002
<i>Co-operative Bank</i>	Co-operative bank shall have the same meaning as assigned to it in clause(dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act 1961.	2(i) of PMLA 2002
<i>Client</i>	Client means a person that engages in a financial transaction or activity with a banking company, or financial institution or intermediary and includes a person on whose behalf the person that engages in the transaction or activity, is acting.	2(1)(b) of Rules*
<i>Housing Finance Institution</i>	Housing Finance Institution shall have the same meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987.	2(m) of PMLA 2002
<i>Money Laundering</i>	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 and projecting it as untainted property shall be guilty of offence of money laundering.	3 of PMLA 2002
<i>Person</i>	Persons includes - i. an individual, ii. a Hindu undivided family, iii. a company, iv. a firm, v. an association of persons or a body of individuals,	2(s) of PMLA 2002

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- vi. whether incorporated or not,
- vii. every artificial juridical person, not falling within any of the preceding sub-clauses,
- l. and any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.

<i>Prescribed Value</i>	Prescribed value means the value of transaction prescribed under these rules.	2(1)(e) of Rules*
<i>Principal Officer</i>	Principal officer means an officer designated by a banking company, financial institution and intermediary, as the case may be.	2(1)(f) of Rules*
<i>Proceeds Of Crime</i>	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.	2(u) of PMLA 2002
<i>Property</i>	Property means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.	2(v) of PMLA 2002
<i>Records</i>	Records include the records maintained in the form of books or stored in a computer or such other form as may be prescribed	2(w) of PMLA 2002
<i>Suspicious Transaction</i>	Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith - <ul style="list-style-type: none"> a. gives rise to a reasonable ground of suspicion that it may involve the proceeds of crime; or 	2(g) of Rules*

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- b. appears to be made in circumstances of unusual or unjustified complexity; or
- c. appears to have no economic rationale or bonafide purpose.

<i>Transaction</i>	Transaction includes deposit, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means.	2(1)(h) of Rules*
<i>Transfer</i>	Transfer includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.	2(za) of PMLA 2002
<i>Value</i>	Value means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.	2(zb) of PMLA 2002

Attachment of property involved in money laundering

Where the Director or any officer not below the rank of Deputy Director authorized by him, has reason to believe on the basis of material in his possession that any person is in possession of any proceeds of money laundering; such person has been charged of having committed a scheduled offence and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, such officer may by order in writing, provisionally attach such property for a period not exceeding 90 days from the date of the order, in the manner provided in the Second Schedule of the Income Tax Act, 1961.

Every order of attachment shall cease to have effect after the expiry of 90 days from the date of the order or on the date of the order made by the Administrating Officer finding the person

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interested is not prevented from the enjoyment of the property attached. Person interested in immovable property includes all persons claiming or entitled to claim any interest in the property. The Director or any other officer who provisionally attaches any property shall, within a period of 30 days from such attachment file a complaint, stating the facts of such attachment before the Adjudicating Authority.

Note: The Prevention of Money Laundering (Amendment) Act, 2009 has made the following changes

The investigating agency can attach any property and search a person only after completing investigation. The period of provisional attachment of property has been enhanced from 90 days to 150 days

Adjudicating Authority

Section 6 empowers the Central Government to appoint, by notification, one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authority or Adjudicating Authorities to exercise the jurisdiction, powers and authority conferred on or under the Act.

Adjudication

Section 8 dealing with the adjudication provides that on receipt of a complaint from the Director or any other officer who provisionally attaches any property or an application made by such officer for retention of seized record or property, the Adjudicating Authority may, on reason to believe that any person has committed an offence of money laundering, serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached or seized, the evidence on which he relies and other relevant information and particulars and show cause why all or any of such property should not be declared to be the properties involved in money laundering and confiscated by the Central Government. Where a notice specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person. Similar notice is required to be served on all persons when such property is held jointly by more than one person.

Vesting of property in Central Government

Section 9 provides that an order of confiscation made, in respect of any property of a person, vests in the Central Government all the rights and title in such property free from all

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encumbrances. The Adjudicating Authority after giving an opportunity of being heard to any other person interested in the property attached or seized is of the opinion that any encumbrances on the property or lease hold interest has been created with a view to defeat the provisions of the Act, it may, by order declare such encumbrances or lease hold interest to be void and thereupon the property shall vest in the Central Government free from such encumbrances or lease hold. However, this provision shall not discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Obligation of Banking Companies, Financial Institutions and Intermediaries

Chapter IV of the Act deals with obligations of Banking Companies, financial institutions and intermediaries. Section 12 requires every banking institution, intermediaries and financial institution to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions legally connected to each other, and when such series of transactions take place within a month. This information is required to be furnished to the Director within such time as may be prescribed. Banks and financial institutions are required to verify and maintain the records of the identity of all clients, in such manner as may be prescribed. The records as mentioned above are required to be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company, financial institution or intermediary.

Section 12 of the Prevention of Money Laundering Act, 2002 lays down following obligations on banking companies, financial institutions and intermediaries.

- (a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
- (b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;
- (c) verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed.

Note: If the principal officer of a banking company, financial institution, or intermediary has suspicion that transactions have been valued below the prescribed value so as to defeat the

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provisions of this Act, they can furnish information in respect of such transactions to the Director within the prescribed time.

Section 13 states that the Director may, either on his motion, or on an application made by any authority, officer, or person, call for records of all transactions and make such inquiry or cause such inquiry to be made, as he thinks fit. In the course of the inquiry, if the Director finds that a banking company, financial institution or intermediary or any of its officers have failed to maintain or retain records in accordance with the provisions of the Act, he may, by an order, levy a fine on such banking company, financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

Section 14 - No civil proceedings

Section 14 of the Prevention of Money Laundering Act, 2002 gives immunity to banking companies, financial institutions and intermediaries of securities market, etc., against civil proceedings for furnishing information .

Section 15 - Prescribing the procedure and manner of maintaining and furnishing information

Section 15 of the Prevention of Money Laundering Act, 2002 confers the power to the Central Government to prescribe procedure and manner of maintaining and furnishing information.

Summons, Searches and Seizures, etc.

Section 16 empowers an authority to enter, on having reason to believe that an offence under Section 3 has been committed, any place within the limits of the area assigned to him or in respect of which he is authorised. Section 16(3) requires such authority to place marks of identification on the records inspected by him and make or cause to be made extracts or copies there from, make an inventory of any property checked or verified by him and record the statement of any person present in the place which may be useful for, or relevant to, any proceedings under the Act.

Section 18 of the Act deals with search of persons and provides that if an authority authorized in this behalf by the Central Government by general or special order has reason to believe that any person has secreted about his person or in anything under his possession, ownership or control any record or proceeds of crime which may be useful or relevant to any proceedings under this

Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under the Act.

Retention of property

Under Section 20, where any property has been seized under Section 17 or Section 18 and the officer authorized by the Director has reason to believe that such property is required to be retained for the purposes of adjudication under Section 8, such property may be retained for a period of not exceeding three months from the end of the month in which such property was seized and on expiry of the period of three months, the property shall be returned to the person from which such property was seized unless the Adjudicating Authority permits the retention of such property beyond the said period. Sub-section (4) requires the Adjudicating Authority, before authorizing the retention of such property beyond the specified period, to satisfy himself that the property is *prima facie* involved in money laundering and the property is required for the purposes of adjudication under Section 8.

Presumption in Inter-connected Transactions

Section 23 of the Act deals with presumption in interconnected transactions and provides that where money laundering involves two or more transactions and one or more such transactions are proved to be involved in money laundering, then for the purposes of adjudication or confiscation under Section 8, it shall be presumed that the remaining transactions form part of such interconnected transactions, unless otherwise proved to the satisfaction of the Adjudicating Authority.

Appellate Tribunal

Chapter VI of the Act deals with Appellate Tribunal. Section 25 empowers the Central Government, to establish an Appellate Tribunal to hear appeals against the orders of Adjudicating Authority and other authorities under the Act.

Section 26 - Appeal to Appellate Tribunal

The Director, or any person aggrieved by an order made by the Adjudicating Authority, may prefer an appeal to the Appellate Tribunal.

Any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

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Every appeal to the Appellate Tribunal shall be filed within forty-five days of the date of receipt of the order against which the appeal is filed.

(The Appellate Tribunal may, after giving an opportunity of being heard entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.)

After receiving an appeal, the Appellate Tribunal will, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Appellate Tribunal shall dispose off the appeal as expeditiously as possible, and shall endeavour to dispose of the appeal finally within six months from the date of filing of the appeal.

Section 39 - Right of Appellant

Section 39 of the Prevention of Money Laundering Act, 2002 provides for the right of the appellant to either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.

Section 41 - Restriction on Civil Court Jurisdiction

Section 41 of the Prevention of Money Laundering Act, 2002 restricts the jurisdiction of civil courts.

Appeal to High Court

Section 42 entitles any person aggrieved by any decision or order of the Appellate Tribunal to file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. However, the High Court, if satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, may Allow it to be filed within a further period not exceeding sixty days.

Special Courts

Sections 43 to 47 of the Act deal with provisions relating to Special Courts. Section 43(1) empowers the Central Government to designate, in consultation with the Chief Justice of the High Court, one or more Courts of Session as Special Courts or Court for such area or areas or for such case or class or group of classes as may be specified in the notification, for trial of offence punishable under Section 4.

Offences triable by Special Courts

Section 44(1) provides that the offence punishable under Section 4, shall be triable only by the Special Court constituted for the area in which the offence has been committed or a special court may, upon perusal of police report of the facts which constitute an offence under the Act or upon a complaint made by an authority authorized in this behalf take cognizance of the offence for which the accused is committed to it for trial.

Offences to be cognizable and non-bailable

Section 45 declares every offence punishable under the Act to be cognizable. A person accused of an offence punishable for a term of imprisonment of more than three years under the Act shall not be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release; and where the Public Prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

However, the special court shall not take cognizance of any offence punishable under Section 4, except upon a complaint in writing made by (i) Director or (ii) any officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or special order made by that Government.

Section 48 - Authorities under the Act

Section 48 of the Prevention of Money Laundering Act, 2002 classifies the authorities under the Act. namely:-

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) Such other class of officers as may be appointed for the purposes of this Act."

Section 50 - Powers of authorities regarding summons, production of documents and to give evidence

Section 50 of the Prevention of Money Laundering Act, 2002 confers following powers of summons, production of documents and to give evidence etc.

The authorities for the purposes of this Act, will be the following
(and of course, they will be appointed by the Central Government):

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- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) such other class of officers as may be appointed for the purposes of this Act.

Powers of authorities regarding summons, production of documents and to give evidence, etc.
(Section 50)

The Director, Additional Director, Joint Director, Deputy Director or Assistant Director have been given the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

The persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

These officers can:

Impound and retain any records without recording the reasons for doing so.

Provided that an Assistant Director or a Deputy Director shall not retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director

Power of Central Government to issue directions

Section 52 empowers the Central Government to issue, from time to time, such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act. The authorities and all other persons employed in execution of the Act have been put under obligation to observe and follow such orders, instructions and directions of the Central Government. However, no such orders, instructions or directions shall be issued so as to require any authority to decide a particular case in a particular manner or interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Section 54 - Assistance from other authorities for enforcement of the Act

Section 54 of the Prevention of Money Laundering Act, 2002 empowers and requires the following authorities to assist in the enforcement of the act.

- (a) officers of the Customs and Central Excise Departments;

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- (b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961 (43 of 1961);
- (d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) officers of Police;
- (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1973 (40 of 1999);
- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (i) officers of any other body corporate constituted or established under a Central Act or a State Act;
- (j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf."

Reciprocal Arrangements for Assistance (Sections 55 to 61)

Sections 55 to 61 contain provisions relating to reciprocal arrangements with other countries made through a treaty or otherwise (called contracting state).

These provisions relate to:

- (a) Exchange of information for the prevention of any offence under this Act under the corresponding law in force in that country or for purposes of investigation; and
- (b) Enforcing the provisions of this Act.

The Special Court can forward a Letter of Request for assistance; or summons, warrant, and search warrant in respect of an accused person, to a contracting state for execution.

The Central Government will also forward a Letter of Request for assistance; or summons, warrant, and search warrant in respect of an accused person, to a contracting state for execution.

The Director can also request a contracting state to attach, seize and confiscate properties situated outside India in respect of such orders have been passed in India.

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The Director will also do the same in respect of requests received from his counterparts in a contracting state.

Punishment for vexatious search

Section 62 says that any authority or officer, while exercising the powers under this Act, without reasons recorded in writing,

1. searches or causes to be searched, any building or place or
2. detains or searches or arrests any person

is liable to be punished with an imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

Punishment for false information or failure to give information

Section 63(1) says that any person willfully and maliciously gives false information and so causing an arrest or search to be made under this Act, could be punished with an imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

If any person who is legally bound to state the truth of any matter relating to an offence under Section 3, refuses to answer any question put to him or refuses to sign any statement made by him in the course of proceedings under this Act or omits to attend or produce books of account or documents when called on summons, then such a person could be asked to pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure [Section 63(2)].

Application of Code of Criminal Procedure, 1973

Section 65 says that the provisions of Code of Criminal Procedure, 1973 can be applied as long as they are not inconsistent with the provisions of this Act, to arrest, search, seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

Section 66 - Disclosure of information

Section 66 of the Prevention of Money Laundering Act, 2002 provides for disclosure of information to other officers, authority or body namely

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the

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narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law."

Recovery of fines

Where any fine imposed on any person under Section 13 or 63 is not paid within six months from the imposition of fine, the Director or any other officer authorized by him in this behalf are empowered to proceed to recover the amount from the said person in the manner prescribed in Schedule II of the Income Tax Act, 1961 (Section 69).

Power to remove difficulties

Section 75 empowers the Central Government to make such provisions not inconsistent with the provisions of this Act so as to remove any difficulty that may arise while giving effect to the provisions of this Act. However, no order can be made under this section, after the expiry of two years from the commencement of this Act.

5.0 PREVENTION OF MONEY LAUNDERING ACT (PMLA) RULES

1. Prevention of Money-laundering (the Manner of forwarding a copy of the Order of Provisional Attachment of Property along with the Material, and copy of the Reasons along with the Material in respect of Survey, to the Adjudicating Authority and its period of Retention) Rules, 2005 Notification No. GSR 442(E), dated 01-07-2005
2. Prevention of Money-Laundering (Receipt and Management of Confiscated Properties) Rules, 2005 Notification No.GSR 443(E), DATED 01-07-2005
3. Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing

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Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005

Prevention of Money-Laundering Rules,2005. Notification No. GSR 444 (E), dated 01-07-2005.

4. Prevention of Money-laundering (Forms, Search and Seizure and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005 notification No. GSR 445 (E), dated 01-07-2005.
5. Prevention of Money-laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its period of Retention) Rules, 2005 Notification No. GSR 446(E)m dated 01-07-2005
6. Prevention of Money-laundering (the Manner of Forwarding a Copy of the Order of Retention of Seized Property along with the Material to the Adjudicating Authority and the period of its Retention) Rules, 2005 Notification No. GSR 447(E), dated 01-07-2005.
7. Prevention of Money-laundering (Manner of Receiving the Records authenticated Outside India) Rules, 2005 Notification No. GSR 448(E), dated 1-7-2005
8. Prevention of Money-laundering (Appeal) Rules, 2005 Notification No. GSR 449(E), dated 1-7-2005
9. Amendment to Prevention of Money laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005.dated 24/05/2007
10. Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Amendment Rules, 2009 dated 12.11.2009

6.0 MAINTENANCE OF RECORDS

Overview

Sec 2(1) (w) of the Prevention of Money Laundering Act, 2002, defines Records

"Records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

Section 12 (1) (a) of the said Act makes it mandatory for every banking company, financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month.

In exercise of the powers conferred under sub section (1) and (2) of Section 73 of the Act the Central Government in consultation with the RBI notified vide Notification number 9/2005 dated 1st July, 2005 ‘**The Prevention of Money-Laundering (Maintenance of Records of the nature and value of transactions, the procedure and manner of maintaining and time of furnishing information and verification and maintenance of records of the identity of clients of the banking companies, financial institutions and intermediaries) Rules 2005**’. This Notification was further amended vide Notification 15/2005 dated 13/12/2005 and Notification 4/2007 dated 24/05/2007 and vide Notification 13/2009 dated 12.11.2009

Vide Changes made vide Notification 13/2009 dated 12.11.2009, any company registered under section 25 of the Indian Companies Act, 1956, and/or as a trust or society under the Societies Act, 1860, or any similar state legislation, has been brought under the purview of PMLA.

Rule 3, 4, 5 and 6 of the said Rules specifically provide rules for maintenance and retention of records.

Obligations of the entities

As per Rule 3 of the said Rules, every banking company, financial institution and intermediary shall maintain a record of, -

- all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
- All transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency;”. [Inserted vide Notification No. 13/2009 dated 12-11-2009]
- all series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month;
- all cash transactions wherein forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions;
- all suspicious transactions whether or not made in cash

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 bonafide purpose; or
- gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

“Transactions “include deposit, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means.

Records – Matter and retention

Rule 4 require recording of certain information in the records maintained for this purpose

Accordingly, the records should contain the following information:-

- (a) the nature of the transactions;
- (b) the amount of the transaction and the currency in which it was denominated;
- (c) the date on which the transaction was conducted; and
- (d) the parties to the transaction."

Rule 6 provides that *the records referred to in rule 3 shall be maintained for a period of ten years from the date of transactions between the client and the banking company, financial institution or intermediary, as the case may be.[inserted vide notification 13/2009 dated 12.11.2009]*

Procedure and manner of maintaining information

Rule 5 lays down the procedure for maintaining information. Accordingly,

The banking companies, financial institutions and intermediary shall maintain transactions with their clients both in hard and soft copies in accordance with the procedure and manner as may be specified by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority, as the case may be.

7.0 FURNISHING OF INFORMATION

Overview

Section 12 (1) (b) of the Prevention of Money Laundering Act, 2002, makes it mandatory for every banking company, financial institution and intermediary to furnish information of transactions to the Director within such time as may be prescribed.

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However, if the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value; such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

Procedure and manner of furnishing information-

Rules 7 and 8 of the Rules notified by Notification No. 9/2005 dated 1st July 2005 read with Notification No.15/2005 dated 13th December 2005 and Notification No. 4/2007 dated 24th May 2007 specify the procedure and manner for furnishing information.

1) Every banking company, financial institution and intermediary, as the case may be, shall communicate the name, designation and address of the Principal Officer to the Director. [Principal Officer is an officer designated by a banking company, financial institution and intermediary for the purpose of Section 12 of PMLA, 2002.]

(2) The Principal Officer shall furnish the information referred to in rule 3 to the Director on the basis of information available with the banking company, financial institution and intermediary, as the case may be. A copy of such information shall be retained by the Principal Officer for the purposes of official record.

(3) Every banking company, financial institution and intermediary may evolve an internal mechanism for furnishing information referred to in rule 3 in such form and at such intervals as may be directed by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority, as the case may be.

(4) It shall be the duty of every banking company, financial institution and intermediary to observe the procedure and the manner of furnishing information referred to in rule 3 as specified by the Reserve Bank of India, the Securities and Exchange Board of India and the Insurance Regulatory and Development Authority under sub-rule (3), as the case may be."

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However a banking company, financial institution or intermediary, as the case may be, and its employees shall keep the fact of furnishing information in respect of transactions referred to in clause (D) of sub-rule (1) of rule 3 strictly confidential [proviso inserted to Rule 8(3) vide notification 13/2009 dated 12.11.2009]

Cash transaction reports

Cash transaction reports refer to:

- A. All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency
- B. All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month

Suspicious transaction reports

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

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

Examples of suspicious transactions for a banking company are indicated as under:

1) Identity of client

- False identification documents
- Identification documents which could not be verified within reasonable time

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- Accounts opened with names very close to other established business Entities

2) Background of client

- Suspicious background or links with known criminals

3) Multiple accounts

- Large number of accounts having a common account holder, introducer or authorized signatory with no rationale
- Unexplained transfers between multiple accounts with no rationale

4) Activity in accounts

- Unusual activity compared with past transactions
- Sudden activity in dormant accounts
- Activity inconsistent with what would be expected from declared business

5) Nature of transactions

- Unusual or unjustified complexity
- No economic rationale or bonafide purpose
- Frequent purchases of drafts or other negotiable instruments with cash
- Nature of transactions inconsistent with what would be expected from declared business

6) Value of transactions

- Value just under the reporting threshold amount in an apparent attempt to avoid reporting
- Value inconsistent with the client's apparent financial standing

Examples of suspicious transactions for an intermediary are as under:

1) Identity of Client

- False identification documents
- Identification documents which could not be verified within reasonable time
- Non-face to face client
- Doubt over the real beneficiary of the account
- Accounts opened with names very close to other established business entities

2) Suspicious Background

- Suspicious background or links with known criminals

3) Multiple Accounts

- Large number of accounts having a common account holder, introducer or authorized signatory with no rationale
- Unexplained transfers between multiple accounts with no rationale

4) Activity in Accounts

- Unusual activity compared to past transactions
- Use of different accounts by client alternatively
- Sudden activity in dormant accounts
- Activity inconsistent with what would be expected from declared business
- Account used for circular trading

5) Nature of Transactions

- Unusual or unjustified complexity
- No economic rationale or bonafide purpose
- Source of funds is doubtful
- Appears to be case of insider trading
- Investment proceeds transferred to a third party
- Transactions reflect likely market manipulations
- Suspicious off market transactions

6) Value of Transactions

- Value just under the reporting threshold amount in an apparent attempt to avoid reporting
- Large sums being transferred from overseas for making payments
- Inconsistent with the clients apparent financial standing
- Inconsistency in the payment pattern by client
- Block deal which is not at market price or prices appear to be artificially inflated/deflated

Counterfeit Currency Reports

The Prevention of Money-laundering Act, 2002, and rule thereunder require every banking company, financial institution and intermediary, to furnish to FIU-IND information relating to all cash transactions where forged or counterfeit currency notes or bank notes have been used as

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genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions.

Methods of filing

Reports can be filed either in manual or electronic format. However, a reporting agency must submit all reports to FIU-IND in electronic format if it has the technical capability to do so. The required technical capability is defined as follows:

- i) A personal computer with 32 MB memory RAM, 800 x 600 VGA video display, Windows® 98/Me/NT/2000/XP; and
- ii) An Internet connection.

It must be noted that every reporting agency has to ensure reporting by all its branches either in manual or electronic format. Thus, it has to adopt only one format for all its branches.

Methods of submitting electronic reports

FIU-IND is in the process of developing technological infrastructure to enable submission of electronic return over a secure gateway. In the interim, the reporting entities exercising the electronic option should submit the following to Director, FIU-IND:

- (i) One CD containing six data files in prescribed data structure with a prescribed label.
- (ii) Each CD should be accompanied by prescribed manual form in physical form duly signed by the principal officer.

In case the size of data files exceeds the capacity of one CD, the data files should be compressed by using WinZip 8.1 or ZipItFast 3.0 (or higher version) compression utility only to ensure quick and smooth acceptance of the file.

Due dates for furnishing information to the FIU

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Report	Description	Due Date
CTR	All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency. All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month	15th day of the succeeding month
CCR	All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions*	Not later than seven working days from the date of occurrence of such transaction*
STR	All suspicious transactions whether or not made in cash	Not later than seven working days on being satisfied that the transaction is suspicious*

***modified by Notification No. 4/2007 dated 24-05-2007.**

Reporting formats

Banking and financial institutions

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a) Cash Transaction Reports in manual format consists of following forms:

Form	Information	To be submitted by
Summary of Cash Transaction Reports for a Banking Company	Contains summary of enclosed CTRs	Principal officer of the banking company
Cash Transaction Report for a Banking Company	Details of bank account and cash transactions	Reporting bank branch
Annexure A- Individual Detail Sheet for a Banking Company	Identification details of individual	Reporting bank branch
Annexure B- Legal Person/ Entity Detail Sheet for a Banking Company	Identification details of legal person /entity	Reporting bank branch

In case of electronic filing, the consolidated Cash Transaction data for the banking/financial company should have following six data files:

S No.	Filename	Description
1	CBACTL.txt	Control File
2	CBABRC.txt	Branch Data File
3	CBAACC.txt	Account Data File
4	CBATRN.txt	Transaction Data File
5	CBAINP.txt	Individual Data File
6	CBALPE.txt	Legal Person/Entity Data File

b) Suspicious Transaction Reports in manual format consists of following forms:

Form	Information	To be submitted by
Suspicious Transaction Report	Details of suspicious transactions, accounts and persons/entities	Principal officer of the banking company

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	linked to such transactions	
Annexure A- Individual Detail Sheet	Identification details of individual	Reporting bank branch
Annexure B- Legal Person/ Entity Detail Sheet	Identification details of legal person /entity	Reporting bank branch
Annexure C- Account Detail Sheet	Details of the account, account holder and related persons.	Reporting bank branch

In case of electronic filing, the consolidated STR data for the banking/financial company should have following six data files:

S No.	Filename	Description
1	SBACTL.txt	Control File
2	SBABRC.txt	Branch Data File
3	SBAACC.txt	Account Data File
4	SBATRN.txt	Transaction Data File
5	SBAINP.txt	Individual Data File
6	SBALPE.txt	Legal Person/Entity Data File

Intermediaries

a) Cash Transaction Reports in manual format consists of following forms:

Form	Information	To be submitted by
Summary of Cash Transaction Reports for an Intermediary	Contains summary of enclosed CTRs	Principal officer of the reporting intermediary
Cash Transaction Report for an Intermediary	Details of reporting branch, account holder, related persons,	Reporting branch/franchisee

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	and cash transactions	
Annexure A- Individual Detail Sheet for an Intermediary	Identification details of individual	Reporting branch/franchisee
Annexure B- Legal Person/ Entity Detail Sheet for an Intermediary	Identification details of legal person /entity	Reporting branch/franchisee

In case of electronic filing, the consolidated Cash Transaction data for an intermediary should have following six data files:

S No.	Filename	Description
1	CBACTL.txt	Control File
2	CBABRC.txt	Branch Data File
3	CBAACC.txt	Account Data File
4	CBATRN.txt	Transaction Data File
5	CBAINP.txt	Individual Data File
6	CBALPE.txt	Legal Person/Entity Data File

b) Suspicious Transaction Reports in manual format consists of following forms:

Form	Information	To be submitted by
Suspicious Transaction Report	Details of suspicious transactions, accounts and persons/entities linked to such transactions	Principal officer of the intermediary
Annexure A- Individual Detail Sheet	Identification details of individual	Reporting branch/franchisee
Annexure B- Legal Person/ Entity Detail Sheet	Identification details of legal person /entity	Reporting branch/franchisee
Annexure C- Account Detail Sheet	Details of the account, account holder and	Reporting branch/franchisee

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	related persons.	
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In case of electronic filing, the consolidated STR data for an intermediary should have following six data files:

S No.	Filename	Description
1	SBACTL.txt	Control File
2	SBABRC.txt	Branch Data File
3	SBAACC.txt	Account Data File
4	SBATRN.txt	Transaction Data File
5	SBAINP.txt	Individual Data File
6	SBALPE.txt	Legal Person/Entity Data File

d) Counterfeit Currency Reports

Counterfeit Currency Reports in manual format consists of following forms:

Form	Information	Completed by
Summary of Counterfeit Currency Reports	Contains summary of enclosed CCRs	Principal officer of the reporting entity
Counterfeit Currency Report	Details of branch and counterfeit currency.	Reporting branch/office

Electronic format

FIU-IND is in the process of developing technological infrastructure to enable submission of electronic return over a secure gateway. In the interim, the reporting entities should submit the following to Director, FIU-IND:

- i) One CD containing three data files in prescribed data structure. A label mentioning name of the reporting entity, Unique code, type of report (CCR), report dated should be affixed on each CD for the purpose of identification.

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- ii) Each CD should be accompanied by Summary of Counterfeit Currency Report for reporting entity (same form should be used for both manual as well as electronic format) in physical form duly signed by the principal officer. This summary should match with the data in Control File (CCRCTL.txt).
- iii) In case of electronic filing, the consolidated CCR data should have following three data files:

S No.	Filename	Description
1	CCRCTL.txt	Control File
2	CCRBRC.txt	Branch File
3	CCRTRN.txt	Transaction File

8.0 IDENTITY OF CLIENTS

Verification of identity of clients

It has been made mandatory for every banking company, financial institution and intermediary, at the time of opening an account or executing any transaction with it, to verify the record of identity and current address or addresses including permanent address or addresses of the client, the nature of business of the client and his financial status. If it is not possible to verify the identity of the client at the time of opening an account or executing any transaction, the banking company, financial institution and intermediary are required to verify the identity of the client within a reasonable time after the account has been opened or the transaction has been executed.

Rule 9 of the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 deals with the verification of the identity of clients.

Meaning of client

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Client means a person who engages in a financial transaction or activity with a banking company, or financial institution or intermediary. The term also includes a person on whose behalf the person that engages in the transaction or activity, is acting.

Meaning of transaction

The word “Transaction” includes deposit, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means.

Documents needed for verification of an individual:

1. One certified copy of an officially valid document containing details of his/her identity and addresses; and
2. One copy of his/her recent photograph; and
3. Such other documents including in respect of the nature of business and financial status of the client as may be required by the banking company or the financial institution or the intermediary.

Officially valid document means the passport, the driving licence, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by the Election Commission of India or any other document as may be required by the banking company, or financial institution or intermediary.

Documents needed for verification of A Company

1. Certificate of incorporation;
2. Memorandum and Articles of Association;
3. A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and
4. An officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf.

Documents needed for verification of a Partnership Firm

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1. Registration certificate;
2. Partnership deed; and
3. An officially valid document in respect of the person holding an attorney to transact on its behalf.

Documents needed for verification of a Trust

1. Registration certificate;
2. Trust deed; and
3. An officially valid document in respect of the person holding an attorney to transact on its behalf.

Documents needed for verification of an Association of Persons (AOP) or Body of Individuals (BOI)

1. Resolution of the managing body of such association or body of individuals;
2. Power of attorney granted to him to transact on its behalf;
3. An officially valid document in respect of the person holding an attorney to transact on its behalf; and
4. Such information as may be required by the banking company or the financial institution or the intermediary to collectively establish the legal existence of such an association or body of individuals.

Client Identification Programme

Rule 9 of the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 lays down that:

The following subsections have been substituted vide Notification dated 12.11.2009

“(1) Every banking company, financial institution and intermediary, as the case may be, shall,

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(a) at the time of commencement of an account-based relationship, identify its clients, verify their identity and obtain information on the purpose and intended nature of the business relationship, and

(b) in all other cases, verify identity while carrying out:

(i) transaction of an amount equal to or exceeding rupees fifty thousand, whether conducted as a single transaction or several transactions that appear to be connected, or

(ii) any international money transfer operations.

(1 A) Every banking company, financial institution and intermediary, as the case may be, shall identify the beneficial owner and take all reasonable steps to verify his identity.

(1 B) Every banking company, financial institution and intermediary, as the case may be, shall exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the customer, his business and risk profile.

(1 C) No banking company, financial institution or intermediary, as the case may be, shall keep any anonymous account or account in fictitious names.

(2) Where the client is an individual, he shall for the purpose of sub-rule (1), submit to the banking company, financial institution and intermediary, as the case may be, one certified copy of an 'officially valid document' containing details of his identity and address, one recent photograph and such other documents including in respect of the nature of business and financial status of the client as may be required by the banking company or the financial institution or the intermediary, as the case may be.

Provided that photograph need not be submitted by a client falling under clause (b) of sub-rule (1)''

Further,

Where the client is a juridical person, the banking company, financial institution and intermediary, as the case may be, should verify that any person purporting to act on behalf of

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such client is so authorised and verify the identity of that person[sub rule 6Ainserted vide notification dated 12.11.2009]

Maintenance of records of identity of clients

Rule 10 of the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 lays down that

“(1) every banking company or financial institution or intermediary, as the case may be shall maintain the records of the identity of its clients.

(2) The records of the identity of clients shall be maintained in hard and soft copies in a manner as may be specified by the Regulator from time to time.

(3) The records of the identity of clients shall be maintained for a period of ten years from the date of cessation of the transactions between the client and the banking company or financial institution or intermediary, as the case may be.”

Retention of Identity of Clients

Rule 10 of the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 is reproduced as under:

“(3) The records of the identity of clients shall be maintained for a period of ten years from the date of cessation of the transactions between the client and the banking company or financial institution or intermediary, as the case may be.”

Know Your Customer Guidelines

The main purpose of KYC norms was to restrict money laundering and terrorist financing when it was introduced in late the 1990s in the United States. The US government turned very strict after 9/11 and all regulations were finalised before 2002 for KYC.

The US has made changes in its major legislations -- Bank Secrecy Act, USA Patriot Act, et cetera - to make KYC norms really effective for the banking sector.

Taking a leaf out of the US book, the Reserve Bank of India too directed all banks to implement KYC guidelines for all new accounts in the 2nd half of 2002.

For existing accounts, imposing KYC norms was a little difficult, so the RBI issued guidelines for the same at the end of 2004.

What is KYC?

But let us first understand what KYC norms actually mean.

In order to prevent identity theft, identity fraud, money laundering, terrorist financing, etc, the RBI had directed all banks and financial institutions to put in place a policy framework to know their customers before opening any account.

This involves verifying customers' identity and address by asking them to submit documents that are accepted as relevant proof.

Mandatory details required under KYC norms are proof of identity and proof of address. Passport, voter's ID card, PAN card or driving license are accepted as proof of identity, and proof of residence can be a ration card, an electricity or telephone bill or a letter from the employer or any recognised public authority certifying the address.

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Some banks may even ask for verification by an existing account holder. Though the standard documents which are accepted as proof of identity and residence remain the same across various banks, some deviations are permitted, which differ from bank to bank.

So, all documents shall be checked against banks requirements to ascertain if those match or not before initiating an account opening process with any bank. Thus opening a new bank account is no longer a cake walk.

Those are the basic requirements of KYC to identify a customer at the account opening stage.

Let's check other aspects of KYC.

To prevent the possible misuse of banking activities for anti-national or illegal activities, the RBI has given various directives to banks:

1. Strengthening the banks' 'Internal Control System' by allocating duties and responsibilities clearly, and periodically monitoring them.
2. Before giving any finance at branch level, making sure that the person has no links with notified terrorist entities and reporting any such 'suspect;' accounts to the government.
3. Regular 'Internal Audit' by internal and concurrent auditors to check if the KYC guidelines are being properly adhered to or not by banks.
4. Most important, banks must keep an eye out for all banking transactions and identify suspicious ones. Such transactions will be immediately reported to the bank's head office and authorities and norms shall also be laid down for freezing of such accounts.

In 2004, the RBI had come up with more specific guidelines regarding KYC. These were divided into four parts:

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Customer Acceptance Policy: All banks shall develop criteria for accepting any person as their customer to restrict any anonymous accounts and ensure documentation mentioned in KYC.

Customer Identification Procedures: Customer to be identified not only while opening the account, but also at the time when the bank has a doubt about his transactions.

Monitoring of Transactions- KYC can be effective by regular monitoring of transactions. Identifying an abnormal or unusual transaction and keeping a watch on higher risk group of the account is essential in monitoring transactions.

Risk management

All banks should ensure that an effective KYC programme is put in place by establishing appropriate procedures and ensuring their effective implementation. It should cover proper management oversight, systems and controls, segregation of duties, training and other related matters.

The RBI had also directed all banks to make a policy for implementing 'Know Your Customer' and anti-money laundering measures and remain fully compliant with given guidelines before December 31, 2005.

But there have been instances of lapses in the implementation of KYC guidelines by several banks. That resulted into the infamous IPO scam. Since January 2006, the RBI has slapped penalties on several leading banks. Till date we have not come across any case of money laundering, terrorist financing or transfer of funds for anti-national activities, but in case of any more lapses in the 'Know Your Customer' guidelines, the threat of the misuse of the banking channels for anti-national activities always lurks around the corner.

9.0 NOTIFICATIONS/GUIDELINES ISSUED BY VARIOUS AUTHORITIES

IMPORTANT NOTIFICATIONS BY THE CENTRAL GOVERNMENT

The Central Government has notified following Rules to enforce the Prevention of Money Laundering Act, 2002.

Notification Number	Description
1/2005 dated 1 st July 2005	Appointed 1st July 2005 as the date on which all the provisions of the Prevention of Money Laundering Act, 2002 shall come into force.
2/2005 dated 1st July 2005	Appointed an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under the Prevention of Money Laundering Act, 2002. The Adjudicating Authority shall consist of a Chairperson and two members and shall function within the Department of Revenue, Ministry of Finance of the Central Government with Headquarters at Delhi.
3/2005 dated 1st July 2005	Specified that the New Delhi Bench of the Adjudicating Authority shall exercise jurisdiction, powers and authority conferred by or under the Prevention of Money Laundering Act, 2002 over the whole of India.
4/2005 dated 1st July 2005	Established an Appellate Tribunal at New Delhi to hear appeals against the orders of the Adjudicating Authority and the authorities under the Prevention of Money Laundering Act, 2002.
5/2005 dated 1st July 2005	Conferred certain exclusive and concurrent powers under the Prevention of Money Laundering Act, 2002 to the Director, Financial Intelligence Unit, India.
6/2005 dated 1st July 2005	Conferred certain exclusive and concurrent powers under the Prevention of Money Laundering Act, 2002 to the Director of Enforcement.
7/2005 dated 1st	Specified Rules relating to the manner of forwarding a copy of the order

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July 2005	of provisional attachment of property along with the material, and the copy of the reasons along with the material in respect of survey, to the Adjudicating Authority and its period of retention by the Adjudicating Authority.
8/2005 dated 1st July 2005	Specified Rules for receipt and management of confiscated properties.
9/2005 dated 1st July 2005	Specified Rules for maintenance of records of the nature and value of transactions, the procedure and manner of maintaining and time for furnishing of information and verification of records of the identity of the clients of the banking companies, financial institutions and intermediaries of securities market.
10/2005 dated 1st July 2005	Specified Rules relating to the Forms, search and seizure and the manner of forwarding a copy of the reasons and the material relating to search and seizure and search of person to the Adjudicating Authority, impounding and custody of records and the period of retention thereof.
11/2005 dated 1st July 2005	Specified Rules relating to the Forms, the manner of forwarding a copy of the order of arrest of a person along with the material to the Adjudicating Authority and the period of retention there of by the Adjudicating Authority.
12/2005 dated 1st July 2005	Specified Rules relating to the manner of forwarding a copy of the order of retention of seized property along with the material to the Adjudicating Authority and its period of retention by the Adjudicating Authority.
13/2005 dated 1st July 2005	Specified Rules for the manner of receiving the records authenticated outside India.
14/2005 dated 1st July 2005	Specified Rules for the purpose of appeals under the Prevention of Money Laundering Act, 2002.
15/2005 dated	Amended Rules 5, 7, 8 and 10 of the Rules notified by Notification No.

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13th Dec 2005	9/2005	
6/2006 dated 27-06-2006		specifies the authorities to whom Director, FIU-IND can furnish information under Section 66 of the Prevention of Money-laundering Act, 2002.
4/2007 dated 24-05-2007	9/2005.	Amends rule 2, 3, 8 and 9 of the Rules notified by Notification No.
13/2009 dated 12-11-2009		amends rule 2, 3, 5, 6,7, 8, 9 and 10 of the Rules notified by Notification No. 9/2005.

BANKING COMPANY

Notifications issued by RBI

- 05.11.2009 - CFT- Unlawful Activities (Prevention) Act, 1967 – Obligation of RRBs
- 29.10.2009 - CFT- Unlawful Activities (Prevention) Act, 1967 – Obligation of State and Central Co-operative Banks
- 30.09.2009 - KYC / AML Standards / CFT / Obligation of State and Central Co-operative Banks
- 29.09.2009 - KYC Norms / AML Standards and obligation of Regional Rural Banks (RRBs)
- 17.09.2009 - CFT - Unlawful Activities (Prevention) Act, 1967 – Obligation of scheduled commercial banks
- 16.09.2009 - Adherence to KYC/AML guidelines-Multi Level Marketing firms - Primary (Urban) Co-operative Banks
- 11.09.2009 - KYC norms / AML standards/CFT/Obligation of scheduled commercial banks
- 14.08.2009 - Policy Guidelines for issuance and operation of Prepaid Payment Instruments in India
- 14.08.2009 - Use of RTGS/NEFT/NECS/ECS – Compliance with FEMA Regulations and Wire Transfer Guidelines
- 11.08.2009 - List of Terrorist Individuals/Organisations - under UNSCR 1267(1999) and 1822(2008)

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- 01.07.2009 - Master Circular – Foreign Contribution (Regulation) Act, 1976
- 01.07.2009 - Master Circular - Para-banking Activities for all scheduled commercial banks (excluding RRBs)
- 01.07.2009 - Master Circular – KYC Guidelines – AML Standards for all NBFCs, MNBs, RNBs
- 01.07.2009 - Master Circular – KYC norms / AML standards/ CFT/Obligation for Scheduled Commercial Banks
- 23.06.2009 - List of Terrorist Individuals/Organisations - under UNSCR 1267(1999) and 1822(2008)
- 05.08.2008 - Obligations of NBFCs under PMLA and Counterfeit Currency Report
- 02.07.2008 - Prevention of Money Laundering Act, 2002 – Obligation for UCBs
- 01.07.2008 - Master Circular-KYC norms/AML standards/CFT obligation of Banks under PMLA, 2002 (w/o Annexures)
- 01.07.2008 - Master Circular-KYC norms/AML standards/CFT obligation of Banks under PMLA, 2002 (with Annexures)
- 25.06.2008 - Obligations of State and Central Cooperative Banks under PMLA and Counterfeit Currency Report
- 18.06.2008 - Obligations of Regional Rural Banks under PMLA and Counterfeit Currency Report
- 22.05.2008 - Obligations of Banks under PMLA and Counterfeit Currency Report
- 28.02.2008 - KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)-State and Dist. Central Coop. Banks
- 27.02.2008 - KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)-Regional Rural Banks
- 25.02.2008 - KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)-Primary (Urban) Cooperative Banks
- 18.02.2008 - KYC Norms/AML Standards/Combating Financing of Terrorism (CFT)-Scheduled Commercial Banks
- 20.04.2007 - Compliance function in Banks
- 13.04.2007 - KYC Norms/AML Guidelines/Combating Financing of Terrorism- Wire Transfers
- 16.11.2006 - Compliance function in Banks
- 26.06.2006 - Anti-Money Laundering Guidelines for Authorized Persons in Foreign Exchange
- 21.03.2006 - Prevention of Money Laundering Act, 2002 – Obligation of Primary (Urban) Co-

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operative Banks

09.03.2006 - Prevention of Money Laundering Act, 2002 – Obligation of Regional Rural Banks

03.03.2006 - Prevention of Money Laundering Act, 2002 – Obligation of State and District

Central Co-operative Banks

15.02.2006 - Prevention of Money Laundering Act, 2002 – Obligation of Scheduled Commercial Banks excluding RRBs

25.01.2006 - Financial inclusion by Extension of Banking Services – Scheduled Commercial Banks including RRBs

02.12.2005 - Anti-Money Laundering Guidelines for Authorized Money Changers

21.11.2005 - Credit Card Operations of banks - Commercial Banks/NBFCs (Excluding RRBs)

11.10.2005 - KYC for persons authorized by NBFCs to collect public deposit on behalf of NBFCs

23.08.2005 - KYC guidelines – AML Standards - Scheduled Commercial Banks (Excluding RRBs)

23.08.2005 - KYC guidelines – AML Standards - State and District Central Co-operative Banks

23.08.2005 - KYC guidelines – AML Standards - Regional Rural Banks

23.08.2005 - KYC guidelines – AML Standards – Primary (Urban) Co-operative Banks

21.02.2005 - KYC guidelines – AML Standards – NBFCs, Miscellaneous NBCs, and Residuary NBCs

18.02.2005 - KYC guidelines – AML Standards - State and District Central Co-operative Banks

18.02.2005 - KYC guidelines – AML Standards - Regional Rural Banks

15.12.2004 - KYC guidelines – AML Standards - Primary (Urban) Co-Operative Banks

29.11.2004 - KYC guidelines – AML Standards -Commercial Banks

09.07.2004 - KYC Guidelines - Compliance -Primary (Urban) Co-Operative Banks

21.06.2004 - Guidelines on KYC Norms – Existing Accounts - Commercial Banks (excluding RRBs)

29.05.2004 - KYC Guidelines - Compliance - Primary (Urban) Co-Operative Banks

19.02.2003 - Risk Management Systems in Banks -Scheduled Commercial Banks (excluding RRBs and LABs)

16.08.2002 - Guidelines on “Know Your Customer” norms and “Cash transactions” - Commercial Banks

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Notifications issued by NABARD

- 23.04.2009 – KYC Guidelines and AML Standards - Obligations of RRBs
- 23.04.2009 - KYC Guidelines and AML Standards for State Cooperative Banks & District Central Cooperative Banks
- 17.03.2008 - KYC Guidelines - AML Standards for State Cooperative Banks & District Central Cooperative Banks
- 28.08.2004 - Guidelines on 'Know Your Customer' Norms - Existing Accounts - RRBs
- 28.08.2004 - Guidelines on KYC Norms - Existing Accounts - State/District Central Cooperative Banks
- 15.06.2004 - KYC norms and Cash transactions - Compliance – RRBs
- 15.06.2004 - KYC norms and Cash transactions - Compliance - State/ District Central Cooperative Banks
- 14.06.2004 – Customer Information – RRBs
- 14.06.2004 – Customer Information - State/District Central Cooperative Banks
- 13.05.2005 - KYC norms and "Cash transactions" – State Cooperative Agriculture & Rural Development Banks
- 30.04.2003 - Guidelines on "Know Your Customer" norms and "Cash transactions" – RRBs
- 30.04.2003 - Guidelines on KYC norms and “Cash transactions”- State Co-operative Banks

FINANCIAL INSTITUTIONS

Notifications issued by RBI

- 01.07.2009 - Master Circular – KYC Guidelines – AML Standards for all NBFCs, MNBs, RNBs
- 05.08.2008 - Obligations of NBFCs under PMLA and Counterfeit Currency Report
- 05.04.2006 - Prevention of Money Laundering Act, 2002 – Obligation of NBFCs
- 21.03.2006 - Prevention of Money Laundering Act, 2002 – Obligation of Primary (Urban) Co-operative Banks
- 07.03.2006 - KYC guidelines – AML Standards – NBFCs, Miscellaneous NBCs, and Residuary NBCs
- 21.11.2005 - Credit Card Operations of banks - Commercial Banks/NBFCs (Excluding RRBs)

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11.10.2005 - KYC for persons authorized by NBFCs to collect public deposit on behalf of NBFCs

21.02.2005 - KYC guidelines – AML Standards – NBFCs, Miscellaneous NBCs, and Residuary NBCs

Circulars issued by IRDA

28.10.2009 - Guidelines for implementation of Section 51A of Unlawful Activities (Prevention) Amendment Act
09.09.2009 - The Prevention of Money Laundering (Amendment) Act, 2009 for Insurance Companies

24.08.2009 - AML Guidelines for Insurance Companies

18.08.2009 - Requirement of PAN for Insurance Products for Insurers

02.12.2008 - Master Circular on Anti-Money Laundering Programme for Insurers

31.03.2006 - Guidelines of Anti Money Laundering Programme for Insurers

Circulars issued by National Housing Bank

23.06.2009 - KYC Norms/AML Standards / Combating of Financing of Terrorism (CFT) for Housing Finance Companies

20.02.2009 - KYC Norms/AML Standards / Combating of Financing of Terrorism (CFT) for Housing Finance Companies

25.07.2007 - KYC Guidelines / AML Standards -Reporting System for Housing Finance Companies

17.01.2007 - KYC Guidelines / AML Standards -Reporting System for Housing Finance Companies

10.04.2006 - KYC Guidelines / AML Standards for Housing Finance Companies

31.03.2005 - KYC Guidelines - Identification of customers- for Housing Finance Companies

INTERMEDIARY

Notification of PMLA Rules

12.11.2009 - Notification No. 13/2009 - Amendment to Rules

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01.06.2009 - Notification for bringing the Prevention of Money Laundering (Amendment) Act, 2009 into force

24.05.2007 - Notification No. 4/2007 - Amendment to Rules

27.06.2006 - Notification No. 6/2006 - Dissemination of Information

13.12.2005 - Notification No. 15/2005 - Amendment to Rules

01.07.2005 - Notification No. 9/2005 - Rules for Record Keeping and Reporting

01.07.2005 - Notification No. 5/2005 - Powers of Director, FIU-IND

Other Orders

27.08.2009 - Procedure for implementation of Section 51A of the Unlawful Activities (Prevention) Act, 1967

Circulars issued by SEBI

23.10.2009 - CFT under Unlawful Activities (Prevention) Act, 1967 – all registered intermediaries

01.09.2009 - AML Standards/CFT/Obligations of Securities Market Intermediaries

19.12.2008 - SEBI Master Circular on AML and CFT- Obligations of Intermediaries under PMLA

27.04.2007 - Permanent Account Number (PAN) to be the sole identification number

20.03.2006 - Obligations of Intermediaries under PMLA

18.01.2006 - Guidelines for Anti Money Laundering Measures

10.0 INTERNATIONAL CONVENTIONS AND RESOLUTIONS

1988 marked the starting point for an international strategy with the signature of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which provided the first legal definition of money-laundering., In addition, the Basel Statement of Principle adopted at the same period, involved the financial system in the fight against funds of criminal origin and terrorism financing. Since then, a series of international legal instruments and international initiatives have been established to fight this menace.

The Vienna Convention or the 1988 Convention

The 1988 Convention against Unlawful Traffic in Narcotic Drugs and Psychotropic Substances, the fruit of the experience of nearly a century in drug control, is the first convention to have laid the foundations of the new strategy to combat drug trafficking organizations., It moved away from emphasizing direct obsession of drug traffic toward attacking the goal of all organized crime, and also its weakest point namely money itself. The Convention recognized that “illicit drug traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,” and became the first international instrument to make the fight against the proceeds of crime an angle of attack in the fight against organized crime and drug trafficking. The Convention provides a definition of money-laundering that has been taken up in many laws as well as in most international conventions on the subject. The Convention instituted a complete mechanism for mutual international assistance in the area of confiscation that seeks to resolve the problems that result from the fact that the assets in which drug traffickers invest their profits are not always found in the country where the party involved carries out these activities, where he has his domicile or even where he is arrested. Signed on October 20, 1988, the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances took effect on November 11, 1990. As of November 1st 2002, it had been ratified by 166 countries

The Strasbourg Convention or the Council of Europe’s Convention on Laundering

The Convention adopts the definition of money-laundering established by the Vienna Convention, as well as the provisions on international cooperation in the area of seizure, confiscation and mutual judicial assistance in investigations. However, it extends the field of its intervention to all the proceeds of crime, defining them more broadly as “any economic advantage from criminal offences.” It also adopts the recommendations of the FATF with respect to the rules for preventing money-laundering in the banking and financial system. All members

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of the Council of Europe except Armenia, Bosnia and Herzegovina, Georgia and Turkey have ratified it. It has also been ratified by two non-members, Australia and Monaco.

The OECD Convention on Corruption

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed in Paris on December 17, 1997 and took effect on February 15, 1999. The goal of the 35 signatories is to protect international trade (and by extension the emerging client states) from the scourge of corruption, while preserving equal opportunities among exporting countries. The Convention does not thereby target only acts of active corruption in international business transactions (exchanges and investments). It requires the signatory states to make the corruption of foreign public officials a criminal violation and, pursuant to Article 3, to provide “effective, proportionate and dissuasive” sanctions for individuals and legal entities comparable to those applied in the case of the corruption of a national official. It provides an autonomous definition of the notion of a foreign public official, whether or not they belong to a signatory state, as well as a broad interpretation of territorial jurisdiction.

Recommendations of FATF

The FATF is an inter-governmental body which sets standards, and develops and advocates policies to fight money laundering and terrorist financing. It currently has 33 members: 31 countries and governments and two international organisations; and more than 20 observers: five FATF-style regional bodies and more than 15 other international organisations or bodies.

The Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Summit in Paris in 1989 with primary responsibility for developing a world-wide standard for anti-money laundering (AML) and combating the financing of terrorism (CFT). It works in close cooperation with other key international organizations, including the IMF, the World Bank, the United Nations, and FATF-style regional bodies (FSRBs), most of which participate in its meetings as observers.

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FATF devised and promulgated its 40 Recommendations, which set out a basic, universally applicable framework for legal and regulatory systems, law-enforcement activities, and the work of supervisory and regulatory agencies. After September 11, 2001, the FATF expanded its mission beyond money laundering and agreed to use its expertise in the worldwide effort to combat terrorist financing. An extraordinary FATF Plenary on the Financing of Terrorism, held in Washington, D.C. in October 2001, issued 8 Special Recommendations on Terrorist Financing as a new international standard to supplement the 40 Recommendations. This standard has also been subsequently expanded and elaborated and now includes nine recommendations.

The Egmont Group Financial Intelligence Units (FIUs)

The fight against money laundering has been an essential part of the overall struggle to combat illegal narcotics trafficking, the activities of organised crime, and more recently the financing of terrorist activity. It became obvious over the years that banks and other financial institutions were an important source for information about money laundering and other financial crimes being investigated by law enforcement. Concurrently, governments around the world began to recognise the virulent dangers that unchecked financial crimes posed to their economic and political systems. To address that threat, a number of specialized governmental agencies were created as countries around the world developed systems to deal with the problem of money laundering. These entities are now commonly referred to as “financial intelligence units” or “FIUs”. They offer law enforcement agencies around the world an important avenue for information exchange.

Recognizing the benefits inherent in the development of a FIU network, in 1995, a group of FIUs at the Egmont Arenberg Palace in Brussels decided to establish an informal group for the stimulation of international co-operation. Now known as the Egmont Group, these FIUs meet regularly to find ways to cooperate, especially in the areas of information exchange, training and the sharing of expertise.

There are currently 101 countries with recognised operational FIU units, with others in various stages of development. Countries must go through a formal procedure established by the Egmont Group in order to be recognised as meeting the Egmont Definition of an FIU. The Egmont Group

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as a whole meets once a year. Since the Egmont Group is not a formal organisation, there is no permanent secretariat. Administrative functions are shared on a rotating basis. Aside from the Egmont Support position, Working Groups and the Egmont Committee are used to conduct common business.

FIUs, at a minimum, receive, analyze, and disclose information by financial institutions to competent authorities of suspicious or unusual financial transactions. Although every FIU operates under different guidelines, most FIUs, under certain provisions, can exchange information with foreign counterpart FIUs. In addition, many FIUs can also be of assistance in providing other government administrative data and public record information to their counterparts, which can also be very helpful to investigators. One of the main goals of the Egmont Group is to create a global network by promoting international co-operation between FIUs.

The ongoing development and establishment of FIUs exemplify how countries around the world continue to intensify their efforts to focus on research, analysis and information exchange in order to combat money laundering, terrorist financing and other financial crimes.

The Basle Statement of Principles

The Committee on Banking Regulations and Supervisory Practices of the G 10 at a meeting in Basle in Switzerland, in December 1988, evolved a set of principles to address the perils thrown by Money Launderers. The committee was formed by the Central Bank Governors of Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland and United States. These principles, which are now known as the Basle Principles, deal with the prevention of criminal use of the banking system for the purpose of Money Laundering. Recommendations for banks and other financial institutions have been set out in the Basle Principles so that these institutions can protect themselves against Money Laundering. The Basle Statement of Principles covers all aspects of laundering through the banking system.

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The Basle Principles suggest policies and procedures in four areas to curb Money Laundering as shown below:

- Customer Identification
- Compliance with Laws
- Cooperation with Law Enforcement agencies, and,
- Adherence to the Statement.

These are dealt with in some detail below:

Customer Identification

This re-accentuates the adage "Know your Customer" (KYC). KYC requires that banks should make justifiable efforts to determine the customer's true identity, and must introduce adequate procedures for verifying the bonafide of new customers.

Compliance with Laws

The laws and regulations pertaining to financial transactions as enacted in different Banking related statutes must be observed. Banks should not offer services or provide active assistance in case of transactions where they have good reason to suppose that these are associated with Money Laundering activities.

Co-operation with Law Enforcement Authorities

Banks should co-operate fully with national law enforcement authorities to the extent permitted by specific local regulations concerning customer confidentiality.

Adherence to the Statement

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Adhering to the Statement implies that banks need to adopt policies that are consistent with the Statement and ensure that all staff members are informed of the banks policy in this regard. Some key factors in promoting adherence to the Statement of Principles are staff training and implementing specific procedures for customer identification and retaining internal records of transactions.

The Basle Principles set out effective guidelines for banks and financial institutions to fight the plague of Money Laundering.

11.0 USEFUL WEBSITES

- 1 Financial Intelligence Unit- India <http://www.fiuindia.gov.in/>
- 2 Ministry of Finance <http://www.finmin.nic.in/>
- 3 Insurance Regulatory and Development Authority <http://www.irdaindia.org/>
- 4 Reserve Bank of India <http://www.rbi.org.in/>
- 5 Securities and Exchange Board of India <http://www.sebi.gov.in/>
- 6 Asia/Pacific Group on Money Laundering (APG) <http://www.apgml.org/>
- 7 Bank for International Settlements <http://www.bis.org/>
- 8 Caribbean Financial Action Task Force on Money Laundering (CFATF)
<http://www.cfatf.org/eng/>
- 9 Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
<http://www.esaamlg.org/>
- 10 Egmont group <http://www.egmontgroup.org/>
- 11 Eurasian Group on Combating Money Laundering and Financing Terrorism
<http://www.eurasiangroup.org/>
- 12 European Union http://europa.eu/pol/fraud/index_en.htm
- 13 Financial Action Task Force on Money Laundering (FATF) <http://www.fatf-gafi.org>
- 14 International Monetary Fund <http://www.imf.org/>
- 15 International Money Laundering Information Network (IMoLIN)
<http://www.imolin.org/imolin/index.html>
- 16 Interpol - International Criminal Police Organisation <http://www.interpol.com/>
- 17 Middle East & North Africa Financial Action Task Force (MENAFATF)
<http://www.menafatf.org/>
- 18 Organisation for Economic Co-operation and Development (OECD)
<http://www.oecd.org/>
- 19 United Nations International Drug Control Programme <http://www.unodc.org/>
- 20 World Bank <http://web.worldbank.org/>